

## Sexual Assault: Female Psych Patient's Case To Go Forward.

The Court of Appeals of Tennessee ruled that a female psychiatric patient's case could go forward against the facility where she allegedly was sexually assaulted by a male fellow patient.

According to the Court, male patients admitted to this facility were by the very fact of having been admitted to the facility known to be prone to unpredictable and potentially violent and assaultive behavior.

The facility's staff should have appreciated the vulnerability of a twenty year-old female patient suffering from acute psychosis and hallucinations.

The core technical legal issue was whether the patient's case could go forward without being backed by an expert's opinion as to the standard of care.

The Court ruled that a non-licensed non-professional staff person such as a security guard could have appreciated the danger to this patient and recognized the steps necessary to keep potentially assaultive male patients separated from her. Thus the legal issue was not professional malpractice, which requires expert testimony, but ordinary negligence, for which no expert is needed. **Brister v. HCA, 2011 WL 2395218 (Tenn. App., June 8, 2011).**

## Nursing Care Standards: Court Sees Immediate Jeopardy, OK's Civil Monetary Penalties.

The US Court of Appeals for the Eleventh Circuit upheld civil monetary penalties against a nursing facility for violations of Federal standards in the care of two separate patients.

The first patient was an eighty-three year-old woman who suffered from congestive heart failure, diabetes and obesity.

### Failure to Follow Care Plan

Her care plan called for the use of a mechanical lift in all transfers. Nevertheless, two aides attempted to transfer her from her bed to her wheelchair without using the mechanical lift, in violation of her care plan. The patient was either dropped or lowered to the floor. It was not clear from the court record whether the patient was actually injured.

The Court ruled that this violation rose to the level of "immediate jeopardy" because members of the nursing home staff directly violated the care plan in the transfer of an elderly obese patient who suffered from serious medical conditions which made her unable to stand on her own even momentarily.

The second patient was an eighty-five year-old woman who suffered from congestive heart failure and dementia.

She managed to wiggle out of her wheelchair while two aides were standing by with her preparing to transfer her from the wheelchair. She fractured her wrist in the incident.

The patient was in a frail physical condition and had limited mobility and limited range of motion in her lower body, needed extensive assistance with transfers, had poor cognition and judgment and was known to fidget during care. Her diagnosis of osteoporosis made it extremely dangerous for her to fall.

The Court upheld a civil monetary penalty levied against the nursing facility, finding that this second violation also rose to the level of immediate jeopardy.

### Failure to Provide Adequate Supervision to Prevent Accidents

The patient was not provided with adequate supervision to prevent accidents, a violation of the express language of Federal Medicare/Medicaid standards, the Court said.

That failure to provide supervision came in two forms. The aides who were with the patient when she wiggled out and fell should have been watching her more closely.

It also came to light that the patient was known to have the tendency to wiggle while in her wheelchair and had wiggled out of her chair on to the floor on previous occasions.

The patient's well-known tendency to wiggle in her wheelchair pointed to a need to address the issue of restraints for her own safety, but that was never done. **Golden Living Center v. US Dept. of Health & Human Svcs, 2011 WL 2308564 (11th Cir., June 10, 2011).**

LEGAL EAGLE EYE NEWSLETTER  
For the Nursing Profession  
ISSN 1085-4924

© 2011 Legal Eagle Eye Newsletter

Indexed in  
Cumulative Index to Nursing & Allied  
Health Literature™

Published monthly, twelve times per year.  
Mailed First Class Mail at Seattle, WA.

E. Kenneth Snyder, BSN, RN, JD  
Editor/Publisher  
PO Box 4592  
Seattle, WA 98194-0592  
Phone (206) 440-5860  
Fax (206) 440-5862  
kensnyder@nursinglaw.com  
www.nursinglaw.com

Clip and mail this form. Or if you prefer, order online at [www.nursinglaw.com](http://www.nursinglaw.com).

Print \$155/year \_\_\_\_\_ Online \$95/year \_\_\_\_\_ Phone 1-877-985-0977  
Check enclosed \_\_\_\_\_ Bill me \_\_\_\_\_ Credit card \_\_\_\_\_ Fax (206) 440-5862  
Visa/MC/AmEx/Disc No. \_\_\_\_\_  
Signature \_\_\_\_\_ Expiration Date \_\_\_\_\_

Name \_\_\_\_\_  
Organization \_\_\_\_\_  
Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_  
Email (if you want Online Edition\*) \_\_\_\_\_

\*Print subscribers also entitled to Online Edition at no extra charge.  
Mail to: Legal Eagle Eye PO Box 4592 Seattle WA 98194-0592