

# Patient Abuse: Court Discusses Legal Definition, How Abuse May Be Proven In Court.

According to the record before the Superior Court of Delaware, an aide working in an assisted living facility responded to a call bell at 5:00 a.m. She provided a bed pan and left the room.

When she returned, she spilled some of the contents of the bedpan on the sheets, became frustrated and flipped the sheet over the resident's head.

The resident told the charge nurse at 7:00 a.m. as she was making her rounds checking her patients. The resident's demeanor seemed like she had been waiting to tell someone and she became more and more tearful as she related the incident.

The charge nurse reported the incident to the director of the facility who immediately went to interview the resident. The resident was still visibly upset and her demeanor was agitated, frustrated and disappointed.

The resident did not know the aide's name but from a description given by the resident all the other aides on duty at 5:00 a.m. were ruled out. Following established procedures, the aide was contacted and told not to report for work the next day, was eventually terminated for the incident and was reported to the state agency maintaining the adult abuse registry.

## **No Violation of Aide's Right to Due Process of Law**

The court ruled the charge nurse's and director's statements about what the patient told them, along with testimony as to the patient's demeanor under the circumstances, were hearsay, but were a form of hearsay which the courts will accept as evidence. The patient does not have to come to court to testify under these circumstances, the court ruled.

An intentional act does not have to cause physical harm to be abuse. Emotional abuse by law is abuse for which a caregiver can be punished. The evidence in this case proved that abuse occurred. **Munyor v. Division of Long Term Care, 2005 WL 2158508 (Del. Super., August 25, 2005).**

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***Even if the patient is not physically injured, a caregiver can commit abuse by intentional conduct which promotes fear and anxiety in the patient.***

***A caregiver accused of abusing a patient has the Constitutional right to a fair hearing if the caregiver wishes to appeal a finding of abuse.***

***It must be proven that an intentional act caused physical or emotional harm.***

***A resident's report of abuse to a caregiver's superiors may qualify as an excited utterance, a statement relating to a startling event or condition made while under the stress of excitement caused by the event or condition.***

***There is an exception to the rule against hearsay for excited utterances.***

***An excited utterance can be related in court by another person to whom the utterance was made even though it is hearsay.***

***The resident does not have to be dragged into court just to safeguard an accused abuser's right to Due Process of Law.***

SUPERIOR COURT OF DELAWARE  
August 25, 2005

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