

## Threats Of Violence: Nurse Exonerated, Defendant Convicted.

A man with a long history of threatening behavior toward an estranged female companion was caught weaving in and out of traffic in his car. His blood alcohol was .316.

Because he verbalized a desire to harm himself he was sent for a seventy-two hour mental health hold. He told the intake nurse in some detail of his intention to kill his girlfriend, knowing full well the nurse had a legal duty to see that his threat would be communicated to her.

***The psych nurse who interviewed the defendant told him she had to report his homicidal threats to the victim and to the police.***

***The defendant's actions and statements beyond that point imply that he wanted his victim to be told.***

***He was using the nurse, the psychiatrist and the police to do his dirty business for him. His conviction and prison sentence will stand.***

COURT OF APPEAL OF CALIFORNIA  
UNPUBLISHED OPINION  
July 29, 2003

The Court of Appeal of California, in an unpublished opinion, ruled the nurse acted properly under these trying circumstances reporting his threatening statements to the psychiatrist and the police.

His statements were not confidential, as there was no reasonable expectation of privacy, and even so there is an exception to medical confidentiality for a healthcare provider's legal duty to see that a threat of violence is communicated to the victim. ***People v. Guzman***, 2003 WL 21744326 (Cal. App., July 29, 2003).

## HMO: Federal Court Allows State-Court Malpractice Suit For Damages Over Nurse's Patient-Care Decision.

***When a member of a health maintenance organization sues to recover benefits that are due or to clarify or enforce the member's right to benefits under the plan, the lawsuit will be strictly limited to those issues and must be filed in Federal District Court.***

***On the other hand, when a member of a health maintenance organization sues for professional malpractice over the treatment decisions made by the organization's case review personnel, the lawsuit can include claims for common-law non-economic damages and will be heard by a civil jury in the local county court.***

***The health maintenance organization's approval nurse made a medical treatment decision to approve outpatient IV antibiotics administered in the patient's home rather than allowing the patient to stay or be readmitted to the hospital.***

***The case belongs before a civil jury in state court and the full range of damages are potentially available.***

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
July 30, 2003

The patient's hand became infected. His physicians at first thought it was cellulitis, then changed their diagnosis to osteomyelitis, a more serious condition. He was admitted to the hospital for an aggressive course of IV antibiotic therapy.

Shortly after admission, however, the approval nurse employed by the patient's health maintenance organization decided he did not need to be in the hospital and had him discharged with approval for IV antibiotic therapy in his home.

The patient came back for outpatient surgery to drain, irrigate and debride the infected hand. He had several more similar procedures before the middle finger had to be amputated.

He sued his health maintenance organization over the approval nurse's decision to have his IV therapy done outpatient rather than inpatient. The US Circuit Court of Appeals for the Eleventh Circuit threw the case out of Federal court without passing judgment whether the approval nurse's decision was negligent.

**Benefit Allocation Decisions  
versus**

**Patient Care Decisions**

The courts are moving away from the hard and fast rule that patients cannot sue their HMO's for compensation beyond the value of the medical services they may have been wrongly denied.

This court ruled the approval nurse was not simply specifying what was and was not covered by this patient's health plan. She was making a basic patient-care decision and she would have to answer for that decision before a civil jury in state court. Common-law damages for pain and suffering, loss of earning capacity, permanent disfigurement, etc., which often lead to large verdicts, would be available to this patient if he could prove the nurse made a negligent patient-care decision. ***Land v. CIGNA Healthcare of Florida***, \_\_\_ F. 3d \_\_\_, 2003 WL 21751247 (11th Cir., July 30, 2003).