

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND DEPARTMENT

Fields v. Axelrod

134 A.D.2d 589 (N.Y. App. Div. 2d Dep't 1987) · Decided November 30, 1987

SUMMARY

The court reviewed a New York Department of Health determination finding the petitioner liable for patient neglect and imposing a \$250 fine. It upheld the finding that the petitioner lifted the patient without assistance, but annulled the finding that the lifting caused the patient’s eye injury because the evidence showed only a possibility of causation, and remitted the matter for reconsideration of the penalty.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Mollen, P.J.; Rubin, J.; Kooper, J.; Sullivan, J.
JURISDICTION	New York
DECIDED	November 30, 1987
DISPOSITION	remanded
PROCEDURAL POSTURE	CPLR article 78 proceeding to review a determination by the Commissioner of the New York State Department of Health finding petitioner liable for patient neglect and imposing a \$250 fine.
STANDARD OF REVIEW	Whether the administrative determination was supported by substantial evidence.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Fields v. Axelrod

TOPICS

- judicial review of agency action
- administrative law
- nursing home liability
- remedies

PRACTICE AREAS

- administrative law
- health law
- administrative agency review
- health-care facility regulation

QUESTIONS PRESENTED

1. Whether substantial evidence supported the Commissioner's finding that petitioner neglected the patient by lifting the patient without assistance in violation of the assignment instructions.
2. Whether substantial evidence supported the Commissioner's finding that the patient's eye injury was caused by petitioner lifting the patient.
3. Whether the monetary penalty should stand when it was predicated on the unsupported finding that petitioner caused the eye injury.

HOLDINGS

1. Substantial evidence supported the Commissioner's determination that petitioner lifted the patient without assistance in violation of the instructions on the patient assignment sheet.
2. The evidence was insufficient to sustain the Commissioner's finding that the patient's eye injury was caused by petitioner lifting the patient; a mere unsupported possibility does not constitute substantial evidence.
3. The \$250 fine had to be vacated and the matter remitted to the Commissioner for reconsideration of the appropriate penalty because the sanction was predicated on the unsupported finding that petitioner caused the eye injury.

KEY QUOTATIONS

“A mere possibility unsupported by substantial evidence, is insufficient to sustain such a finding.” (590)

FACTUAL BACKGROUND

Petitioner lifted a patient without assistance despite instructions on a patient assignment sheet requiring assistance. The Commissioner found that this conduct constituted patient neglect and further found that the lifting caused an eye injury to the patient. The evidence, however, established only a possibility that the eye injury occurred during the lifting.

PROCEDURAL HISTORY

The Commissioner determined that petitioner neglected a patient by lifting the patient without assistance contrary to instructions on a patient assignment sheet, found that the lifting caused the patient an eye injury, and imposed a \$250 fine. The Appellate Division upheld the neglect determination insofar as it was supported by substantial evidence, annulled the finding that petitioner caused the eye injury, vacated the fine, and remitted the matter for reconsideration of the penalty.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Commissioner must reconsider the appropriate penalty after removal of the finding that petitioner caused the patient's eye injury. The injury-causation portion of the determination is annulled and the \$250 fine is vacated; the remaining neglect determination is otherwise upheld.

CASES CITED

- 300 Gramatan Ave. Assocs. v. State Div. of Human Rights, 45 N.Y.2d 176
- Matter of Schepanski Roofing & Gutters v. Roberts, 133 A.D.2d 757

OPINION

PER CURIAM.

Proceeding pursuant to CPLR article 78 to review a determination of the respondent Commissioner of the New York State Department of Health, dated July 24, 1986, which found the petitioner liable for patient neglect pursuant to New York Public Health Law § 2803-d and imposed a fine of \$250. Adjudged that the petition is granted, on the law, without costs or disbursements, to the extent that that portion of the determination which found that the petitioner's neglect caused injury to the patient is annulled, the fine imposed is vacated, and the matter is remitted to the respondent for reconsideration of the penalty, and the petition is otherwise dismissed on the merits.

Contrary to petitioner's contentions, there was substantial evidence supporting the Commissioner's determination that the petitioner lifted the patient without assistance in violation of instructions contained on a patient assignment sheet (see, 300 Gramatan Ave. Assocs. v State Div. of Human Rights, 45 NY2d 176).

We conclude, however, that the evidence was insufficient to sustain the Commissioner's determination that the patient suffered an eye injury as a consequence of being lifted by the petitioner. As the Commissioner conceded in making this finding, the evidence established only a "possibility" that the eye injury occurred when the patient was lifted. A mere possibility unsupported by substantial evidence, is insufficient to sustain such a finding.

Under these circumstances, that portion of the determination must be annulled. Furthermore, since the Commissioner's imposition of a \$250 monetary sanction was predicated on his finding that the patient's eye was injured when the petitioner lifted the patient, the matter must be remitted to the respondent for reconsideration of the appropriate penalty to be imposed (see, Matter of Schepanski Roofing & Gutters v Roberts, 133 AD2d 757).

We have considered the petitioner's remaining contention and find it to be without merit. Mollen, P. J., Rubin, Kooper and Sullivan, JJ., concur.