

Nursing Home Visitor Trips And Falls: Court Throws Out Lawsuit.

A visitor tripped and fell over a twenty-inch-square box fan on the floor of her sister's room. The nurses had put the fan there to help cool the sister's roommate who had congestive heart failure and often felt warm.

The fan had been in the room for some time, although the court did not specify exactly how long. When the visitor fell it was not the first time she and other visitors had seen it.

The visitor sued the nursing home for personal injuries. The jury reached a verdict of \$57,600 for the visitor, which the judge reduced by 50% for the visitor's own comparative negligence. The nursing home appealed.

The Appellate Court of Illinois threw out the verdict altogether and the visitor got nothing. The court ruled a nursing home has no legal duty toward a visitor to protect the visitor from a danger which is visible and obvious to anyone who is paying attention to his or her own personal safety. **True v. Greenwood Manor West, Inc.**, 737 N.E. 2d 673 (Ill. App., 2000).

Ob/Gyn: Court Says Nurse Not Expert On Standard Of Care For Physician.

A mother who was diabetic and overweight to start with gained more than fifty pounds during her pregnancy. Her labor and delivery were uncomplicated and she was scheduled for discharge in three days.

Before discharge she went into cardiac arrest, suffered irreversible brain damage and was in a coma up to the time the US Court of Appeals for the Eighth Circuit rendered a decision.

The family, members of a Native-American tribe, sued the hospital in Federal court. As required by local state law their attorney had to file an affidavit of an expert witness within a short time after filing suit or face dismissal of the lawsuit. The court ruled the affidavit of a registered nurse did not comply with the law, as a registered nurse is not legally accepted as an expert witness on the medical standard of care for an obstetric physician. **Weasel v. St. Alexius Medical Center**, 230 F. 3d 348 (8th Cir., 2000).

Abandonment: Home Health Client And Family Member Die In Home Fire, Agency Ruled At Fault.

The client died in a home fire that broke out during the last hour of a home health aide's shift, after the aide had already left for the day.

The New York Supreme Court, Appellate Division, ruled the aide abandoned his patient. His employer, a visiting nurse agency, was liable for negligence for the client's death and a family member's death who tried to rescue him from the fire.

The court noted the client was severely disabled and bedridden. He lived with his extended family in a rented house. A home health aide was to stay with him at all times when family members were not present.

The fire would not have started or would have been detected sooner if the aide had stayed on duty, the court said.

The home health aide left the client's home one hour before his shift ended.

The client and a family member died in a home fire that started during the last hour of the aide's shift.

The aide could have prevented or detected the fire, called the fire department and/or saved the client.

A family member also died trying to save the client from their burning home.

NEW YORK SUPREME COURT,
APPELLATE DIVISION, 2000.

Danger Invites Rescue

The court referred to a common-law rule, "Danger invites rescue." That is, when one person who has responsibility for another person places that person in danger, the danger invites rescue.

When a third party comes to the rescue of a person whom one has negligently placed in danger, and the third party is injured or killed during the rescue, the one who placed the person in danger in the first place is to blame.

The home health aide placed the client's seventeen year-old stepdaughter in danger in essence by inviting her to rush into the house to rescue her stepfather when she came home and saw the house on fire, the court ruled. **Villarin v. Onobanjo**, 714 N.Y.S.2d 90 (N.Y. App., 2000).