

Elopement From Nursing Home: Court Sets Limits On Nursing Home's Liability.

A developmentally disabled adult resident eloped from a nursing home and died from injuries, heat exhaustion and exposure. His mother sued the nursing home for damages. The lawsuit alleged negligence as well as abuse and neglect, the latter allegations bringing the lawsuit within the ambit of the state's Nursing Home Residents' Bill of Rights.

Nursing Home Not Automatically Liable For Elopement

At this stage in the litigation there has been no determination whether the nursing home was guilty of civil negligence or any violation of the deceased's rights. The Court of Appeal of Louisiana has only defined the rules of engagement for how the lawsuit must be characterized.

Professional Skill and Judgment

Nursing homes, the court pointed out, are faced with conflicting legal duties in the area of resident elopement.

Nursing homes are required to maintain the least restrictive environment possible, a policy which minimizes the appropriateness of physical and chemical restraints. At the same time they must protect residents from the consequences of the residents' cognitive and behavioral impairments, the very reasons some residents go to nursing homes.

According to the court, when a nursing home is sued for resident elopement, the nursing home has the right to defend as if being sued for medical malpractice.

The state's procedural formalities for medical malpractice apply. Those formalities, like prompt filing of expert witness reports and medical review panels, are designed to weed out non-meritorious cases as early as possible.

There must be expert medical testimony as to the standard of care and violation of the standard of care. A jury should not be allowed to speculate on the issue of negligence without guidance from expert testimony. McKnight v. D & W Health Services, Inc., __ So. 2d __, 2003 WL 22518215 (La. App., November 7, 2003).

Federal regulations, the state's nursing home residents' bill of rights and other state regulations promote the policy of residents being able to live in the least restrictive environment possible.

There is a strong policy of freedom from physical and chemical restraints and freedom to exercise the right of self-determination.

Nursing homes at the same time have the responsibility to supervise and protect residents from the potential consequences of their own cognitive and volitional impairments.

The conflicting legal duties imposed upon nursing homes require them to maintain a delicate balance between patients' freedom from restraint and the need for protective restraint of impaired patients.

The exercise of these competing duties is subject to professional standards of skill and care.

When a resident elopes the question of whether there was negligence is the same as in medical malpractice cases.

COURT OF APPEAL OF LOUISIANA
November 7, 2003

Freedom Of Speech: Federal Court Throws Out Nurses' Suit, Sees No Issues Of Public Concern.

Nurses' right to free speech becomes an issue when nurses speak out on issues of public concern. Nurses cannot face adverse consequences from a public-agency employer for exercising their Constitutional rights.

The Constitutional right of Freedom of Speech can be an issue for nurses working in a public hospital, employees of a governmental agency.

Freedom of Speech, as a Constitutional right, only applies to speaking out on matters of public concern.

Private grievances over transfers, seniority rights, scheduling, attendance, work rules, etc., are not matters of public concern.

The First Amendment does not apply.

UNITED STATES DISTRICT COURT
ILLINOIS
October 29, 2003

However, the US District Court for the Northern District of Illinois did not see any public policy issues in the case to elevate it out of the realm of an ordinary labor/management dispute.

The nurses at a state developmental center had no valid claim that their employer violated their Constitutional rights. Berry v. Illinois Dept. of Human Services, 2003 WL 22462547 (N.D. Ill., October 29, 2003).