

Assault: Court Upholds Criminal Conviction.

The somewhat agitated patient came to the nurse's station at 4:00 a.m. demanding his pain medication. The LPN said she would bring it to the room. Five minutes later an aide heard the patient screaming.

Several nursing assistants saw that the patient had a broken nose. The police were notified.

The Court of Appeals of Ohio, in an unpublished opinion, upheld the LPN's conviction for felonious assault and patient abuse. His license was taken.

The court rejected the LPN's argument the patient should not have been allowed to testify. The patient had Alzheimer's and a guardian had been appointed by the local probate court. However, the judge found no problem with his ability to perceive, recall or communicate accurately what happened and it was corroborated by others. State v. Murphy, 2004 Ohio 638, 2004 WL 254217 (Ohio App., February 12, 2004).

Admission Contract: Court Refers Wrongful Death Lawsuit To Arbitration.

Without passing judgment one way or the other on the validity of the underlying allegations, the Supreme Court of Alabama referred two wrongful death lawsuits against the same nursing home to arbitration.

The families argued the alternative dispute resolution program administered by the National Health Lawyers Association was a puppet for the health care and long term care industries and stacked the deck against patients for dispute resolution by industry insiders.

The court, however, could not find any proof submitted by the families in support of their allegations of bias. There also was no evidence that arbitration is inherently unfair to one side or the other. Briarcliff Nursing Home, Inc. v. Turcotte, __ So. 2d __, 2004 WL 226087 (Ala., February 6, 2004).

Medical Records: Court Upholds Nursing Home's Efforts To Maintain Patient Confidentiality.

The daughter filed a medical malpractice lawsuit against the skilled nursing facility alleging substandard care was provided to her mother during her stay in the facility.

The daughter then approached the management of the facility for copies of all of her mother's treatment records.

The daughter presented a document the daughter stated was a power of attorney signed by her mother giving her authority to prosecute the legal action on her mother's behalf.

The facility questioned why it was only a photocopy, why pages were missing and whether the daughter could sign the document as a witness if she was the one who supposedly was to be given power of attorney. The facility referred it to their legal counsel.

A healthcare provider cannot release medical records to a third party without proper written permission from the patient.

It was proper for the nursing facility to question the daughter's alleged power of attorney from her mother and to refer the whole matter to the nursing home's legal counsel, who also acted properly denying the daughter's request.

CALIFORNIA COURT OF APPEAL
UNPUBLISHED OPINION
February 4, 2004

The daughter sued the facility's lawyer, alleging a conspiracy to retain the records so they could be altered and falsified, in violation of the state's consumer protection act.

The California Court of Appeal, in an unpublished opinion, ruled the nursing facility acted with all due concern for the mother's privacy and her right to medical confidentiality by refusing to give up the records without proper authorization, and also exonerated the facility's attorney from blame.

After four months going back and forth in court the daughter did get copies of the complete chart, after it was established she did have her mother's consent to be provided with that information. Starkey v. Covenant Care, Inc., 2004 WL 206209 (Cal. App., February 4, 2004).