

LEGAL EAGLE EYE NEWSLETTER

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Home Health: Nurse Has Firefighters Break Into Patient's Home, Trespass Suit Nixed.

After she was discharged from the hospital in frail health with a recently fractured hip and other medical issues, the patient signed a contract to receive in-home care from a visiting nurse association.

The contract gave express permission to the association, "... for authorized personnel of the [Association] to perform all necessary procedures and treatments as prescribed by [her] physician for the delivery of home health care."

The visiting nurse who was assigned to care for the patient needed to see her over the weekend. On Friday her physician changed her medication. Also, it was believed the son who normally lived with her would be out of town, leaving her alone in the house. The nurse phoned and got no answer. The next day she phoned again and got no answer, so she went over to the house and knocked on the front and back doors. She got no response except that she might have heard someone moaning inside the house.

She called her supervisor, then called the local police. The police had the fire department come and take off the back door. The nurse, fire and police entered the house and found the lady to be OK.



The consent form the patient signed allowed the nurse to take all reasonable and necessary steps to secure her health and safety.

The court wonders about the legal repercussions if the nurse had ignored the signs of danger and the patient was indeed lying injured inside her home.

UNITED STATES DISTRICT COURT
CONNECTICUT
December 16, 2005

Consent is a Legal Defense To Civil Trespass

The US District Court for the District of Connecticut was sharply critical of the civil trespass lawsuit the patient's son filed against the visiting nurse and the local town government. The court dismissed the case.

First, only the legal owner or a tenant with a legal lease can sue for civil trespass. Strictly speaking it was the mother's home and not the son's.

Second, the law defines civil trespass as entry upon the property of another without authorization or consent. Authorization or consent, by law, is a complete defense to civil trespass.

The admission paperwork the patient had signed gave the visiting nurse authorization and consent to take all reasonable and necessary steps to protect the patient's health and safety.

The court was mindful of the dire consequences to the patient and the legal liability that could have resulted if the nurse had not taken the initiative.

Under the circumstances, the police and fire personnel also acted properly in what appeared to be an emergency, based upon what the patient's nurse had told them. ***Rovaldi v. Courtemanche, 2005 WL 3455131 (D. Conn., December 16, 2005).***

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