

# LEGAL EAGLE EYE NEWSLETTER

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## Patient's Fall: Facility Ruled Not At Fault, Had No Legal Basis To Apply Restraints.

An eighty-nine year-old resident fell in a nursing home and broke her right hip while attempting to go from her bed to the bathroom without assistance.

She sued the nursing home for negligence. After she passed away her son took over as plaintiff in the lawsuit. The New York Supreme Court, Appellate Division, ordered the case dismissed because the nursing home had fully complied with its legal obligations and was not guilty of negligence.

### Patient's Fall Assessment

The patient went to the nursing home for rehabilitation after surgery to repair a fractured left hip. According to the court, she was correctly assessed with a high risk for falling.

However, the court also pointed out she was correctly assessed as alert, oriented and cooperative with her short-term and long-term memory intact and with good safety awareness.

The patient was instructed to use her call bell to summon help and not to attempt independent ambulation. She had demonstrated she could and would call for assistance rather than attempting to ambulate on her own.

The court said she had called for assistance to get up to the bathroom just a few hours before she fell.



**Federal and state statutes and regulations establish a patient's right to be free from restraints that are not necessary for the patient's safety.**

**Restraints can only be used in exceptional circumstances, when less restrictive alternatives will not work.**

**The resident was alert and oriented. Just hours before she fell she used her call bell.**

NEW YORK SUPREME COURT,  
APPELLATE DIVISION, 2001.

### Restraints / Legal Parameters

The court pointed out that Federal and state statutes and regulations sharply limit the use of physical restraints. Restraints may not be applied routinely to patients whose individualized assessments do not point to a need for restraints to protect their safety.

The other side of the coin is that a nursing facility will not be penalized in a civil lawsuit for not having restrained a patient just because perfect hindsight indicates the patient would not have fallen if restrained.

The court ruled the facility had no legal basis to restrain this patient, even with her high fall risk. Her cognitive assessment indicated she understood her own risk of falling and appreciated the need to call for assistance.

### Patient Monitoring

The facility's written policy was that all patients assessed with high fall-risk were to be monitored closely, provided with a call button and instructed in its use, evaluated as to whether they had understood the instructions and promptly provided with assistance to ambulate whenever they called. The court said the facility's staff fully followed the policy with this patient. **Yamin v. Baghel, 728 N.Y.S.2d 520 (N.Y. App., 2001).**

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