

Alzheimer's: Court Rules That Verbal Threat Is Abuse.

While two aides were transferring an elderly nursing home resident with Alzheimer's from her wheelchair to a shower chair for her bath, she kicked one of them.

The aide threatened to beat her and/or pinch her if she did it again.

There is no proof that the aide's threats resulted in physical harm or pain to the resident.

Nevertheless, a threat of violence to an elderly Alzheimer's patient is an act a hearing examiner could determine causes mental anguish to a resident.

The law must protect the health and safety of every nursing home resident.

Whether the resident is cognizant or not, the law presumes that instances of abuse of any sort cause physical harm, pain or mental anguish.

COURT OF APPEALS
OF NORTH CAROLINA
December 31, 2002

The Court of Appeals of North Carolina ruled that it makes no difference whether it can be proved that a vulnerable nursing home resident actually perceived, understood or was affected by threatening or abusive language from a caregiver. Allen v. Department of Health and Human Services, __ S.E. 2d __, 2002 WL 31889915 (N.C. App., December 31, 2002).

Nursing Home Resident's Bill Of Rights: Is A Medical Review Panel Necessary?

Many states require medical negligence claims to go to a medical review panel before they can be filed in court.

In this case the allegations were the resident was physically abused, or in the alternative, that she was simply allowed to fall out of her wheelchair.

Does a resident's lawsuit under the Nursing Home Resident's Bill of Rights have to go to a medical review panel before it can be filed in civil court?

What is the suit all about? Is it a violation of the right to be free from abuse, or was there substandard health care?

SUPREME COURT OF LOUISIANA
January 14, 2003

The Supreme Court of Louisiana sent the case back to the local parish court to find out what happened.

Physical abuse is a violation of the Nursing Home Resident's Bill of Rights but does not come under the medical malpractice statute and a medical review panel is not required to hear the claim before the case can be filed in court.

On the other hand, improper assessment and care are violations of the Nursing Home Resident's Bill of Rights and also come under the medical malpractice statute and a medical review panel is required. Richard v. Louisiana Extended Care Centers, Inc., __ So. 2d __, 2003 WL 115582 (La., January 14, 2003).

Aide Slaps Resident: Court Says It Was Not Intentional, Not Abuse.

The resident was known to be difficult to work with. She was highly combative toward her caregivers.

Aides assigned to care for her often had difficulty getting other aides to help them when help was needed, the Court of Appeals of North Carolina pointed out in a recent ruling that has not been released for publication.

A third aide reluctantly agreed to help two others who were trying to change the resident's diaper. The resident spit at her and she slapped the resident.

Abuse is the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

The emphasis in this case is on the word willful.

The aide reflexively slapped the resident when the resident spit on her.

The aide's act was not willful and was not abusive as abuse is defined by law.

COURT OF APPEALS
OF NORTH CAROLINA
UNPUBLISHED OPINION
December 31, 2002

The court looked carefully at all the evidence and ruled that this was a reflexive reaction rather than an intentional act.

Only an intentional act can be legally deemed abusive, the court said, so the aide did not commit resident abuse as defined by law. Wiley v. Department of Health and Human Services, 2002 WL 31895023 (N.C. App., December 31, 2002).