

Assault By CNA: Nursing Home Ruled Liable, Knew Of Prior Violent Behavior.

A resident's son filed a civil lawsuit for assault and battery on his mother's behalf against a certified nursing assistant (CNA) and the nursing home.

The jury made two separate awards of damages, \$25,000 against the CNA and \$40,000 against the nursing home. The local trial judge threw out the jury's award against the nursing home and dismissed the nursing home from the case.

The Supreme Court of Tennessee reversed, holding the nursing home responsible to pay civil damages.

The Supreme Court also ruled it was erroneous to split fault between the employer and the employee. That ruling effectively made the nursing home responsible to pay the entire amount.

Prior Assault Was the Key

The key to liability was not the incident with this resident but an incident with another resident eighteen days earlier that the Supreme Court believed was not handled appropriately by management. If that incident had been handled properly, the second incident would not have occurred, the court concluded.

A resident's daughter-in-law had reported to the director of nursing that the CNA physically corrected her mother-in-law. The director of nursing wrote up the incident for the administrator and included statements from the CNA's co-workers that she was known to be overly harsh and impatient with residents.

The administrator filed the report away and did nothing, even though it was the policy that when such an incident was substantiated by witnesses the employee was to be sent home and the incident reported to the state. Only if the state's investigation cleared the employee could the employee return to work.

This CNA would not have been allowed to return and the second incident would not have happened if procedures had been followed, the court believed. **Limbaugh v. Coffee Medical Center**, 59 S.W. 3d 73 (Tenn., 2001).

An employer has no liability when an employee unexpectedly assaults a patron.

However, an employer has liability when an assault is a foreseeable result of the employer's failure to take reasonable precautions to protect patrons from the risk of abuse posed by an aggressive employee.

The nursing home had a standard policy for dealing with caregivers who exhibited violent behavior toward residents.

The incident was to be reported to the state within twenty-four hours.

The offender was to be sent home promptly and placed on administrative leave within the same twenty-four-hour period to await the results of the state's investigation.

The nursing home negligently failed to follow its own policy guidelines.

The employee was not appropriately disciplined for an incident just eighteen days earlier where she bent back another resident's finger and dug in her nails to correct the resident for pointing her finger in her face.

SUPREME COURT OF TENNESSEE, 2001.

Nurse Reported Violence Threat: Suit Dismissed Over Breach Of Confidentiality.

A college student was receiving mental health treatment at a mental health clinic and at a psychiatric center.

His parents phoned the nurse who ran a parents' group at the psychiatric center and also spoke in group about statements from their son that he might act out violently at the college's graduation ceremony. The nurse reported this to the local mental-health authorities, who relayed the information to the local police. College officials questioned the young man but let him participate in the graduation ceremony and nothing unusual happened.

The patient claimed the nurse released confidential information from his mental health treatment records.

That is not what happened. The patient's parents talked to the nurse. The nurse called the county mental-health crisis team to report what the parents told her. The crisis team called the town police, who called the campus police.

There is no issue of medical confidentiality here.

NEW YORK SUPREME COURT,
APPELLATE DIVISION, 2001.

The New York Supreme Court, Appellate Division, threw out the lawsuit. The nurse may have had justification to release confidential information, but that did not actually happen. The parents' statements about the patient's statements were not part of the patient's treatment records, so there was no breach of medical confidentiality. **Godinez v. Siena College**, 733 N.Y.S.2d 262 (N.Y. App., 2001).