

# LEGAL EAGLE EYE NEWSLETTER

January 2003

*For the Nursing Profession*

Volume 11 Number 1

## Alzheimer's: Court Says Nurse Assaulted By Patient Cannot Sue Patient Or Family.

Because the patient was not mentally competent to care for himself and posed a danger to himself and others the patient's daughter was named as his legal guardian.

As legal guardian she had him admitted to the long-term care unit of the local county hospital. Two weeks after admission the staff had him transferred from the long-term care unit of the hospital to the hospital's psychiatric unit because of agitation and assaultive behavior toward staff.

His daughter insisted he be taken off the psych unit. After three weeks he was transferred back to the long-term care unit and placed in the Alzheimer's section. The interdisciplinary team believed his aggressive acting-out had subsided to the point where a less restrictive placement in long-term care was more appropriate for him than the psych unit.

In the Alzheimer's section he opened a fire door and set off the alarm. As the charge nurse tried to redirect him from leaving he pushed her down and injured her.

The charge nurse sued the daughter, the physician and the patient. The Superior Court of New Jersey, Appellate Division, ruled there were not sufficient grounds for the lawsuit



***The patient's daughter insisted her father be moved back to the long term care unit from the psychiatric unit.***

***It was the care team who made the decision.***

***The daughter had no control of her father or of placement decisions affecting him and was not responsible for his actions toward his nurses.***

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
November 20, 2002

### **Family Member Ruled Not Liable**

The court ruled a patient's family member is not legally liable to caregivers for trying to have input in a placement decision regarding the patient.

The daughter had no choice but to place him in the facility. Then it became the facility's ultimate responsibility for care and placement decisions.

### **Physician Ruled Not Liable**

In this case the charge nurse, the physician and the multidisciplinary team were all employees of the facility.

As a general rule, state worker's compensation laws establish worker's compensation as the only legal recourse for employees' on-the-job injuries. Negligence lawsuits are not allowed against the employer and co-employees, whether or not actual negligence can be proven.

### **Patient Ruled Not Liable**

The trial judge instructed the jury they had to evaluate the patient's mental capacity to decide if he could appreciate the nature and consequences of his actions, which the jury decided he could not.

The Appellate Division ruled that is the correct approach in cases involving caregivers assaulted by Alzheimer's patients.

*(Continued on page 3)*

## Inside this month's issue ...

**January 2003**

**New Subscriptions Page 3**

Alzheimer's/Nurse Assaulted - Incident Reports/Confidentiality  
Catheterization - Alzheimer's/Patient Abuse  
Hospice Care/Medicare Part A/Admissions/Discharges  
Disability Discrimination/Panic Disorder/Agrophobia  
Home Health/Medicare/Hospital Referrals  
Fall Out Of Bed/Family Member Lowered Bed Rails  
Home Health/Definition Of Agency Employee  
Restraints/Fall Out Of Bed/Nursing Expert/Standard Of Care

# Alzheimer's: Aide Slaps Patient, Ruled Guilty Of Abuse.

The Appellate Court of Illinois recently upheld charges of abuse filed by her supervisor against an aide working with Alzheimer's patients in a nursing home.

That is, the court upheld the state department of public health's decision to delete her name from the registry of certified nurse's aides allowed to work in the state.

## Patient Struck Caregiver First

The aide had been working in the nursing home at least eight years, was familiar with Alzheimer's patients in general and had been caring for this patient off and on for four months.

While trying to keep the patient from climbing out of bed, just after the aide and the LPN charge nurse had transferred the patient from a wheelchair to the bed, the patient kicked the aide.

The aide then slapped the patient and was immediately corrected by the nurse. The court did not discuss the aide's reasoning, justification, excuse or mitigating circumstances. Slapping a patient is abuse. Ulysse v. Lumpkin, \_\_ N.E. 2d \_\_, 2002 WL 31506601 (Ill. App., November 12, 2002).

# Alzheimer's: Court Says Nurse Assaulted By Patient Cannot Sue Patient Or Family (Continued.)

(Continued from page 1)

## Caregivers Assaulted By Patients

As a general rule a caregiver can sue a patient for personal injury when a negligent or intentional act by the patient injures the caregiver.

In general our society holds everyone accountable in civil lawsuits for the consequences that reasonably prudent persons would expect as a result of their actions. Even if the actor does not subjectively intend, expect or even comprehend the possible consequences, the actor is nevertheless responsible for what anyone would objectively expect to happen.

## Diminished Mental Capacity

Diminished mental capacity can be a defense to criminal charges. If a person has a temporary or permanent cognitive deficiency and cannot appreciate the nature and consequences of his or her actions, and can prove that, he or she is not liable under the criminal justice system.

In civil cases, however, where one private party is suing another for compensation for personal injury or property damage, diminished mental capacity is generally not recognized as a legal defense.

For example, in a legal precedent cited by the court, a diagnosed schizophrenic receiving regular injections of medication to control his behavior was held liable to his landlord for damaging his apartment, apparently because he failed to go in for his scheduled injections and became out of control.

Right or wrong, diminished mental capacity is not a defense in civil cases.

## Special Legal Rules for Caregivers And Institutionalized Patients

Many states are following a trend disallowing lawsuits by caregivers against patients who have been institutionalized because of their inability to control their actions and behaviors.

The rationale has two parts: First, these patients need special care in special settings. Their ability to get care could be jeopardized by allowing such lawsuits. A patient might have vital personal assets depleted by paying a civil judgment.

Secondly, the courts recognize that caregivers who accept employment with Alzheimer's and other dementia and psychiatric patients recognize and voluntarily accept special risks.

Caregivers should have the training to work with these patients. Institutions should screen employees to ensure they can work with this special population and offer training that may be necessary.

## No Contributory Negligence

Although it was not an issue in this case, the court pointed out the same trend toward recognizing diminished mental capacity in civil suits involving institutionalized patients means that caregivers cannot claim their cognitively-challenged patients are negligent when caregivers or institutions are sued for negligence.

For example, if a patient elopes or jumps from the roof it cannot be claimed that it was the patient's own fault. Berberman v. Lynn, 355 N.J. Super. 210, \_\_ A. 2d \_\_, 2002 WL 31557027 (N.J. App., November 20, 2002).

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