

Abuse: One Incident Is Enough To Discipline CNA.

According to the record, a CNA went into a dementia patient's room, began poking her in the ribs, took her juice away, threatened to pour it on her, poured it on her, rubbed her head and teased her saying, "It will be all right, honey."

The aide was reported to the state department of health. The aide was placed in the registry of care workers who had abused a patient. The Appellate Court of Illinois agreed with the state's hearing examiner that such action was warranted.

One Incident Sufficient

Pattern Does Not Have to Be Shown

The hearing examiner in his report stated he believed there was a pattern of abuse. The aide appealed on the basis that one incident does not establish a pattern.

After reviewing the legal definition of abuse the court stated it could find nothing in the law that there must be a pattern of abuse. One incident is enough to discipline an aide and effectively remove the aide from further caregiving employment, the court ruled. Mason v. Department of Public Health, 761 N.E. 2d 794 (Ill. App., 2001).

Dementia: Court Rules Patient Needs Nursing Home, Selects Guardians To OK Placement.

The legal issue is whether to override the patient's durable power of attorney and appoint a legal guardian.

That is not a cut-and-dried legal technicality. The real question is whether the patient can be cared for at home or needs to be placed in a nursing facility.

The daughter who wants to try to take care of her at home is the attorney-in-fact nominated by the durable power of attorney.

The son and the other daughter who want to keep their mother in the nursing facility are the petitioners seeking an order appointing them as the guardians.

A nurse testified she needs one-on-one assistance with the most basic activities of daily living.

The son and other daughter will be the guardians.

NEW YORK SUPREME COURT,
APPELLATE DIVISION, 2002.

The patient was ninety-one years-old. Living at home she broke her hip, went to the hospital and then to a nursing home. Complete nursing, physical therapy and social-work psychosocial assessments were done at the nursing home.

Durable Power of Attorney

One daughter lived nearby and had been taking care of the patient at home before she went to the hospital. This daughter had her sign a durable power of attorney appointing her as the attorney-in-fact for her mother's healthcare decisions.

On the face of it, that gave the daughter legal authority to remove her mother from the nursing home, take her home and try to care for her there.

The son and another daughter did not live nearby and could not take care of her. But they also sided with the nursing home's professional staff's assessments that their mother's needs dictated she remain in the nursing home.

They went to court for an order appointing them as guardians with authority to override the durable power of attorney.

The New York Supreme Court, Appellate Division, threw out the durable power of attorney because the patient already had significant dementia before she signed it. More important, based on testimony from the nurse who assessed her, the court ruled nursing home placement was necessary and appointed the son and the other daughter as the legal guardians. In re Mary J., 736 N.Y.S.2d 542 (N.Y. App., 2002).

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