LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Fall In Nursing Home: Residents' Bill Of Rights.

A resident fell and broke his hip while in a nursing home undergoing rehabilitation following brain-tumor surgery. He sued the nursing home for inadequate staff training, which he claimed deprived him of rights under the state's nursing home residents' bill of rights.

Nursing Home Residents' Bill of Rights

The District Court of Appeal of Florida ruled the state's nursing home residents' bill of rights gave him a separate and distinct legal cause of action apart from medical negligence. Many states have a nursing home residents' bills of rights. One isolated act can violate a resident's rights without an ongoing course of substandard treatment, the court said.

The import of the ruling is to absolve a nursing home resident from denominating expert witnesses, attending a medical review panel, filing an affidavit of merit, etc., as in a medical malpractice case. **St. Angelo v. Healthcare and Retirement Corporation of America, __ So. 2d __, 2002 WL 1972320 (Fla. App., August 28, 2002).**

Hep C Exposure: Industrial Injury, Not Occupational Disease, But Court Extends Limitations.

A nurse was caring for a dialysis patient when his leg shunt port exploded. She and the entire room were covered with blood.

She was tested for Hepatitis C for one year and was told she was not infected, but six years later she tested positive for the first time.

The Supreme Court of Iowa stated that a sudden episode of exposure to communicable disease is an industrial injury, not an occupational disease, meaning there is a relatively short statute of limitations from the date of the injury to apply for worker's compensation.

However, the court then went on to rule in the nurse's favor. The court ruled that the date of injury in this scenario occurs on the day when the employee first learns she is infected, not on the day of the infecting episode. **Perkins v. HEA of Iowa, Inc., __ N.W. 2d __, 2002 WL 2022738 (Iowa, September 5, 2002).**

Visitor Slips, Falls In Nursing Home: Court Faults Practice Of Residents Taking Food To Rooms.

A family member was visiting her mother, a resident at the nursing home. At about 1:00 p.m. when the residents were leaving the dining room after lunch the visitor was walking in a hallway leading to the elevator to the residents' rooms and to the activities room on the same floor.

The visitor slipped and fell on a grape on the marble-type floor surface. She sued the nursing home for personal injury.

How Long Was The Hazard Present?

Pre-trial discovery focused on finding a witness, a nurse, other staff or resident who had seen the grape on the floor or finding another way to prove it was there long enough for the nursing home to know about it, the usual focus in slip-and-fall lawsuits.

The nursing home's practice of allowing elderly residents to carry food from the dining room to their rooms created a foreseeable risk of them spilling their food on the floor and creating dangerous conditions.

The focus is not on how long the grape was on the floor before the visitor fell; the focus is on whether there was a negligent mode of operation at the home.

SUPREME COURT OF FLORIDA
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All that proved inconclusive and the lower court dismissed the case.

Supreme Court of Florida ruled nevertheless there were grounds for the lawsuit. The visitor was entitled to go before a jury with the theory that the nursing home's very method of operation was negligent and created a foreseeable risk of harm.

Practice Created Foreseeable Risk To Visitors, Staff, Residents

Specifically, the visitor would get her day in court to argue that allowing elderly residents to carry food out of the dining room creates a foreseeable risk they will spill something and a visitor, staff or another resident will slip and fall. A jury should decide the case, the court said. **Markowitz v. Helen Homes of Kendall Corporation, 736 So. 2d 775,**