

Psych Take-Down, Positional Asphyxia: Court Upholds Family's Wrongful Death Lawsuit.

The patient admitted himself voluntarily to a public psychiatric hospital. It was the first time he had ever been in any psychiatric facility.

The admission form, however, stipulated that he could be held involuntarily up to three days if he tried to sign out against medical advice.

During his first night, before a patient room had been assigned to him, while he was being kept in a "quiet room," he became increasingly agitated. By 9:30 a.m. he was wandering in and out of patient rooms and banging his head on the doors. The on-call physician was notified and he phoned in an order for IM Ativan. The alarm was sounded to summon staff to restrain him so that the nurse could give him the shot in his buttocks.

Use of excessive force in restraining a psychiatric patient can lead to a lawsuit for violation of state statutes that outlaw patient abuse and neglect.

The family would also have the right to sue for civil assault and battery.

The analogy to a police officer is correct. Even if making a lawful arrest, use of force beyond what is necessary is against the law.

UNITED STATES DISTRICT COURT
MICHIGAN
August 10, 2006

Eight staff members kept holding him down on the floor after he got his medication. One person knelt on his neck and another stood on his head. No one checked his breathing.

He was let go of when he quieted down apparently from the medication taking effect. In fact, he had been asphyxiated and had died.

The US District Court for the Western District of Michigan would not say his Constitutional rights were violated.

However, the family could still sue for wrongful death under state statutes which outlaw abuse and neglect of patients by healthcare caregivers and could sue for common-law civil assault and battery for use of excessive force. Lanman v. Hinson, 2006 WL 2331185 (W.D. Mich., August 10, 2006).