

## Medical Confidentiality: An Exception Exists When One Patient Assaults Another.

The family and the probate administrator of a deceased nursing home resident sued the nursing home.

The lawsuit alleged that the resident had been permitted repeatedly to fall and suffer injuries.

The lawsuit also alleged that another resident who was under psychiatric care at the time was negligently permitted to sexually assault the resident in question.

### **Alleged Perpetrator's**

#### **Medical / Psychiatric Condition**

The court has not as yet passed judgment on the truth or falsity of the underlying allegations of negligence.

The issue at this point is whether the nursing home and the treating psychiatrist must provide the victim's family's lawyers with copies of the alleged perpetrator's medical records without any authorization from the perpetrator.

The Court of Appeals of Texas looked carefully at the general principles of medical confidentiality.

A patient or the patient's legal representative is always allowed access to the patient's medical records, and in most circumstances can block any and all third parties from access to the records.

When one nursing home resident sues alleging substandard care, the records of other patients are still strictly confidential even though those records could conceivably substantiate the case by proving they also received substandard care.

There is a narrow exception when a resident sues for abuse or neglect claiming that abuse or neglect came from failure to protect the resident from another resident.

In such as case it is necessary to establish the alleged perpetrator's psychiatric condition and the fact the caregivers caring for both of them knew of the perpetrator's mental problems. The only just way to establish these basic elements of the case is to break the perpetrator's medical confidentiality, the court ruled. *In re Arriola*, \_\_\_ S.W. 3d \_\_\_, 2004 WL 1244289 (Tex. App., June 8, 2004).

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***When one patient sues for negligence the medical records of other patients receiving similar care in the same facility from the same caregivers remain strictly confidential.***

***That is true unless the other patients agree to sign away their right to medical confidentiality as to their charts and their caregivers' recollections about them.***

***That is the general rule. There is a very narrow exception to the general rule.***

***When there is reason for the court to believe that a patient has a valid case for abuse or neglect in the form of an assault by another patient, the other patient's psychiatric condition and their mutual caregivers' knowledge of that condition are facts essential to the victim's case.***

***In this limited circumstance the victim's right to seek justice and vindication outweighs the alleged perpetrator's right to confidentiality.***

***The perpetrator's records can be looked into and caregivers can be compelled to testify.***

COURT OF APPEALS OF TEXAS  
June 8, 2004

## Quality Assurance: Confidentiality Applies To Nursing Homes.

A deceased resident's probate administrator sued the nursing home for negligence after the resident rolled himself into an area where he should not have gone, fell out of the chair, was injured and died from his injuries.

The lawsuit alleged negligent lack of supervision.

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***Nursing facilities are required by Federal law to have quality assurance committees.***

***A nursing facility risks loss of Medicaid and Medicare funding if it does not have a functioning quality assurance committee.***

***It makes sense that nursing homes should benefit from the same principles of quality assurance confidentiality that the law expressly applies to hospitals.***

NEW YORK SUPREME COURT  
MONROE COUNTY  
June 7, 2004

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The New York Supreme Court for Monroe County ruled that the family's lawyers should not be given copies of incident reports or other documents for this incident created by the nursing home's internal quality review committee.

Although not expressly stated in the law, nursing homes should have the same quality assurance confidentiality which the law expressly applies to hospitals, the court said. The rationale is to promote full and candid quality assurance appraisals of such incidents as this one. *Bielewicz v. Maplewood Nursing Home, Inc.*, 2004 N.Y. Slip Op. 224190, 2004 WL 1258034 (N.Y. Super., June 7, 2004).