

## Persons with Mental Illnesses in Nursing Homes

Testimony Prepared for the Governor's Nursing Home Safety Task Force Hearing  
October 20, 2009

Illinois has long struggled with problems relating to the placement of persons with mental illnesses in nursing homes. Unfortunately, despite periodic attention from the media and from various government agencies, we have not yet created a thoughtful and systematic response to these problems. There are serious systemic problems with our excessive reliance on nursing homes as placements for persons with mental illnesses, with the way many nursing homes treat persons with mental illnesses and with the government regulation of the treatment of persons with mental illnesses in nursing homes.

In addressing these serious problems, it is important to remember:

- Like any other type of facility, there are nursing homes that are better and those that are worse.
- Most person with mental illnesses are not dangerous and are not criminals.
- Most of the over 260,000 persons in Illinois diagnosed with two of the most serious mental illnesses—schizophrenia and bipolar disorder—are not living in any type of institution; nor do they belong in one.
- Most criminals are not mentally ill.
- Persons who need to reside in a nursing home due to the infirmities associated with old age or physical disability are not immune from mental illnesses. Thus, no matter what policy choices Illinois makes about the placement of persons who are in nursing homes *only* because they have a serious mental illness, it will be important to insure that elderly and physically disabled persons are provide with adequate and humane mental health services when needed.

Specific serious problems involving the placement of persons with mental illnesses in nursing homes include:

- Inadequate intake screening and assessment
- Insufficient staff
- Staff lacks training/expertise regarding the diagnosis/assessment and treatment of persons with mental illnesses

- Inadequate understanding of and monitoring of use of psychotropic medications
- Government oversight of the quality and quantity of mental health services provided in nursing homes has been inadequate.
- Absence of a recovery focus and discharge planning
- Failure of nursing homes classified as “Institutes for Mental Diseases” (IMD) and specialized mental health units within other nursing homes to comply with the Mental Health and Developmental Disabilities Code as required by *Muellner v. Blessing Hospital*, 335 Ill. App. 3d 1079; 782 N.E.2d 799; 270 Ill. Dec. 240 (2002)
- Unnecessary placement of persons with mental illnesses in nursing homes, particularly in IMD nursing homes.

Recommendations:

1. The Governor should settle the *Williams v. Blagojevich* litigation which seeks to insure that only those persons who need institutional care are placed in nursing homes.
2. The Illinois Department of Public Health should enforce the *Muellner* decision by enacting and enforcing specific new regulations.
3. The Illinois Department of Public Health should hire more staff with mental health expertise to oversee nursing homes.
4. The nine inpatient psychiatric facilities operated by the Department of Human Services, Division of Mental should refrain from discharging persons to nursing homes unless the need for such a placement is based upon a condition other than a mental illness.
5. Remove all persons from nursing homes who are there *solely* due to a mental illness.
6. Use the money saved from reducing the number of person with mental illnesses in nursing homes to fund supportive housing, Assertive Community Treatment, peer support services, supported employment and other recovery-oriented services.

Mark J. Heyrman  
 Chair, Public Policy Committee  
 Writer’s direct line: 773-753-4440

# MUELLNER v. BLESSING HOSPITAL

335 Ill. App. 3d 1079; 782 N.E.2d 799; 270 Ill. Dec. 240 (2002)

Appeal from Circuit Court of Adams County No. 01P228 Honorable Thomas J. Ortbal, Judge Presiding.

PRESIDING JUSTICE MYERSCOUGH delivered the opinion of the court:

In January 2002, the trial court found respondent, Sandra Muellner, to be a disabled adult and appointed petitioner, the Office of State Guardian (State Guardian), as limited guardian of her person. Respondent appeals, arguing the trial court erred in authorizing the State Guardian to place her in a nursing home's behavioral unit without proceeding for her involuntary commitment under chapter III of the Mental Health and Developmental Disabilities Code ( 405 ILCS 5/3-100 through 3-1003).

## I. BACKGROUND

In September 2001, respondent was 55 years old and resided in Hotel Quincy Apartments. The manager noticed respondent holding a towel in her arms and acting like she had a baby. A maid convinced respondent to go to Blessing Hospital (Blessing), where she was voluntarily admitted as an inpatient to an adult psychiatric unit. In October 2001, Melissa Penn, a social worker at Blessing, filed a guardianship petition and a petition for temporary guardianship. Penn alleged respondent was a disabled person because she was unable to care for herself and she suffered from chronic paranoid schizophrenia with delusions. The petitions sought to appoint the State Guardian as guardian of respondent's person with authority to make residential placement. The trial court appointed the State Guardian as respondent's temporary guardian for up to 60 days. The trial court authorized the State Guardian to make residential placement.

In November 2001, the State Guardian, as respondent's temporary guardian, placed respondent with New Horizons in Sycamore Health Care (Sycamore), a 24-hour skilled nursing facility. New Horizons is a behavioral unit that works to stabilize psychiatric patients. It has an in-house psychiatrist and offers group therapy classes. The facility is not locked, but access to other areas of Sycamore or the outside community is restricted until the resident gains levels of trust.

