

## Abuse, Neglect: Aide's Certification Revoked, Name Placed In Registry.

A nursing home resident was known for yelling out for help and for being combative with caregiving staff.

While being assisted into his wheelchair the resident repeatedly told the aide "easy does it" in a loud voice.

The aide became frustrated with the resident's repeated outbursts. She snapped the footrest down forcibly, grazing the resident's leg in the process.

The resident kept telling her "easy does it" and so she slapped the side of his head and told him to shut up.

Then she pushed his wheelchair into the hallway, left him there and told him to get himself to the dayroom on his own.

Another aide who witnessed the incident checked and found no injuries to the resident, on his leg or on his head, but she reported it to the charge nurse.

The director of nursing suspended the aide the next morning and reported her to the state Department of Health and Senior Services which revoked her certification to work with vulnerable adults.

### **Aide Guilty of Abuse and Neglect**

The Superior Court of New Jersey, Appellate Division, ruled that the aide was guilty of physical and verbal abuse for striking the resident and telling him to shut up and was guilty of neglect for leaving a helpless total care patient in the hallway somehow to get to the dayroom on his own. **Dept. of Health v. Moise, 2011 WL 5041397 (N.J. Super., October 25, 2011).**

***The aide's conduct fits both definitions, abuse and neglect of a patient.***

***A resident of a long-term care facility has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment and involuntary seclusion.***

***Residents are entitled to be treated with courtesy, consideration and respect for the individual's dignity and individuality.***

***Abuse is defined as willful infliction of injury, unreasonable confinement, intimidation or punishment with physical harm, pain or mental anguish resulting.***

***Neglect is defined as the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.***

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
October 25, 2011

## Sexual Assault: Patient Has The Right To Sue.

An adult female patient involuntarily committed to the psychiatric unit of an acute care hospital was sexually assaulted in her room by a male patient from the same unit.

***Earlier that evening a mental-health aide caught the male patient in the female patients' room and told him he was not allowed to be there and had to leave.***

***That was all that was done.***

COURT OF APPEALS OF MICHIGAN  
November 10, 2011

The Court of Appeals of Michigan approved a jury verdict against the hospital in the patient's favor.

The Court accepted expert testimony from a nurse with twenty-four years experience as a psychiatric nurse. Psychiatric patients are a highly vulnerable population and a hospital has a special duty to keep them safe. The burden for seeing that what needs to be done is done falls on the hospital's professional staff, not the patients.

### **This Incident Called for Follow Up**

Catching him in the females' room put the unit staff on notice that something was going on between the male patient and one or more of the females in the room.

The next step should have been to separate the patients, the male patient and each of the two female roommates and to question each of them individually in depth about what was going on.

As it turned out, the victim, her roommate and the male patient had gone for a walk on the grounds earlier that day. The female roommate was flirting heavily with him. He said more than once he was going to come to their room that night and get in bed with one of them.

He did return later that night after he was earlier told to leave the room. He committed a rape for which he was convicted of first-degree sexual assault. **Sloan v. Chelsea Comm. Hosp., 2011 WL 5454567 (Mich. App., November 10, 2011).**

## Defamation: No Malice, Suit Dismissed.

Two insurance company telephone advice-line nurses got into an argument over use of a particular office cubicle which resulted in one of them being fired.

The fired nurse's defamation lawsuit was dismissed by US District Court for the Eastern District of Virginia even though there was reason to believe her former nurse manager erred writing up her termination based on information from co-workers who did not witness the incident.

The law gives personnel managers what the law calls a qualified privilege from being sued for defamation for statements placed in the personnel files of those they supervise, even if they are untrue.

### **Statements Placed in Personnel Files Are Covered By a Qualified Privilege**

To sue for defamation over a statement placed in his or her personnel file an employee or former employee must not only prove the statement is false but must also jump over the much larger hurdle of proving that the false information was placed in his or her personnel file maliciously with the sole intent of unjustifiably harming his or her reputation.

If the employee or former employee is unable to prove malice, as in this case, his or her lawsuit will fail to prove defamation. **Shaheen v. Wellpoint Companies, 2011 WL 5325668 (E.D. Va., November 3, 2011).**