

## Shampoo Cap: Hospital Ruled Not Liable.

A hospital nurse supplied a rinse-free shampoo cap to the patient's family member after the patient complained he had a problem with his hair.

After the family member used it to wash his hair the patient complained the shampoo cap gave him scab-like burns on his head and made his hair fall out.

***The hospital's risk management department had on file the manufacturer's Material Safety Data sheet which indicated the shampoo cap contained only chemicals defined by OSHA as non-hazardous and non-irritating.***

***The shampoo cap is not an unreasonably dangerous product. There was nothing on file at the hospital indicating any prior adverse experience with the shampoo cap.***

COURT OF APPEALS OF KENTUCKY  
February 3, 2012

The Court of Appeals of Kentucky ruled the hospital was not liable.

A hospital is not considered a retailer of the product in question when a personal care item is provided to a patient or patient's family member in the original packaging in which it came from the manufacturer, the Court said.

After giving it to the family member the hospital had no further control over the way the patient or family member used it.

According to the Court, it could have been a different case if the nurse herself had undertaken to use the cap to cleanse the patient's hair and somehow misused the cap and injured the patient. In that case the issue would not have been the cap itself as a defective product but the hospital nursing service of providing personal care to a patient. Hughes v. Taylor Reg. Hosp., 2012 WL 330402 (Ky. App., February 3, 2012).

## Smoking: Nursing Home Resident's Family Obtains Large Jury Verdict.

The eighty-six year-old resident was admitted to the nursing home when his early-stage Alzheimer's began to make it difficult for the family to look after him in the apartment where he lived by himself. He also had a history of a stroke, although it was not clear from the court record whether than occurred before or after admission to the nursing facility.

His nursing assessment indicated he needed to be closely monitored while he smoked cigarettes. His care plan stated unequivocally that he was to be prevented from smoking except when being directly supervised.

He caught fire soon after he was left unsupervised in the dining area with smoking materials and suffered massive burns over 30% of his body which led to sepsis from which he died almost two years later.

***The Nursing Home Care Act outlaws abuse and neglect of nursing home residents and guarantees them the right to adequate supervision.***

***Violation of the Act is grounds for a civil lawsuit.***

APPELLATE COURT OF ILLINOIS  
February 10, 2012

The Appellate Court of Illinois ruled the family was entitled to go back to court for a new trial to seek damages for their own mental anguish and emotional distress in addition to \$1.5 million for medical expenses and attorneys fees, which, although awarded to them by the jury, will not end up in their pockets.

The facility was negligent and violated the state's Nursing Home Care Act by failing to ensure strictly that smoking materials were kept away from the resident except when he was under direct visual supervision by a staff member. Watson v. South Shore, \_\_ N.E. 2d \_\_, 2012 WL 470158 (Ill. App., February 10, 2012).

## Sexual Assault: Court Faults Nursing Supervision.

A female patient in an addiction treatment center was assaulted in bed in her room by a male psych aide. Earlier that day he slipped into her room while she was showering and she told him to leave.

***A medical facility is not necessarily liable for an employee's conduct when an employee commits an act such as a sexual assault which is outside the course and scope of the employee's duties.***

***A medical facility is liable when supervisors are negligent in their supervision of a subordinate and thereby fail to prevent an assault from being committed.***

COURT OF APPEAL OF LOUISIANA  
February 14, 2012

The Court of Appeal of Louisiana found grounds for the patient's lawsuit against the facility.

The Court looked to the testimony of one of the nurses at the facility who had eighteen years experience in psychiatric nursing. She explained that the psych aides are front-line treatment personnel who interact with patients closely on a 24/7 basis to assist the nurses. They act under supervision from the nurses in the provision of quality nursing care.

The facility's nurses are directly responsible for enforcing the facility's policies for maintenance of appropriate boundaries between staff and patients. The nurses are responsible for educating the staff whom they supervise and for monitoring their interactions with patients to ensure that boundaries are being maintained. At a fundamental level any sexual contact between staff and a patient is strictly off limits. Buford v. Williams, \_\_ So. 3d \_\_, 2012 WL 469871 (La. App., February 14, 2012).