

# Alzheimer's: Court Rules Caregivers Cannot Sue Their Patients For Personal Injuries Inflicted By Patients While Being Cared For.

A patient was admitted to a nursing home by his wife because he had memory loss and confusion. His wife could no longer care for him at home.

His primary diagnosis was Alzheimer's disease. Over the course of three years in the nursing home he experienced periods of anxiousness, confusion, depression, disorientation and agitation.

He was belligerent with staff and with other residents. He often resisted when staff members attempted to remove him from prohibited areas of the facility. He was especially combative, agitated, aggressive and prone to strike out when staff members tried to provide personal care.

One day two certified nursing assistants were going through their customary routine for putting this resident and others to bed. They knew he had been particularly agitated and combative that evening. One nursing assistant was holding his wrists to keep him from striking out while a second assistant was trying to lift his legs up into bed. He started kicking at the second assistant and caught her knee, which caused her back to pop out.

She filed a civil personal injury negligence lawsuit against the resident. The Supreme Court of Indiana agreed with the lower court that the assistant had no right to file a civil personal injury lawsuit against the resident for damages.

Her only available legal recourse would be worker's compensation for her medical expenses and time loss.

She had been working as a CNA at this facility for twenty months. She had no specialized training in assessing and working with Alzheimer's patients, but had attended a short in-service presentation on the pathological effects of the disease.

She had worked with this resident and others with Alzheimer's before and had been struck and bruised on the job by him and others before this particular incident occurred.

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***The general rule of the civil law is that a person with a mental disability is held to the same standard as others. When sued for personal injuries a person with a mental disability is assumed in general to understand the consequences and to be able to control his or her actions.***

***There is an exception to the general rule for the special relationship between patients with advanced Alzheimer's dementia and caregivers they injure.***

***Caregivers are not members of the public at large. Caregivers are able to anticipate and are able to safeguard against the hazards they encounter caring for Alzheimer's patients.***

***Caregivers know their patients' histories. Caregivers are in a position to request assistance when needed and to take other appropriate measures for their own safety.***

***Caregivers have voluntarily accepted employment to care for persons for whom the inability to understand and control their actions is the very reason they need to be cared for.***

SUPREME COURT OF INDIANA, 2000.

The court analyzed the case by stating the general rule and then looking for an exception.

The general rule in civil personal injury negligence cases is that a person with a mental disability is responsible for his or her actions the same as anyone else.

There are many reasons for the general rule. It removes any incentive for negligent parties to fake mental disabilities to escape civil liability. It avoids bogging the courts down in having to assess the state of each and every civil defendant's mental health. Persons responsible for caring for the truly disabled should have the incentive of knowing the person's assets will be taken to pay legal damages and will not be available for their support if they do not keep the person under observation and adequate restraint. Finally, an innocent member of the public should not have to suffer a wrong without the option of seeking legal compensation.

However, that being said, the court looked at its state's own civil legal developments and at recent developments around the U.S. For persons whose job is caring for Alzheimer's patients there is now a widely accepted exception to the general rule: they cannot sue their Alzheimer's patients for personal injuries.

Alzheimer's patients have no capacity to control their actions or to appreciate their consequences, and caregivers know that. That is the very reason they need professional care, the court pointed out.

The court went on to say it would recognize a licensed practical nurse as an expert witness and consider her qualified to testify in court concerning the diagnosis and characteristic behaviors of an Alzheimer's patient. That is, the attorneys appointed to represent this resident were able to prevail in his defense with testimony from the nurse who had cared for him for the three years he had been in the facility and for other patients during the nine years she had worked there. ***Creasy v. Rusk***, 730 N.E. 2d 659 (Ind., 2000).