

Constipation/Impaction: Nurses Failed To Report Significant Change In Health Status. Punitive Damages Upheld.

A family member found the resident unconscious, slumped over in her wheelchair with foul smelling white foam coming out of her mouth, while two nurses aides were making her bed.

He had her taken to the hospital where surgery was performed to clean out her intestines from a fecal impaction. The surgeon testified it was the worst case he had ever seen.

Unfortunately after two more such surgeries she died of multi-organ failure secondary to sepsis from a perforated bowel. The condition had been there, in the surgeon's opinion, at least 48 hours before the surgeries were started.

The family sued. The jury awarded \$500,000 compensatory damages and \$5,000,000 punitive damages. The US Circuit Court of Appeals for the Eighth Circuit ruled that the nurses' conduct was so outrageous that punitive damages were appropriate, although \$2,000,000 was ruled a more reasonable figure.

Significant Change In Health Status Duty To Notify The Physician

Although elderly nursing home residents are highly susceptible to constipation, constipation lasting more than three days for this resident would be considered a significant change in health status requiring a physician consultation. The physician had written express orders for impaction checks q 3 days.

In fact, in this case, the nursing staff started doing impaction checks after four days, were not able to obtain a bowel movement as a result and then stopped doing the checks five days into the resident's final bout of constipation. They did not call the physician or do anything further while the resident complained of severe pain and her abdomen swelled to the point she had to be hospitalized. Stogsdill v. Healthmark Partners, L.L.C., ___ F. 3d ___, 2004 WL 1636426 (8th Cir., July 23, 2004).

The standard of care for a nursing home requires a resident's treating physician to be notified of a significant change in the resident's condition.

The resident's physician's standing orders included an impaction check every three days, an enema when necessary and milk of magnesia as needed, due to degenerative muscle disease and COPD which made her immobile and highly prone to constipation.

Three days without a bowel movement would be a significant change in health condition for this resident, that is, an event which required the physician to be notified so that the nursing staff could obtain further orders.

When a family member complained after eight days without a bowel movement her nurse said they do not call the doctor every time somebody gets a bellyache.

The jury awarded \$5 million punitive damages, which should be reduced to \$2 million.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
July 23, 2004

Post-Surgical Care: Nursing Home Found Liable.

An eighty-one year-old stroke victim had to have an outpatient surgical procedure to incise and drain a skin lesion on his chest.

After the procedure he was returned to the long-term care facility with sterile packing in the partially-sutured incision site. The packing was to be removed after three days and the wound was to be covered with a dry dressing thereafter.

The man was back at the facility no more than five hours before bleeding was observed at the incision site. He was taken to the hospital by ambulance where he died the next day.

Even though the risk of complications was actually quite small, the resident should have been checked by a licensed nurse at least every one to two hours post surgery.

COMMONWEALTH COURT
OF PENNSYLVANIA
July 28, 2004

The Commonwealth Court of Pennsylvania upheld a civil monetary penalty along with downgrading of the facility's license to provisional status.

For over five hours licensed and non-licensed personnel were in and out of his room and non-licensed personnel took him to the dining room for his lunch.

No licensed nurse examined his dressing until an aide noticed he was bleeding through his bed sheets, which the court believed fell below the legal standard of care for nurses caring for such a patient. It was not proven that the bleeding did not start right before it was noticed, but still his care was substandard, the court ruled. Manorcare Health Services-Lansdale v. Dept. of Health, ___ A. 2d ___, 2004 WL 1672555 (Pa. Cmwith., July 28, 2004).