

# Nursing Home Litigation: Court Rules Other Residents' Records Are Relevant, Allows Access To Lawyer, With Adequate Privacy Protection.

The personal representative of a deceased nursing home resident's probate estate filed suit against the nursing home where he had resided.

The lawsuit alleged negligence and violations of the nursing home residents' bill of rights.

No judge or jury has as yet ruled on the validity of these allegations. The legal issue at this time is whether the nursing home must provide the personal representative's lawyers with copies of all of the medical charts of all of the other residents who were in the facility at the same time as the resident whose care is in question in the lawsuit.

## Other Residents' Charts Are Relevant Or May Reveal Relevant Facts

The resident's personal representative's lawyers want to probe into the acuity levels of other patients at the facility, to determine the numbers of staff members needed to provide adequate care facility-wide, to determine whether the facility was adequately staffed, to determine in a round-about fashion whether the resident in question received proper care.

***As a general rule in civil cases, the lawyers for one side are allowed access to documents in the possession of the other side if the material contained in the documents is relevant to the issues in the lawsuit.***

***The lawyers are also entitled to access documents in the possession of the other side if the court is satisfied that a request for access to the documents, although not necessarily relevant, is reasonably calculated to lead to the discovery of relevant information that will assist in the preparation of the case against the party in possession of the documents.***

***However, patients' privacy must be protected in the whole process. The other patients not involved in the lawsuit have not waived medical confidentiality.***

DISTRICT COURT OF APPEAL  
OF FLORIDA  
October 13, 2004

The District Court of Appeal of Florida overruled the lower court judge's decision that the other patients' medical charts are irrelevant and thus off limits for the lawyers representing the patient in question.

Whether or not the records are relevant is not the legal standard. The legal standard for pre-trial discovery of documents in the possession of the opposing party is whether a request for the documents is at least reasonably calculated to lead to the discovery of relevant information.

The acuity levels of other patients in the facility, in conjunction with personnel records showing staffing levels, could tend to show that the patient's personal representative's lawyers' legal theory of the case does hold water, that the facility was understaffed and the resident in question suffered accordingly. Or it could prove staffing levels were adequate. Either way, the lawyers will get copies of the other charts to prepare for jury trial.

## Patient Confidentiality Must Be Protected

The court nevertheless upbraided the lawyers for not conceding that all identifying information had to be whited out, or, in legal parlance, redacted, before the charts left the facility.

The local judge will have supervisory responsibility to see that the other patients' privacy rights are preserved. ***Age Institute of Florida, Inc. v. McGriff***, \_\_ So. 2d \_\_, 2004 WL 2289686 (Fla. App., October 13, 2004).

### LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

ISSN 1085-4924

© 2004 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

12026 15th Avenue N.E., Suite 206  
Seattle, WA 98125-5049  
Phone (206) 440-5860  
Fax (206) 440-5862  
info@nursinglaw.com  
http://www.nursinglaw.com

<b>Circle one: \$155 print</b>	<b>\$120 electronic</b>	<b>Phone toll free</b>
<b>Check enclosed</b> _____	<b>Bill me</b> _____	<b>1-877-985-0977</b>
<b>Credit card</b> _____		<b>Mail to:</b>
<b>Signature</b> _____	<b>Expiration Date</b> _____	<b>Legal Eagle</b>
<b>Organization</b> _____		<b>PO Box 4592</b>
<b>Address</b> _____		<b>Seattle WA</b>
<b>City/State/Zip</b> _____		<b>98194-0592</b>