

LEGAL EAGLE EYE NEWSLETTER

May 2025

For the Nursing Profession

Volume 33 Number 5

Resident Choked On Non-Food Item: Court Upholds Citation, Fine Imposed On SNF.

A resident of a skilled nursing facility died the next day after he tried to eat a disposable examination glove.

The resident was eighty-nine years old. He had advanced Alzheimer's, dysphagia and poor vision. His use of his right hand and arm was limited. He was dependent on his caregivers to transport him in his wheelchair.

He was considered able to feed himself independently with his good left hand. Nevertheless, his care plan called for close direct monitoring while he ate in the dining room and for staff to reduce his risk of choking by reminding him to swallow after every bite.

Speech therapy had called for staff to watch him closely while eating, reinforcing the awareness of his choking risk.

The facility had a policy that all residents were to be watched while eating.

On the day of his fatal incident, a nurse checked his lunch tray to see that it met his dietary restrictions, then placed his tray on the table where he was seated, but not in a spot where he could use his good left hand to reach it. The nurse left the cover on the tray. Then the nurse told the nurse in charge in the dining room that she was going on break.

A social program staff member happened by, wiped the resident's face, and also left. Later she testified that no other staff were in the dining room at that time.



The issue is not whether it was foreseeable that the skilled nursing facility resident would choke on a disposable glove, when he had no prior history of trying to eat non-food items.

The issue is whether the resident could choke if left unsupervised while eating, given his history of swallowing difficulty, dementia and impaired vision.

CALIFORNIA COURT OF APPEAL
April 22, 2025

Twenty minutes later a person from the office happened by. He recognized the resident was in distress, but he saw no food on his face or a spoon in his hand.

A nurse was summoned. The nurse called 911. Paramedics were able to dislodge a white exam glove from his throat.

The resident died in the hospital the next day.

Court Upholds Citation

The California Court of Appeal upheld a Class AA citation that carried a substantial fine imposed by state inspectors.

The Court agreed with the State that it was irrelevant that the resident had never before tried to eat a non-food item.

Choking on his food was the risk that led to his care plan being written for close direct supervision, due to ample evidence of difficulty swallowing his food.

However, the Court ruled irrelevant any distinction between choking on a non-food item versus choking on his food.

The facility clearly violated its legal duty to follow the resident's care plan. The risk materialized, albeit in an unusual and unexpected way, that the care plan was meant to avoid, and the resident died. That was all that mattered.

The facility argued there was no link between the incident and the resident's passing the next day. The Court dismissed that contention. ***SNF v. Department*, 2025 WL 1165736 (Cal. App., April 22, 2025).**

Inside this month's issue...

May 2025

New Subscriptions
See Page 3

Patient Choked/Non-Food Item/Citation/Violation
Emergency Room/Charting/Dead Man's Statute - Catheterization
Transgender Patient/Bias/Intentional Infliction Of Emotional Distress
Deaf Nurse/Reasonable Accommodation - Discrimination/EEOC
Fictitious John Doe Defendant - Discrimination/Comparators
Patient Fall/Bedrails - Patient Fall/Nursing Expert's Opinion
Nurse Practitioner/Expert Witness - Understaffing/Negligence
Sexual Assault Nurse Examiner/Hearsay - Morphine Diversion