

# LEGAL EAGLE EYE NEWSLETTER

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## Patient's Fall: Safe Patient Transfers Require Nursing Assessment And Care Planning.

The eighty-five year-old patient had a stroke in the late 1970's that resulted in left-side paralysis.

She was admitted to a nursing facility in 1992 after she fractured her ankle in a fall in her daughter's home.

In 2006 she was being helped out of bed by a lone CNA when she lost the strength in her legs and either fell or was lowered to the floor. Her left leg was bent backward.

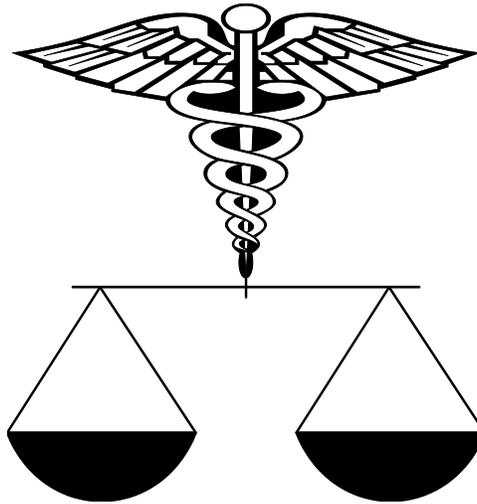
When she complained of pain she was sent to the hospital where she was treated for a leg fracture.

She sued the nursing facility for negligence. The Supreme Court of Alabama ruled she was entitled to her day in court. That is, the lower court judge was wrong to disallow the expert testimony of a registered nurse offered by the patient's lawyers and instead to rely only on the testimony of the facility's physical therapy staff.

### Factors Affecting Patient Transfers Require Nursing Assessment

The Court expressly overruled the nursing facility's argument that it was solely up to its physical therapy department to assess the patient and determine how the patient was to be transferred.

The physical therapist had not written orders for a mechanical lift or a gait belt or for more than a single caregiver to participate in this patient's transfers.



***The nursing facility's argument is not valid that patient transfer assessments and care planning were the sole province of physical therapy.***

***A care facility cannot control the standard of care simply by having a certain department, rather than the law, select the standards applicable to activities undertaken by its care-giving employees.***

SUPREME COURT OF ALABAMA  
June 28, 2013

The Court ruled instead that the legal standard of care for a nurse or nursing assistant caring for a patient is not determined by a facility's physical therapists.

Thus in this case the standard of care for this patient should have been explained to the jury by the testimony of the registered nurse offered as the patient's expert witness.

The patient's nursing expert had an extensive background caring for infirm elderly patients in long-term care and extensive experience supervising non-licensed staff in that care-giving environment, which qualified her as an expert on the nursing standard of care.

According to the patient's nursing expert, the patient should have been assessed by the nurses as needing a mechanical lift.

If the CNA went ahead without using a lift she should at least have used a gait belt and brought in another staff person to help her, the patient's nursing expert went on to say.

It was not relevant to the outcome of the lawsuit, the Court said, that the facility's general nursing guidelines did not expressly call for two-person transfer assistance. The CNA should have known not to go it alone. ***Hill v. Fairfiled Nsg. & Rehab.***, \_\_ So. 3d \_\_, 2013 WL 3242867 (Ala., June 28, 2013).

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