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

Collowing total hip replacement surgery the ninety-five year 11 the ninety-five year-old was admitted pertension and congestive heart failure.

She was found confused and on the the health and safety of its residents. floor by a CNA, was checked, was found bed. Later that day during PT she became unresponsive and was transported to the hospital.

confusion, urinary tract infection, pneumonia, syncope, hypothyroidism, anemia and ration to drop. When her low O<sub>2</sub> saturation malnutrition.

family that the patient was in very poor health and was quickly approaching the rectly her O<sub>2</sub> saturation improved. 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 facility had a history of non-compliance the patient's nurse manager was a county family to sue the nursing facility for negligence involved in the patient's care and dismissed the case. Domoroski v. Smith-N.Y.S.2d 2012 WL town Center, 1860898 (N.Y. App., May 23, 2012).

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# **Respiratory Care: Court Upholds** Civil Penalty.

long-term care facility was found Aguilty of two violations of Federal to a nursing facility with a history of hy- standards involving its patients' respiratory at the county developmental center, it was

penalty levied against the facility.

#### **Empty Portable Oxygen Tank**

was allowed to empty, causing her O<sub>2</sub> satu- creased her risk of choking on solids. The hospital physicians advised the O<sub>2</sub> tube was not connected correctly to the handwriting where someone had penned wall. When it was finally connected cor-

### **Breathing Machine Not Set Up**

The surveyors also found problems ing set up, that is, his documented O<sub>2</sub> saturation levels during the night were not being maintained at the appropriate level.

The Court noted for the record that the and had previously received lesser civil monetary penalties.

compliance was a legitimate factor, the ordinary garden-variety negligence. Court said, in the Department's decision to Human Services, 2012 WL 1850387 (5th Cir., misconduct. May 22, 2012).

## **Choking Death:** Mix-Up With **Dietary Orders.**

fter a mentally disabled adult choked A to death while eating in the cafeteria care which posed immediate jeopardy to discovered that orders had been faxed to the developmental center from the nursing The US Court of Appeals for the Fifth facility where she had previously been not to be injured and was returned to her Circuit upheld a \$9,500 civil monetary housed indicating she was to be on a mechanical soft diet.

The problem was the patient's propen-State surveyors found evidence that an sity to stuff her food rapidly and impul-The diagnoses in the hospital included eighty-one year-old's portable oxygen tank sively into her mouth which greatly in-

> The deceased patient's nurse case was discovered she was put to bed but her manager admitted it could have been her 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 with the way another resident's bi-level have been to forward any such dietary orpositive airway pressure machine was be- ders 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 government employee in Ohio who could only be sued for "wanton or reckless" mis-The facility's history of non- conduct but not for the lesser offense of

The Court of Appeals of Ohio disassess these most recent incidents at the missed the family's allegations of neglilevel of immediate jeopardy and justified gence out of hand and sent the case back to the highest possible level of penalty assess- the county Court of Common Pleas for a ment. Cedar Lake v. US Dept. of Health & ruling on the issue of wanton or reckless Lackey v. Noble, 2012 WL 2087227 (Ohio App., June 11, 2012).

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