

LEGAL EAGLE EYE NEWSLETTER

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Medications: Court Says Nurse Practitioner Can Be Liable For Homicide By Her Patient.

The adult male patient was under the care of a nurse practitioner in an outpatient clinic who prescribed a combination of Concerta, Valium, doxepin, Paxil, pregnenolone and testosterone for him.

With all of these medications in his system the patient went into a violent rage and shot and killed his wife. He later pled guilty to aggravated murder and is presently incarcerated.

The two young children, now without parents, filed a negligence lawsuit through a court-appointed guardian against the nurse, her consulting physician and the corporation which owns the outpatient clinic.

The Supreme Court of Utah ruled that the children's lawsuit stands on solid legal grounds. The children are entitled to their day in court for a jury to determine the ultimate question of the nurse practitioner's liability.

The General Rule

No Duty to Control Violent Persons

As a general rule, mental health practitioners are not liable in civil lawsuits for failing to treat and control persons whose inherent psychiatric issues make them potentially dangerous to society at large.

Mental health practitioners do have a legal duty, following a landmark 1977 California court decision, to break



Healthcare professionals like physicians and nurse practitioners must exercise care in prescribing medications so that their patients do not pose an unreasonable risk of harm to other persons.

They must understand the risks to others and must assess the relative advantages and disadvantages of any course of drug therapy.

SUPREME COURT OF UTAH
February 28, 2012

medical confidentiality and notify a specific third party or parties, and law enforcement, when a patient under their care verbalizes a present intent to commit specific harm upon a specific identifiable person.

However, according to the Supreme Court of Utah, the situation is very different when a healthcare professional creates the risk of harm by the affirmative act of prescribing medication or a combination of medications which can cause an otherwise harmless patient to act out violently.

The evidence before the jury will focus on the issue of foreseeability, whether the nurse practitioner should have anticipated that these particular medications taken together by this particular patient could have led to an episode of violence.

Some medications, the Court said, would be ruled harmless in this context while others would have very foreseeable consequences. An idiopathic reaction to ibuprofen leading to a murderous rage would not be foreseeable and the victim's family would have no right to sue. However, a high dose of narcotics prescribed to an active-duty airline pilot could have very foreseeable consequences to the pilot's passengers. **"B.R." v. West**, __ P. 3d __, 2012 WL 621341 (Utah, February 28, 2012).

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