

# Sexual Assault In Long Term Care: Court Questions Supervision Of Nurse's Aide.

A newly certified male nurse's aide in a long term care facility sexually assaulted a female quadriplegic accident victim by placing his hands on and inside her vagina while giving her p.m. care.

She died eighteen months later. Her death was unrelated to the incident. The administrator of her probate estate sued the nursing home for damages. The damage money was to be awarded to her estate on behalf her family who were her heirs.

The local circuit judge threw out the case, but the Court of Appeals of Arkansas reversed the local judge's decision and ruled there were grounds for the lawsuit.

## **Respondeat Superior**

*Respondeat superior* is the old Latin phrase used in the common law to say that the employer is automatically liable for an employee's wrongful conduct, whether or not the employer was negligent, if the employee was acting in the course and scope of the employee's duties for the employer.

The Court of Appeals ruled the local circuit judge was correct, at least in refusing to apply the legal doctrine of *respondeat superior*. That is, a sexual assault on a patient is outside the course and scope of a caregiver's duties as a caregiver.

**Healthcare facilities must observe the work performance of nurse's aides and must see them demonstrate competency in specific care tasks.**

**How newly hired or newly certified male aides are able to work with vulnerable female patients must be observed by supervising nurses before they are allowed to work alone with them.**

COURT OF APPEALS OF ARKANSAS, 2001.

## **Negligent Supervision**

That was not the end of the story. The Court of Appeals ruled the resident's heirs' lawsuit had a solid basis because the employer corporation itself was negligent for how its nurses supervised this aide.

As a general rule, the court said, nurse's aides must first demonstrate actual competency in specific skills before they are allowed to perform those skills without direct supervision.

For a newly certified male aide, the court said, giving personal care appropriately to vulnerable female patients is a skill that must be demonstrated to a supervising nurse's satisfaction before the aide is allowed to do it on his own, just like any other nursing task.

The aide was hired as a janitor, then took a two-week certification course at the facility and became a nurse's aide. In his second week he was still a student/trainee,

the court believed, and he still required close supervision by the charge nurse.

A facility also must do background checks and contact past job references, as a general rule. However, this individual had no employment history in direct patient care and no opportunity to render care inappropriately in the past. A thorough job reference check would not have made a difference in this case.

## **Reporting Patient Abuse Chain of Command**

The court also expressed concern over what transpired when a co-worker, another nurse's aide, reported the incident to the senior nurse's aide on duty. The senior aide decided to wait and see.

The co-worker was not comfortable with that and went to the charge nurse. The charge nurse tried to phone the director of nursing and the nursing administrator but was unable to reach either of them to find out what she was supposed to do.

The charge nurse decided to come in early first thing Monday morning before her shift and talk to the nursing supervisors or to more senior management.

The court was not convinced there was a definite chain of command at the facility for when an incident occurs and action must be taken.

The court wished it had seen procedures already in place for employees to report, for supervisors to investigate immediately and for managers to take prompt decisive action right away when a threatening incident occurs. **Regions Bank v. Stone County Skilled Nursing, 38 S.W. 3d 916 (Ark. App., 2001).**

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