

Family-Member Interference: Court Sees Harassment, Upholds Restraining Order.

The Court of Appeals of Minnesota agreed with the decision of the local county district court judge to issue a restraining order permanently barring a nursing-home resident's daughter from any further communication or contact with the management or staff of the nursing facility where her mother resides.

The court's decision was based on a finding that the daughter's conduct fit the legal definition of harassment.

Interference With Nursing Care

The last straw was when the daughter brought in a birthday cake for her mother to share with the other residents on her unit at the nursing facility.

As many residents had dietary restrictions or swallowing issues, the facility administrator told her it was best to let a nurse have control of giving out the cake.

The daughter, not believing what she had been told, pointed to a resident and asked an aide if the resident was diabetic. When the aide replied "yes," the aide was reprimanded by the administrator on the spot and reminded not to divulge confidential medical information. The daughter then went to the nursing station and leafed through the dietary tickets to find out for herself which residents were diabetic.

A security guard had to remove the daughter from the facility.

While being bodily removed she screamed at a nurse and waved some legal-looking paperwork in the nurse's face, causing the nurse to fear for her own personal safety.

On another occasion the daughter phoned the nursing station and demanded that the nurse who answered the phone conduct an immediate review of the care plan to determine if her mother had been assisted to the restroom no later than 7:00 a.m. that morning.

That was only one of a long series of repeated angry, demanding, demeaning letters and phone calls which forced management to go to court when they finally reached their breaking point. **Johnson v. Berg, 2008 WL 3897846 (Minn. App., August 26, 2008).**

A family member certainly has the right to consult with caregivers, to voice his or opinions and to advocate for alternatives. However, the situation here went far beyond reasonable advocacy and became harassment.

The nursing facility is entitled to a restraining order that the resident's family member cease and desist from harassing conduct.

Harassment is defined to include repeated incidents of intrusive or unwanted acts, words or gestures that have a substantial adverse effect on the safety, security or privacy of another person.

The resident's daughter repeatedly sent harassing letters of complaint on the same subjects to the nursing facility and followed up with harassing phone calls to staff, verbally abused the administrator face-to-face on at least six occasions and personally interfered with the nursing care of other residents.

Actual fear for personal safety is not a necessary element, but if it is present it will, of course, lend support to a court's finding of harassment.

COURT OF APPEALS OF MINNESOTA
August 26, 2008