

## Patient Murdered: Court Denies Access To Criminal Investigation.

Two nurses and a mental health worker in a state facility for the retarded were sued for the death of a patient who allegedly was strangled by another resident in the facility.

In the civil wrongful death lawsuit the Supreme Court of Alabama denied the deceased's personal representative's request for a copy of the internal investigative file of the state Department of Mental Health and Mental Retardation.

In this situation, the court ruled, the Department acts as a police agency. Police investigative files are generally exempt from discovery in civil cases.

To access police files a civil plaintiff has to show undue hardship, that is, explain why the plaintiff's attorneys cannot contact the witnesses on their own and generate their own independent investigation. Ex Parte Alabama Department of Mental Health and Mental Retardation, \_\_ So. 2d \_\_, 2002 WL 1434135 (Ala., July 3, 2002).

## Student Nurse Falsely Accused Of Rape: Civil Suit Dismissed.

To gain practical experience for her LPN program a student nurse enrolled in a CNA training program at a nursing home.

She was assigned to work with an advanced Lou Gehrig's Disease patient. According to the Court of Appeals of Tennessee, the patient was known by the nursing staff to be highly resistant to changes in her routine and to make unfounded complaints about imagined grievances.

The patient became upset when the student nurse did not pulverize her pill directly in front of her so she could see it done. When the patient was told the student nurse who bathed her was a lesbian, she filed criminal charges of rape which a local judge threw out.

The student nurse sued the nursing home for negligence for assigning her a difficult patient. The court ruled the resident's reaction was not foreseeable and dismissed the lawsuit. Lewis v. Life Care Centers of America, Inc., 2002 WL 1489602 (Tenn. App., July 12, 2002).

## Home Health: Family Says Nurses Ignored Their Elderly Mother, Court Sees Elder-Abuse Lawsuit.

The family filed a civil lawsuit for elder abuse against their home health nursing agency.

The agency was hired to provide in-home care for the family's elderly mother after her discharge from the hospital for decubitus ulcers on her hips and feet. The discharge orders were for a professional nurse to re-apply DuoDerm to pressure sores and re-evaluate every two to three days.

During the initial visit the dressings were applied. The nurse said she would return in two days but she did not. The dressings became wet and malodorous, according to the court record, and the family phoned the agency. The best the family could get was instructions over the phone how to change the dressings themselves.

***It appears the home health nursing agency recklessly or intentionally disregarded its own determination that the elderly client would require treatment again within two days of the initial visit.***

***The family alerted the agency that the client's skin ulcers were deteriorating. The agency said it was understaffed and too busy to respond.***

CALIFORNIA COURT OF APPEAL  
NON-PUBLISHED OPINION  
July 16, 2002

They had to take their elderly mother to the hospital and have her re-admitted for sepsis.

The Superior Court for Los Angeles County dismissed the family's civil lawsuit. The California Court of Appeal overruled the Superior Court.

If the family could prove their allegations, the Court of Appeal ruled, there was a case of elder abuse that could result in a civil jury verdict.

Elder abuse by a healthcare provider can include deliberate indifference to a patient's care needs established by the patient's care plan. A home health agency is required to maintain sufficient staffing to meet its clients' needs, the court said. Trujillo v. Superior Court, 2002 WL 1558830 (Cal. App., July 16, 2002).