

## Child Abuse: Court Accepts Trauma Nurse As Expert Witness.

The parents went back to court to appeal a decision terminating their parental rights and removing their children from the home on grounds of intentional child abuse.

The parents argued specifically that a registered nurse was not qualified to testify as an expert witness that burns to their fifteen month-old's legs were the result of intentional scalding in hot water.

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***This ER nurse is qualified to testify as an expert witness in this child-abuse case.***

***The child's burns are the result of trauma.***

***The mother's story how it happened is not consistent with what the nurse observed.***

COURT OF APPEALS OF TEXAS  
September 15, 2004

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The Court of Appeals of Texas disagreed with the parents.

An experienced emergency room trauma nurse can testify that the burns she observed were the result of scalding in hot water. She can testify that the explanation she elicited from the child's mother/primary caregiver did not match the injuries the nurse actually observed.

The nurse in question was also qualified to give an expert opinion in court that a discrepancy between what is seen in the physical examination of the child/victim and the caregiver's explanation for the injuries is positive evidence of intentional abuse, the court ruled. ***In the Interest of B.L.D.***, 2004 WL 2066845 (Tex. App., September 15, 2004).

## Arbitration: Nursing Home Admission Contract Upheld.

The patient was admitted to a nursing home after another facility where she had been living closed its Alzheimer's unit. She fell twice at the nursing home shortly before her death. Her probate estate sued the nursing home.

The nursing home countered the lawsuit by insisting the case be transferred out of civil court to an arbitrator according to the arbitration agreement in the admissions contract.

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***Arbitration of nursing-home negligence cases does not limit the resident's legal rights or the right of the estate to sue after the resident is deceased.***

***The only limitation is on the forum in which those rights must be pursued.***

COURT OF APPEALS OF INDIANA  
August 13, 2004

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The Court of Appeals of Indiana sided with the nursing home.

The admissions papers were signed by the patient's daughter who had full power of attorney to sign binding contracts on the patient's behalf, the patient being unable to do that on her own.

The nursing home's marketing and admissions director was willing and able to explain each and every aspect of the admissions papers before they were signed, including the fact that the part about arbitration meant the patient would be giving up the right to jury trial if a claim or dispute could not be settled.

Family members are often feeling stress when placing a loved one in a nursing home. That is not a factor in the validity of an admissions contract. ***Sanford v. Castelton Health Care Center***, 813 N.E. 2d 411, 2004 WL 1814036 (Ind. App., August 13, 2004).

## Workers Comp: Nurse On The Job Picking Up Check, Cannot File Lawsuit.

A nurse went to her place of employment, a nursing home, for the sole purpose of picking up her paycheck. She was not working that day.

She slipped and fell on a paved walkway from the parking lot to the operational building and sustained wrist, back and neck injuries.

She filed a civil personal injury suit against her employer.

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***Workers compensation is the sole legal remedy for on-the-job injuries.***

***An employee injured in the course and scope of employment duties cannot sue his or her employer for negligence.***

COURT OF APPEALS OF KENTUCKY  
September 10, 2004

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The Court of Appeals of Kentucky agreed with the employer that this employee was acting in the course and scope of her employment at the time she was injured. Whether or not she elected to file a claim for workers compensation, she had no right to file a personal injury lawsuit against her employer.

Ordinarily if an employee is injured while off duty due to the employer's negligence the employee would have the same right as the general public to sue. However, according to the court, collecting one's pay is an integral part of the employment relationship and the employee is not off duty when doing so. ***Nunn v. First HealthCare Corp.***, 2004 WL 20011282 (Ky. App., September 10, 2004).