

# Stroke Patient Chokes On Food, Dies: Court Discusses Legal Standard Of Care.

The patient had been in the nursing home almost four years after having a stroke.

While eating alone in his room he choked on a bite-sized piece of meat from his sandwich. He wheeled himself into the hallway and gestured for help. A laundry worker and two nurses were unable to clear his airway. Emergency paramedics did finally clear his airway and start CPR, but too late to save him. He died in a nearby hospital emergency room.

## **No Ruling on Liability Court Discusses Standard of Care**

The Court of Appeal of Louisiana was not able to rule one way or the other from both sides' expert witnesses' affidavits whether the nursing facility was negligent and liable for his death. The court decided a civil jury would have to hear the experts' conflicting testimony, weigh their credibility and render a verdict accordingly.

## **The Family's Legal Theory**

The patient was placed on a calorie-restricted diabetic diet when he came back to the nursing home after prostate surgery two months after his stroke.

The patient's nursing-home admission nutritional assessment had made note of his chewing and swallowing problems and had ordered the dietitian to see that his food was soft and his meat chopped.

However, when he was switched to his diabetic diet only the diabetes-related aspects were copied from his medical chart into his dietary plan and his other ongoing restrictions were carelessly omitted.

The family also argued that once a stroke patient has been assessed with swallowing difficulties the need to monitor for a swallowing hazard never ceases.

After two years in the nursing home his nursing and medical progress notes no longer referred to any difficulties swallowing. That could mean he was no longer having difficulties. The family argued it meant his caregivers were no longer bothering to assess a continuing problem.

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***A stroke patient who is having difficulty swallowing requires a special soft or mechanical diet and close supervision while eating.***

***The patient cannot be allowed to eat alone or be given unrestricted access to snacks.***

***Staff must be trained to deal with a choking episode if it occurs.***

COURT OF APPEAL OF LOUISIANA  
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A nursing progress note thirteen months before he died said he tolerated oral medications well, but still had difficulty swallowing due to his CVA. Other progress notes, however, indicated he was eating his meals and snacks in his room without any reported swallowing difficulties or choking incidents.

## **The Nursing Home's Legal Theory**

The nursing home's expert witnesses argued that the patient was, in fact, being competently assessed and evaluated.

The physicians had obtained barium swallowing tests six and eighteen months after his stroke which showed no evidence of esophageal abnormality and would tend to show compliance with the standard of care for post-stroke medical care.

His dietary care plan documented that his chewing and swallowing problems were no longer issues after two years of rehab in the nursing home. Experience showed he had regained the ability to tolerate non-soft and non-mechanical foods without difficulty. His swallowing accident was a true accident, something which could have happened to anyone, stroke history or not. **Sharp v. Parkview Care Center, Inc., \_\_ So. 2d \_\_, 2006 WL 2741998 (La. App., September 27, 2006).**