

Inconsistent Accounts: Nurse's Liability Nixed.

The dementia patient's daughter found a bruise over her mother's eye and complained to the nursing home's director of nursing and to the police.

The patient said she had been beaten up. The patient also said she fell and hurt herself.

The nurse on duty assigned to her care told the administrator she checked on the patient when she heard her cry out and did not see any facial bruising. The nurse told the police she never actually went to the room.

The nurse's conflicting accounts of what happened, in and themselves, were not enough evidence for the police to file criminal charges.

The Court of Appeal of Louisiana sympathetically acknowledged it was a very unfortunate set of circumstances for both sides.

However, standing alone, the nurse's conflicting statements were insufficient evidence to hold the nursing home liable for damages in a civil lawsuit. **Wallace v. Red River Center Corp.**, ___ So. 2d ___, 2004 WL 385006 (La. App., March 3, 2004).

Adverse Drug Reaction: No Nursing Liability.

A patient came to the hospital's emergency room with a skin rash. A physician started an IV line in her right hand.

When the patient complained of nausea an LPN gave an unspecified dose of Phenergan through the IV line.

The patient felt a burning sensation in her hand and later developed a superficial phlebitis which resulted in a sclerotic vein that had to be removed surgically.

The patient sued the hospital for nursing negligence. The patient's attorney filed the affidavit of a registered nurse stating that the manner in which the E.R. nurse gave the Phenergan fell below the standard of care and had to have been what caused the sclerotic vein.

However, the Court of Appeals of Michigan, in an unpublished opinion, ruled that an adverse reaction, standing alone, does not prove a nurse was negligent. The case was dismissed. **Parker v. Mercy General Health Partners**, 2004 WL 243359 (Mich. App., February 10, 2004).

Sexual Assault: Psych Nurse's Consensual Relations With Former Patient Ruled Criminal.

A patient with a history of psychiatric illness admitted herself to a psychiatric hospital on the advice of her therapist who feared she might try to harm herself.

A licensed vocational nurse on the unit was assigned to dispense medications and to chart each patient's status. He gave this patient her meds on twelve occasions.

On four such occasions he took the opportunity to conduct what the Court of Appeals of Texas described as "in depth" conversations in which the patient revealed intimate details about her personal life.

Four days after discharge the nurse approached her outside her workplace and she invited him to her home, where consensual sexual relations took place.

A criminal sexual assault occurs when a mental health service provider causes a patient or former patient to submit by exploiting the other person's emotional dependency.

Consensual sexual relations in this circumstance are legally considered non-consensual.

Mental health service provider includes a nurse on a mental health unit.

COURT OF APPEALS OF TEXAS
UNPUBLISHED OPINION
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The nurse was prosecuted and found guilty of sexual assault. The Court of Appeals of Texas upheld his conviction in an opinion not released for publication.

The law sees consenting sexual relations as non-consensual between mental health service providers, including nurses, and their patients or former patients and grounds for criminal sexual assault charges.

The law fears the potential for a mental health service provider to exploit a psychiatric patient's vulnerability and/or to misuse a dependency relationship for inappropriate ends. Actual exploitation does not have to be proven, only that the victim is or was a patient under the defendant's care. **Jones v. State**, 2004 WL 438676 (Tex. App., March 11, 2004).