

Sexual Assault In Long-Term Care: Court Overrules Decision.

A nursing home or other healthcare facility has a legal duty to protect patients from foreseeable harm.

It is foreseeable that a caregiver who has abused or assaulted a patient before could do it again.

It is negligent supervision not to appreciate that possibility and to let such an individual work directly with vulnerable patients.

A sexual assault is not foreseeable without a prior indication that the employee posed a danger to vulnerable female patients.

The fact this man was newly certified and inexperienced, in and of itself, did not give rise to any foreseeable probability that he could or would sexually assault a patient.

He had no criminal record or record of patient abuse. Before he transferred from housekeeping to direct care he was fully trained and certified as a CNA.

SUPREME COURT OF ARKANSAS, 2001.

In the June, 2001 issue we reported a case from the Court of Appeals of Arkansas saying that a healthcare facility must anticipate that newly-hired male aides can have difficulty not acting inappropriately with vulnerable female patients, *Sexual Assault In Long Term Care: Court Questions Supervision Of Nurse's Aide*, Legal Eagle Eye Newsletter for the Nursing Profession, (9)6, Jun '01 p.3.

The Court of Appeals ruled a newly-certified and/or newly-hired male aide has to be watched closely by supervising nurses to prove he can give care appropriately before being allowed to work alone with vulnerable female patients.

The Supreme Court of Arkansas overruled the Court of Appeals on that point.

Only when a healthcare facility permits foreseeable harm to occur is the facility guilty of negligent supervision. There is no liability for unforeseeable harm.

A facility must do a thorough background check for a criminal record, check with the state registry and contact previous job references for prior episodes of patient mistreatment. Beyond that there is nothing special about a male CNA being new on the job to make his employer anticipate he can or will commit a sexual assault.

Nursing Home Ruled Not At Fault

The Supreme Court ruled the nursing home was not guilty of negligent supervision. They trained the aide in basic caregiving skills. Nothing in his background suggested inappropriate interaction with vulnerable females. There was no reason to foresee a sexual assault. **Regions Bank & Trust v. Stone County Skilled Nursing Facility, Inc.**, 49 S.W. 3d 107 (Ark., 2001).

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