End Of Life: Court Sees No Basis For Family's Lawsuit.

Following total hip replacement surgery the ninety-five year-old was admitted to a nursing facility with a history of hypertension and congestive heart failure.

She was found confused and on the floor by a CNA, was checked, was found not to be injured and was returned to her bed. Later that day during PT she became unresponsive and was transported to the hospital.

The diagnoses in the hospital included confusion, urinary tract infection, pneumonia, syncope, hypothyroidism, anemia and malnutrition.

The hospital physicians advised the family that the patient was in very poor health and was quickly approaching the end of her life. The physicians recommended a palliative approach to care and the family agreed.

The patient was discharged from the hospital back to the nursing facility where she passed away two days later from cardiac arrest from congestive heart failure.

The New York Supreme Court, Appellate Division, found no grounds for the family to sue the nursing facility for negligence involved in the patient's care and dismissed the case. **Domoroski v. Smithtown Center, __ N.Y.S.2d __, 2012 WL 1860898 (N.Y. App., May 23, 2012).**

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E. Kenneth Snyder, BSN, RN, JD
Editor/Publisher
PO Box 4592
Seattle, WA 98194–0592
Phone (206) 440-5860
Fax (206) 440-5862
kensnyder@nursinglaw.com
www.nursinglaw.com

Respiratory Care: Court Upholds Civil Penalty.

A long-term care facility was found guilty of two violations of Federal standards involving its patients' respiratory care which posed immediate jeopardy to the health and safety of its residents.

The US Court of Appeals for the Fifth Circuit upheld a $9,500 civil monetary penalty levied against the facility.

Empty Portable Oxygen Tank

State surveyors found evidence that an eighty-one year-old's portable oxygen tank was allowed to empty, causing her O_2 saturation to drop. When her low O_2 saturation was discovered she was put to bed but her O_2 tube was not connected correctly to the wall. When it was finally connected correctly her O_2 saturation improved.

Breathing Machine Not Set Up

The surveyors also found problems with the way another resident's bi-level positive airway pressure machine was being set up, that is, his documented O_2 saturation levels during the night were not being maintained at the appropriate level.

The Court noted for the record that the facility had a history of non-compliance and had previously received lesser civil monetary penalties.

The facility's history of non-compliance was a legitimate factor, the Court said, in the Department's decision to assess these most recent incidents at the level of immediate jeopardy and justified the highest possible level of penalty assessment. **Cedar Lake v. US Dept. of Health & Human Services, 2012 WL 1850387 (5th Cir., May 22, 2012).**

Choking Death: Mix-Up With Dietary Orders.

After a mentally disabled adult choked to death while eating in the cafeteria at the county developmental center, it was discovered that orders had been faxed to the developmental center from the nursing facility where she had previously been housed indicating she was to be on a mechanical soft diet.

The problem was the patient's propensity to stuff her food rapidly and impulsively into her mouth which greatly increased her risk of choking on solids.

The deceased patient's nurse case manager admitted it could have been her handwriting where someone had penned the patient's name on the corners of two faxed documents containing the physician's orders for the soft diet.

The nurse's habitual routine would have been to forward any such dietary orders to the dietary department right away, but that was all that she could say given that the information apparently never was forwarded to the kitchen for action.

An unusual wrinkle in this case is that the patient's nurse manager was a county government employee in Ohio who could only be sued for "wanton or reckless" misconduct but not for the lesser offense of ordinary garden-variety negligence.

The Court of Appeals of Ohio dismissed the family's allegations of negligence out of hand and sent the case back to the county Court of Common Pleas for a ruling on the issue of wanton or reckless misconduct. **Lackey v. Noble, 2012 WL 2087227 (Ohio App., June 11, 2012).**

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