

## Home Health: Aide Held Responsible For Fire Hazard.

The home health aide herself perished along with the patient in a home fire the fire marshal ruled started in a space heater on which old newspapers and magazines had been piled.

The Missouri Court of Appeals ruled the patient's family had grounds for a civil wrongful death lawsuit against the aide's employer, a home health agency.

***In determining whether the care was sufficient, the ability of the person being cared for to appreciate and avoid danger must be taken into consideration.***

MISSOURI COURT OF APPEALS, 2000.

The aide had been caring for this patient for more than two years.

The patient was eighty-six years-old. She had been diagnosed with life-long schizophrenia with paranoid features, severe chronic alcoholism and progressive senile dementia.

The family had asked the aide to dole out her cigarettes one by one and watch her while she smoked, as the family had known the patient to let burning cigarettes fall on the floor and to forget cigarettes she had left in ashtrays. The court said that was evidence the patient had problems with fire-safety awareness and evidence the aide knew it.

The court believed the aide should have realized it was a fire hazard to have old newspapers and magazines stacked on an electric space heater.

It is the responsibility of a home health aide to know when a patient is unaware of a fire hazard and do something about it, the court ruled. Failure to take action is negligence for which the aide's employer is legally responsible. Daniels v. Senior Care, Inc., 21 S.W. 3d 133 (Mo. App., 2000).

## Psychiatric Patient Elopes: Court Finds Fault With Nurse.

***The nurse made a chart entry at 6:50 p.m. the patient was out in the hallway and stated she was going to walk to the emergency room and then come back and lie down in her room.***

***Five minutes later the nurse made a chart entry the patient was gone. She had walked out of the hospital. She met a man she believed was Jesus and had sex in a park. The police caught her and returned her to the hospital. The next day she was involuntarily committed to the state psychiatric hospital.***

***The hospital admitted in court, hypothetically, that if a nurse has reason to believe a psych patient intends to elope, the nurse must take reasonable measures to keep the patient from leaving.***

***That would be true even on the psych unit of a general acute care hospital with no locked wards.***

***That would be true even with a patient who had voluntarily admitted herself, as she was diagnosed schizophrenic and assessed with delusions and agitation.***

***She was to be closely watched and she was not to leave the building.***

SUPREME COURT OF ALASKA, 2000.

The Supreme Court of Alaska recently upheld a patient's civil lawsuit for negligence against the hospital and the nurse who allowed the patient to elope.

The Supreme Court reversed the lower court judge who decided the case in favor of the hospital and the nurse and sent the case back to be decided by a jury.

The patient would need no expert witness to prove her case to the jury.

### **Ordinary Negligence vs. Malpractice**

After lengthy outpatient treatment for schizophrenic auditory hallucinations and religious delusions she was voluntarily admitted to the psych unit of a general hospital for medication management. Her diagnosis was schizophrenia with psychotic decompensation.

On admission her physician wrote orders for Haldol and Ativan q4<sup>prn</sup> for agitation, delusion or danger to self or others, restraints prn only for danger to self or others. She could be up as tolerated, but she was to stay in the building under suicide precautions.

The Supreme Court said under the circumstances it was ordinary negligence for a nurse not to appreciate the grave danger of allowing this patient to elope. There were physician's orders the patient was not to leave the building. The nurse had no room to exercise professional nursing judgment, the court said, so there was no issue of nursing malpractice.

### **Close Watch/Suicide Precautions**

The Supreme Court conceded that checking a psych patient on close watch or suicide precautions every fifteen minutes is adequate, but only in general terms, that is, only if there is nothing to suggest the patient has formed a specific immediate intention to elope or to do self harm.

The hospital itself conceded if a nurse knew this patient was attempting to elope, the nurse would have the responsibility to take reasonable measures to stop the patient. She could be medicated, held and/or restrained even as a voluntary patient, given her diagnosis and assessment. D.P. v. Wrangell General Hospital, 5 P. 3d 225 (Alaska, 2000).