Transitional Setting: No Liability For Unwitnessed Seizure, Court Says.

The patient had a long history of mental health admissions for schizophrenia, suicide attempts and an epileptic seizure disorder.

At the time in question he was doing well and taking his medications. He was living in a transitional care unit on the state hospital campus, with grounds privileges, awaiting discharge to an adult group home setting.

He still had some angry outbursts, showed some delusional thinking and had occasional seizures, but his discharge plans were still deemed appropriate.

He did not report and ask for his 5:00 p.m. meds as usual. They went looking for him at 5:50 p.m. He was found fifteen minutes later dead in a closet, apparently having died during an unwitnessed seizure episode.

There was no reason before the fact for the physicians or nurses to believe this patient needed more restrictive supervision.

NEW YORK SUPREME COURT, APPELLATE DIVISION, 2000.

The New York Supreme Court, Appellate Division, refused to go along with the family's wrongful death lawsuit.

His care was fully up to par. His medication levels were being monitored closely. He had a chronic seizure disorder but it was being controlled as best it could, and he was participating in his care as fully as any patient could, with or without psychiatric problems. Death during seizure was always possible and could not be blamed on his caregivers, the court ruled. **Angell v. State, 719 N.Y.S.2d 158 (N.Y. App., 2000).**

Least Restrictive Alternative: Court Orders Involuntary Care.

When a person has been judged mentally ill by a court, the person loses the right to consent or to refuse to consent to medical interventions the law deems necessary for the person's welfare.

To justify such a significant loss of the civil and constitutional rights most citizens enjoy, the person must have an impairment that has a substantial adverse effect on the person's cognitive and volitional functions, the Supreme Court of Montana recently noted in upholding involuntary commitment and forced medication of a mentally-ill adult.

It is clear from the detailed factual evidence in the court record that involuntary hospitalization and involuntary injection of anti-psychotic medication is the least restrictive alternative that will meet this patient's treatment needs.

SUPREME COURT OF MONTANA, 2000.

The court said the record contained specific facts justifying the action taken. The patient had repeatedly voiced her own opinions that she was not mentally ill, that she did not need medication, that she would not take medication and that she could live fine independently. Hospital staff saw her try at least twice to throw away her oral anti-psychotic medications.

Her anti-psychotic medication could be taken orally on a daily basis, but she usually would not take her medication voluntarily. The court believed it was the least restrictive alternative consistent with the patient's needs that she receive her anti-psychotic medication in the form of a weekly injection, even though a less invasive alternative was theoretically possible. **In re Mental Health of S.C., 15 P. 3d 861 (Mont., 2000).**

Least Restrictive Alternative: Inpatient versus Transitional Care.

The patient was sixty-four years old and had a lifetime history of schizophrenia, psychotic behavior and numerous involuntary mental health admissions.

His treatment team wanted to keep him in the state hospital.

The patient wanted to move out of the hospital into transitional living quarters on the state hospital campus.

The patient is entitled to the least restrictive conditions needed to achieve the treatment goals that have been set for the patient.

A patient's legal challenge will be upheld if there are no specific details in the court record why the lesser restrictive alternative the patient wants is not sufficient and appropriate.

SUPREME COURT OF NORTH DAKOTA, 2001.

The Supreme Court of North Dakota sided with the patient and ruled he could live in transitional care at the hospital, pending further legal proceedings.

The patient unquestionably needed careful medication management of his psychosis and his diabetes in a structured setting. The patient's psychiatrist testified as the treatment team's representative about the patient's psychiatric and medical problems, the patient's lack of insight into his own needs and the dire consequences if his medications were neglected.

However, the court ruled there was no specific evidence why the patient's needs could not be met in the lesser-restrictive transitional setting the patient wanted. **In re J.S., 621 N.W. 2d 582 (N.D., 2001).**