

Sexual Assault: Nursing Home Liable, They Knew Resident's History Of Sexual Acting Out, Failed To Take Action To Protect Others.

A resident was acting out sexually at a nursing home. The nature and extent of his alarming behavior was fully documented in his chart.

Prior Nursing Home Placement Inappropriate Behavior Charted

He attempted to sexually assault a male resident of the nursing home in a restroom. The victim was elderly, blind, disoriented and suffered from advanced Alzheimer's disease.

A resident's daughter reported he had tried to follow her into a linen closet.

The nursing staff believed the resident was a serious threat to other residents and basically did not belong in a nursing home.

When he left that facility the director of nursing expressly wrote in her discharge note, "This resident is at risk for harming others."

Two Nursing Homes Same Corporate Owner Same Medical Director

The nursing staff had kept his personal physician aware of his acting out. His personal physician was the medical director of the nursing home and the medical director of the second nursing home where he would be placed, where he would assault a resident. That assault led to the family filing a lawsuit against the corporate parent of the nursing homes, the resident's personal physician and the resident's psychiatrist.

Involuntary Psychiatric Hospitalization

In between the two nursing-home placements the resident was involuntarily committed to the state psychiatric hospital for major depression.

The hospital's staff psychiatrist made notes of the resident's sexual acting out in many of the same ways he had been acting out at the first nursing home. The psychiatrist concluded he was very dangerous to female fellow patients.

It was the nursing home's policy for the director of nursing to go to the other facilities and examine the patient's charts before admitting the patient to the nursing home, but at the medical director's directions that was not done.

Had the resident's background been properly investigated, harm to a vulnerable resident could have been avoided.

Based on his history at another nursing home owned by the same corporation and at the state psychiatric hospital, it was foreseeable that the resident in question could harm one of the nursing home's elderly female residents.

He had displayed overt sexually deviant behavior that was fully documented in his charts at his prior placements.

Once the resident came to the nursing home the nurses and the aides immediately knew there was plenty wrong with his behavior. He should have been watched more closely and kept away from vulnerable female residents.

COURT OF APPEALS OF TEXAS
December 12, 2002

When he was ready to leave the state hospital the first nursing home sent its assistant director of nursing to the hospital to review his chart to determine if he was appropriate for re-admission.

Based on alarming episodes of sexual acting out the administrator and director of nursing made the decision to refuse him re-admission to the nursing home.

Admission Granted To Second Nursing Home

According to the Court of Appeals of Texas, it was the machinations of the resident's physician, medical director at the first and second nursing homes, that got him into the second nursing home.

The nursing director was told not to go to the state hospital or the first nursing home to review his records. Review of his records would have and should have been standard procedure before accepting a resident with a psychiatric history.

The staff nurses and aides immediately began to see there were problems with having him in the facility. However, they did not take steps to prevent him from assaulting a helpless female resident in her room ten days later.

Verdict Disputed / Upheld

The jury awarded \$50 million in punitive damages. The Court of Appeals ruled this was a case of negligence, not intentional misconduct, and threw out the punitive damages.

The Court of Appeals also upheld the local judge's decision to reduce the verdict for compensatory damages from \$2.5 million each for the resident and her daughter to \$500,000 each against the parent corporation and the physicians.

Harm Was Legally Foreseeable

When it is foreseeable that a patient can and will harm others, it is imperative for a healthcare facility to take steps to prevent that harm. In this case, the court believed, the medical director should have known he did not belong there and should never have let him in.

Healthcare Centers of Texas, Inc. v. Rigby, ___ S.W. 3d ___, 2002 WL 31769624 (Tex. App., December 12, 2002).