

# Nursing Home Resident Dementia Wanders

The District Court of Appeal of Florida ruled a nursing home's parent corporation would be required to pay a substantial award of punitive damages following a resident's death.

The resident who had dementia wandered from the nursing home, fell into a nearby pond and drowned. The personal representative of the deceased's probate estate sued on behalf of the family.

Punitive damages are not awarded just for negligence, the court pointed out. As the common law phrases it, punitive damages are meant to punish "conduct of a gross and flagrant nature, showing reckless disregard of human life, or of the safety of persons, or there is an entire want of care which would raise the presumption of a conscious indifference to consequences or wantonness or recklessness, or grossly careless disregard of the safety and welfare of the public, or reckless indifference to the rights of others which is equivalent to an intentional violation of them."

Like many states, in addition to the common law Florida also has a special statute law on the books upholding the rights

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***The jury was right to award \$4,500,000 punitive damages for conscious indifference to the deceased's rights as a nursing home resident.***

***The nursing home did not fail to assess the resident's condition accurately. They knew he had dementia.***

***The resident was placed in the nursing home because he needed close supervision in a secure setting to keep him from wandering.***

***He had wandered off before and been found in stores near the nursing home.***

***Twice he injured himself during other elopement episodes and could not account for how he did it.***

***He was on seven different medications, three of which had psychotropic properties.***

***He also had a visual impairment.***

DISTRICT COURT OF APPEAL  
OF FLORIDA, 1999.

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of nursing home residents. The statute law expressly says punitive damages are appropriate for "conduct which is willful, wanton, gross or flagrant, reckless, or consciously indifferent to the rights of the resident."

The court pointed out with dismay that the sliding glass door that opened to the outside from the resident's room was stuck ajar in a position open wide enough for the resident to slip out at any time without being noticed.

The deceased's wife had asked repeatedly to have the door fixed. Repairs were promised but never done.

The wife had also asked for a bracelet for the resident that would trip an alarm at the nurses' station if he left the building. That was never provided.

The wife had over and over again reminded the staff to keep close tabs on her husband's whereabouts, since he had wandered off before and placed himself in danger. That was ignored.

This was not a healthcare malpractice case, according to the court. There was a fully competent professional assessment of the resident's condition and needs. The professional and non-professional staff were fully aware he had dementia. That was why he was placed in their facility. They knew he needed close supervision and had a tendency to try to leave the premises on his own and that he would be in grave danger if he left. Yet they let him wander away. ***First Healthcare Corporation v. Hamilton***, 740 So. 2d 1189 (Fla. App., 1999).