

# [Nursing Assistant's Conduct Found To Be Criminal](#)

written by Nancy Brent | March 15, 2018

## **Avoiding Liability Bulletin - March 15, 2018**

Nurse Assistants are often utilized in health care facilities, especially in long-term care. Most often, they are a valuable member of the health care team. However, in the following case<sup>1</sup>, this nursing "personal assistant", as her title was in the Louisiana facility, was a contemptible member of that nursing staff.

Chonita Browhow worked at an assisted living facility in Louisiana on the Alzheimer's unit. She was assigned to work four days on and three days off on the 11:00 pm until 7:00 am shift.

During a night shift, Chonita and two other personal care assistants attempted to dress one of the residents on the unit. The resident was uncooperative and "struck" Chonita. Chonita then hit the resident in the face. The resident hit her again. One of the personal care assistants asked Chonita to stop hitting the resident and Chonita left the resident's room.

About a week later, in December, one of the personal care assistants worked with Chonita again. Chonita was assigned to an 81-year-old non-ambulatory patient. The personal care assistant saw Chonita "preparing to give the resident a shower". When she saw Chonita again, she was standing near the facility's back door leading to an open-air area which was enclosed for safety purposes but had no heat or air conditioning.

The personal care assistant asked Chonita where the resident was and she replied she was "outside". When asked why the resident was outside, Chonita stated that the resident was "acting a fool."

About 15 minutes later, the personal care assistant saw Chonita bring the resident back into the facility in a wheelchair and dressed in flannel pajamas.

Chonita was charged with two crimes as a result of her conduct: one Count of simple battery and one Count of attempted cruelty to the infirmed.<sup>1</sup> After a one-day jury trial, the jury returned a "responsive verdict" to each of the Counts. The criminal court then ordered that a pre-sentencing investigation be done.

Among other things, the pre-sentencing report indicated that:

- Chonita manifested deliberate cruelty to the two resident victims, "whom she knew to be particularly vulnerable due to their advanced age and infirmity";
- Chonita abused her position because she violated the trust of the residents' families who believed

- she would care for their family members;
- Chonita refused to make any statements to the court for the pre-sentencing hearing or at the sentencing hearing; and,
- The only mitigating factor in this situation was her lack of a prior criminal history.

The court sentenced Chonita to serve five years' imprisonment at hard labor due to the attempted cruelty to the infirm and six months' imprisonment on the Count of battery. The sentences were ordered to be consecutively served.

Chonita appealed this verdict on the grounds of the sufficiency of the evidence and that the sentence she was given was excessive.

The appellate court opined that the direct evidence presented in the criminal trial proved beyond a reasonable doubt that Chonita behaved as she did.

For example, the court pointed out that the testimony by a meteorologist indicated that the temperature on the night Chonita placed the resident outside was 32 degrees Fahrenheit.

The personal assistant who asked Chonita where the resident was and the facility administrator both testified that the resident's condition would "have prevented her [the resident] from finding her way outside on her own or back inside on the evening in question."

The court also opined stated that the "despicable actions" by Chonita clearly established a specific intent to mistreat the resident.

In regard to the excessive sentence allegation, the court held the crimes against the two residents were serious. In addition, the harm done to the victims and their families was not to be overlooked. And, due to the "lack of remorse" shown by Chonita, the sentences were appropriate.

The court affirmed the convictions and the sentences of the lower court.

I doubt that you as a nursing assistant or a nurse's aide would behave toward residents for whom you care in the way Chonita did. However, you might work with some assistants that have a propensity to conduct themselves in a similar manner. For you and your fellow assistants remember the following:

1. You are employed to provide care to residents in an ethical, legal, and humane manner;
2. Families put their trust in you, as do the residents, that you will provide ethical, legal, and humane care;
3. If you find yourself unable for whatever reason to provide care that is consistent with your ethical, legal and humane duties, seek help through counseling, changing your job, or taking a leave from your position until you are able to meet the duties required of you;
4. If you observe another team member who is abusive or intentionally mistreating a resident, report that observation immediately to your nurse supervisor;

5. As has been highlighted in past Bulletins, fellow co-workers can testify to conduct they observe by you if a case is filed;
6. Criminal charges can be filed against you or a fellow co-worker if your or your team member's actions fit the elements of a particular crime or crimes; and,
7. Professional liability insurance excludes coverage of criminal charges.

#### FOOTNOTES

1. State v. Browhow, No. 41,686-KA, Court of Appeal of Louisiana, Second Circuit, December 13, 2006.

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