

Alzheimer's Dementia: Nurse Assaulted By Patient Cannot Sue Patient For Injuries.

The patient was institutionalized involuntarily in the county hospital for senile dementia of the Alzheimer's type.

In the county hospital he had to be transferred from the long-term care unit to the geriatric psychiatric unit when he became agitated and assaultive toward staff. Then he was transferred to a unit just for Alzheimer's and other dementia patients.

Nurse Assaulted Ignored Hospital Policy

The nurse had over twenty years experience working with Alzheimer's patients.

Hospital protocol was for a nurse to retreat from the patient and call security when a dementia patient was violent, aggressive or resistant.

The nurse knew the patient was often agitated and combative and had tried to hit staff. When he opened a fire door and set off the alarm one nurse tried to redirect him, but then she had to back off and went to call security.

The nurse in question, however, went to him and extended her hand to try to redirect him to his room. He pushed her down and she broke her leg.

No Right To Sue Patient

The Supreme Court of New Jersey ruled the nurse had no right to sue the now-deceased patient's probate estate for damages for personal injury. Courts in other states have ruled that a professional caregiver who is employed specifically to work with Alzheimer's patients has no right to sue a patient who assaults the caregiver.

The sole legal remedy is worker's compensation for an on-the-job injury.

A propensity to strike out at caregivers is one of the reasons Alzheimer's patients require professional care in special settings, the courts have said. Alzheimer's patients lack the mental capacity to understand the nature and consequences of their actions, a fundamental prerequisite to civil liability for negligence under our legal system. **Berberian v. Lynn**, __ A. 2d __, 2004 WL 726176 (N.J., April 6, 2004).

A professional caregiver chooses his or her profession and willingly accepts the risks engendered by patients' poor mental health.

Just as a firefighter is obligated to face the hazards of a burning building that belongs to someone else, a professional caregiver is obligated to face the hazards of patients' uncontrollable conduct.

A professional caregiver cannot file a lawsuit over the conduct of a patient when the conduct is, in whole or in part, the very reason for the caregiver's role with the patient.

Professional caregivers accept that their compensation for any injuries caused by mentally-disabled patients' aggression will be limited to the benefits available through workers' compensation.

The burden of having to compensate health care workers injured by disturbed patients shifts to their employers through the patients' contracts with the employers for their care.

The burden is removed from disabled patients of being parties to litigation.

SUPREME COURT OF NEW JERSEY
April 6, 2004

Alzheimer's: Patient Has The Right To Protection From Others.

A resident with Alzheimer's was placed in the nursing home by the family with assurances that the facility offered special care and had special security features to meet the needs of Alzheimer's patients.

A non-Alzheimer's patient known to the nursing staff to be physically aggressive gained access to the Alzheimer's unit and assaulted the patient.

The door to the Alzheimer's unit could only be opened in or out without setting off an alarm by punching a code into the key pad by the door.

The code was posted right above the keypad, on the assumption that the Alzheimer's patients could not figure it out.

An aggressive, assault-prone non-Alzheimer's patient entered and assaulted an Alzheimer's resident.

COURT OF APPEAL OF CALIFORNIA
March 25, 2004

The Court of Appeal of California found grounds for a negligence lawsuit against the nursing home.

A secure environment for Alzheimer's patients not only includes special precautions to keep them from being able to elope or to assault others, but also includes special precautions to keep these vulnerable individuals from being the victims or assaults by other residents with tendencies toward aggression, the court ruled. **Intrieri v. Superior Court**, 2004 WL 586030 (Cal. App., March 25, 2004).