

Multiple Sclerosis: Patient Injured In Wheelchair Transfer.

A patient with multiple sclerosis sued the hospital for negligence after she was injured in an unassisted transfer from her wheelchair to an exercise mat in the hospital's physical therapy department.

The crux of the lawsuit was that her physical therapist should have known that MS patients have good days and bad days. Even after an MS patient has demonstrated the ability to transfer unassisted, on a bad day the patient may still need considerable assistance.

The purpose of rehabilitation is to promote independence.

However, trained healthcare professionals must realize that some patients will require assistance even after they have succeeded in demonstrating a certain degree of independence.

APPELLATE COURT OF CONNECTICUT,
2001.

The Appellate Court of Connecticut agreed in general terms she had grounds to sue, and went on to rule it was professional malpractice not to appreciate the nature of this patient's condition and her special needs and not to assess her status on a particular day. That is, it was malpractice, not ordinary negligence.

The court then granted the hospital's request to dismiss her case, ruling that the patient's lawyers had neglected to comply with pre-suit requirements under state law for a medical malpractice lawsuit. Trime l v. Lawrence & Memorial Hospital Rehab Center, 764 A. 2d 203 (Conn. App., 2001).

Reporting Abuse/Neglect: Nurse Practitioner's Employment Retaliation Suit Thrown Out By Court.

An employee of a nursing facility can sue his or her employer if the employer retaliates against the employee for reporting abuse or neglect of a vulnerable patient.

It must be something that the law would see as abuse or neglect.

An elderly resident falling out of a geri chair, in and of itself, is not necessarily abuse or neglect, unless it happened because of staff inattention.

The abuse or neglect must be reported to the employee's supervisors or to the department which regulates nursing facilities or to a law enforcement agency.

An employee must express himself or herself in a civil tone and may have to yield to a supervisor's better judgment.

An employee does not necessarily get to use the anti-retaliation laws to get the upper hand in disputes with superiors over patient-care issues.

The law does not penalize employers from disciplining or terminating insubordinate employees.

COURT OF APPEALS OF TEXAS, 2000.

An elderly resident fell out of her geri chair. How it happened was never specified in the court record.

The nurse practitioner on duty at the nursing home took her vital signs, then phoned the nursing home's medical director for permission to send the resident to the hospital in an ambulance for an assessment of possible injuries.

The medical director wanted an explanation why the nurse practitioner was not able to assess the resident for possible injuries herself. She said she did not feel comfortable doing it. The medical director became upset that the nurse practitioner was not doing her job.

The medical director was also concerned about spending over \$400 for the resident to ride to the hospital in an ambulance, with no apparent justification, and told the nurse practitioner to phone emergency medical services, let the paramedics assess the resident, and then call back.

The nurse got angry, made derisive comments to the doctor and was fired the next day for insubordination. She sued claiming it was retaliation. The Court of Appeals of Texas ruled against her.

Abuse or Neglect?

The court agreed, in general terms, she could sue for being fired for reporting abuse or neglect. However, she never said anything about the resident being abused or neglected. Falling out of a geri chair is not necessarily abuse or neglect.

Dispute Over Patient Care Issues

The conversation with the medical director was not about how the patient came to be found on the floor, the court pointed out. A nurse's dispute with a physician over how to examine or treat a patient is not covered by the anti-retaliation laws, and can be seen as insubordinate conduct for a nurse, the court ruled. Gonzales v. Methodist Retirement Communities, 33 S.W. 3d 882 (Tex. App., 2000).