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CASE STUDY:

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# NEGLIGENT HIRING

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How it affects you & how you can avoid the damages caused by negligent hiring.

Bobby Pugh

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# DEERINGS WEST NURSING CENTER SUED FOR \$235,000

## Summary of Case:

A nursing home was found liable for \$235,000 for negligent hiring of an unlicensed nurse with 56 prior criminal convictions, who assaulted an 80-year-old visitor. -Deerings West Nursing Center v. Scott

On November 2, 1986, at approximately 5:30 a.m., eighty-year-old Velma Ponder Scott came to Deerings to visit her infirm older brother. It was her habit to come at all hours, though it was contended that she had been informed to restrict her visitation to certain hours. On that particular morning, Ken Hopper, an unlicensed, approximately thirty-six-year-old, 6 foot 4 inch, nurse employee, attempted to prevent Scott from visiting. He testified that he was attempting to usher Scott from the premises when she fell while resisting. She testified that Hopper, appearing greatly agitated, yelled out that she had been told not to come before 9:00 a.m. Upon his approach, she threw up her hands but was hit on the chin. He slapped her down and followed her to the floor, pinning her there with his knee upon her chest.

The nursing home had a duty to exercise reasonable care in the selection of its medical staff. In Texas, it is akin to the doctrine of negligent entrustment, which places a duty on an automobile owner to determine the driving competency of a person to whom he entrusts his automobile. *Park North General Hospital v. Hickman*, [703 S.W.2d 262](#) (Tex.App.—San Antonio 1985, writ ref'd n.r.e.).



## Facts:

There was an abundant amount of competent evidence before the jury that Ken Hopper should never have been employed by Appellant Deerings Nursing Center.

Ken Hopper testified he was hired “sight unseen” over the telephone when called by a Mrs. Parks, Director of Nursing for Appellant. Even though, the next day, he went to the nursing home to fill out the application, he still maintained he had already been hired by phone. In that application he falsely stated:

- (1) That he had a Texas LVN license;
- (2) That he had not been convicted of a crime.

He failed to advise that he had previously been employed in a bar or that he committed over fifty-six criminal offenses of theft. He was asked to produce his claimed California LVN license but only produced a wallet size card claiming that no other certificate was issued in California.

## Conclusion:

Texas courts recognize that an employer owes a duty to the public to hire competent employees, especially where they are engaged in an occupation which could be hazardous to life and limb and requires skilled or experienced persons. The basis of responsibility under the doctrine of negligent hiring is the employer’s own negligence in hiring or retaining in its employ an incompetent employee who the employer knows or by the exercise of reasonable care should have known was incompetent or unfit, and thereby, causing an unreasonable risk of harm to others. It is well settled that a master may be subject to derivative liability for exemplary damages resulting from the acts of his servant where the master was negligent in the employment of the servant. *Estate of Arrington v. Fields*, 578 S.W.2d 173 (Tex.Civ. App.—Tyler 1979, writ ref’d n.r.e.).

A nursing home is under a duty to exercise a high degree of care in selecting employees. This is because many occupants of nursing homes throughout our State and nation are not only elderly but often physically and/or mentally impaired. Many are helpless, lonely, forsaken and ripe for abuse.

[Read Full Case »](#)



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The cost to implement a policy to guard against negligent hiring is much less than the money and reputational damage caused by negligent hiring.

- Anonymous

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# NEGLIGENT HIRING

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