

## Sexual Assault In Long Term Care: Court Discusses Nursing Home's Liability.

A woman was admitted to a nursing home with head injuries from a motor vehicle accident that left her in a persistent vegetative state. She is not able to talk or otherwise communicate, not able to feed herself, not able to breathe on her own, not able to perform any activities of daily living and is totally dependent upon the care given her by the nursing home.

The resident was sexually assaulted in her room by her brother-in-law. A nursing home employee caught him in the act and chased him away. The brother-in-law was later arrested and convicted and is now serving a lengthy prison sentence.

### Resident To Get Her Day In Court

The Court of Appeals of Kentucky ruled the local county court judge was in error to dismiss the civil lawsuit filed against the nursing home by the family on the resident's behalf.

The common law rule does not apply in this situation that generally absolves every person from consequences of other parties' criminal acts.

A jury will be allowed to decide whether or not reasonable steps were taken for the resident's protection.

### Duty to Screen Visitors

#### Duty to Monitor Visitation

The Court of Appeals ruled that nursing homes have a duty to screen visitors. Visitors must identify themselves. People cannot be allowed just to walk in.

Any visitor who the nursing home has reason to anticipate may harm a resident cannot be allowed in to see a resident.

Nursing homes also have the duty to monitor visitation to see that no harm occurs even after screening visitors to determine which visitors can be allowed in.

That being said, however, it is not all clear that the nursing home would have had any reason to bar the brother-in-law or that his visit was not monitored closely enough by the staff. A jury will have to decide that. **Murphy v. EPI Corp.**, 2004 WL 405754 (Ky. App., March 5, 2004).

***Ordinarily no one is responsible for the consequences of another person's criminal acts.***

***That is, ordinarily no one has any legal duty to prevent another person from committing a crime.***

***Having no duty to prevent a criminal act, no one is ordinarily liable to pay civil damages to another party for the harm done in a criminal act committed by another person.***

***A major exception to the ordinary rule exists for institutions like hospitals, nursing homes, day care centers, etc., that exist for the sole purpose of caring for vulnerable persons who are unable to care for and protect themselves.***

***A nursing home is responsible for the safety of its residents.***

***A nursing home must exercise what the law refers to as ordinary care to protect residents from harm, if the harm can reasonably be expected from third parties.***

***A nursing home resident harmed by a visitor can, in some cases, sue the nursing home for damages.***

COURT OF APPEALS OF KENTUCKY  
UNPUBLISHED OPINION  
March 5, 2004

## Nursing Home Liability: Court Upholds Arbitration.

A long-term care resident was badly injured when his caregivers placed him in a bathtub of water that was too hot.

The issue for the District Court of Appeal of Florida was not whether the nursing home was negligent, but how the resident would go about seeking and obtaining legal compensation.

The nursing home admission contract clearly spelled out that any claim against the nursing home related to the care received by the resident would be decided in arbitration and not in a civil-court jury trial. The court upheld arbitration as the only avenue of recourse for this resident, even though there were allegations of violation of state law for which state law allows a nursing home resident to sue.

Arbitration can be a method for healthcare facilities to avoid potential liability for large non-economic damages. **Five Points Health Care, Ltd. v. Alberts**, \_\_\_ So. 2d \_\_\_, 2004 WL 350741 (Fla. App., February 26, 2004).

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