In January 2002, the trial court held a hearing on Penn's guardianship petition. Dr. Lee Johnson, a psychiatrist, treated respondent for schizophrenia. Dr. Johnson noted that respondent rarely took prescribed medication. Julie Irvine of the West Central Illinois Center for Independent Living testified for respondent. Irvine stated respondent was capable of living independently in the community with visits by personal assistants to her home. Respondent filed a motion to limit the proposed guardian's power to place her in a nursing home. After taking the matter under advisement, the trial court denied respondent's motion as moot and appointed the State Guardian as limited guardian of respondent's person. The trial court granted the State Guardian authority to place respondent in a group home, shelter-care facility, or in the community. The trial court conditioned the State Guardian's authority to residentially place respondent in a skilled-care nursing facility; the State Guardian had to determine that respondent's placement in a less

restrictive environment would cause substantial harm to her.

## II. ANALYSIS

Respondent argues the trial court erred in authorizing the State Guardian to place her in a nursing home's behavioral unit without proceeding for her involuntary commitment under chapter III of the Mental Health Code ( 405 ILCS 5/3-100 through 3-1003).

\* \* \*

### **Nursing Home as a Mental Health Facility**

Section 11a-3(a) of the Probate Act of 1975 (Probate Act) ( 755 ILCS 5/11a-3(a)) authorizes a trial court to appoint a guardian for a disabled person. A guardian of the person has custody of the ward. 755 ILCS 5/11a-17(a). The guardianship order may specify the conditions on which the guardian may admit the ward to a residential facility without further court order. 755 ILCS 5/11a-14.1 . However, a trial court may not grant a guardian the power to admit a nonconsenting ward to a mental health facility for treatment as a voluntary patient. *In re Gardner*, 121 Ill. App. 3d 7, 12, 459 N.E.2d 17, 20, 76 Ill. Dec. 608 (1984). Section 3-200(a) of the Mental Health Code ( 405 ILCS 5/3-200(a)) provides that "[a] person may be admitted as an inpatient to a mental health facility for treatment of mental illness only as provided in" chapter III of the Mental Health Code.

In the present case, the trial court authorized the State Guardian to admit respondent to a skilled-care nursing facility, and the State Guardian placed respondent in New Horizons, which is a behavioral unit of a skilled-care nursing facility. Although the State Guardian has confessed error, this court is not bound by a confession of error. *People v. Lavallier*, 298 Ill. App. 3d 648, 649, 698 N.E.2d 704, 705, 232 Ill. Dec. 613 (1998). Therefore, we decide whether a nursing home's behavioral unit qualifies as a "mental health facility" under the Mental Health Code.

Section 1-114 of the Mental Health Code ( 405 ILCS 5/1-114) defines "mental health facility" as:  
any licensed private hospital, institution, or facility or section thereof, and any facility, or section thereof, operated by the State or a political subdivision thereof for the treatment of persons with mental illness and includes all hospitals, institutions, clinics, evaluation facilities, and mental health centers which provide treatment for such persons.

Section 1-113 of the Mental Health Code ( 405 ILCS 5/1-113) defines "licensed private hospital" as:  
any privately owned home, hospital, or institution, or any section thereof which is licensed by the Department of Public Health and which provides treatment for persons with mental illness.

The State Guardian claims that the definition of "mental health facility" is limited to those facilities with a "primary purpose" of treating mental illness. Amicus curiae suggests that any

nursing home may become a "mental health facility" if a single mentally ill person is admitted for mental health treatment. We reject these interpretations because they depart from the plain language of section 1-114. See *People v. Ellis*, 199 Ill. 2d 28, 39, 765 N.E.2d 991, 997, 262 Ill. Dec. 383 (2002).

Instead, we determine that New Horizons qualifies under the "licensed private hospital" portion of the definition of a "mental health facility" in section 1-114 of the Mental Health Code. As this court noted in *In re Moore*, 301 Ill. App. 3d 759, 766, 704 N.E.2d 442, 446, 235 Ill. Dec. 93 (1998), sections 1-113 and 1-114 of the Mental Health Code recognize that a facility may have sections for the treatment of mentally ill persons. The record shows that Sycamore is licensed by the Illinois Department of Public Health and New Horizons, a section of Sycamore, provides treatment for persons with mental illness.

Therefore, the trial court erred in permitting the State Guardian to place respondent in a mental health facility without requiring the State Guardian to proceed under the Mental Health Code.

### **III. CONCLUSION**

For the reasons stated, we reverse the portion of the trial court's limited guardianship order that authorizes the State Guardian to place respondent in a skilled-care nursing facility to the extent it allows the State Guardian to admit respondent to a mental health facility without complying with the Mental Health Code. We affirm the trial court in all other respects and direct the trial court on remand to enter an order restricting the State Guardian's authority to admit respondent to a mental health facility without complying with the Mental Health Code.

KNECHT and APPLETON, JJ., concur.