

Residents Die From Decubitus Ulcers: Court Upholds Criminal Convictions Of Nursing Home And Nursing Home Administrator.

An individual who was both the operator and administrator of a nursing home, and the nursing home corporation itself, were accused of multiple counts of criminal charges for the care or lack of care residents were receiving.

A jury acquitted them on most of the charges. However, the individual defendant and the corporation were convicted of two counts of felony neglect of a nursing home resident for two residents who died of complications of decubitus ulcers.

The Missouri Court of Appeals heard their appeal, but validated the jury's decision.

The corporation was held criminally responsible for criminal acts of neglect which were the fault of the nursing home's director of nursing, but the director herself was not charged in the case.

Prevention of Pressure Sores

The court ruled a nursing home by law must provide the services and supplies necessary to prevent pressure sores.

When a resident enters a nursing home without pressure sores it is the home's responsibility to ensure the resident does not develop pressure sores. If pressure sores develop they must not progress from one stage to the next or to decubitus ulcers that threaten the resident's very life, the court pointed out.

Understaffing

This nursing home was understaffed, the court believed, particularly the floor where the two residents who died had resided. As a result, staff were not able to turn immobile patients on a consistent basis every two hours.

To complaints about staffing levels the operator/administrator responded by announcing he had decided to keep staffing levels at the minimum permitted by state regulations. Then he went ahead to raise the census to increase cash flow for a building project. The court faulted him for refusing to hire adequate staffing to meet the residents' needs.

The felony crime of knowingly neglecting a nursing home resident means the failure to provide, by those responsible for the care, custody and control of a resident in a facility, the services which are reasonable and necessary to maintain the physical and mental health of the resident, when such failure presents either an imminent danger to the health, safety or welfare of the resident or substantial probability that death or serious physical harm would result.

A corporation which operates a nursing home can be guilty of a crime if conduct constituting neglect is engaged in, authorized or knowingly tolerated by the board of directors or by high managerial agents.

An officer of the corporation is a high managerial agent.

A nursing home administrator is a high managerial agent of a nursing home.

A nursing home's director of nursing is a high managerial agent of a nursing home as far as the supervision and management of patient care is concerned.

MISSOURI COURT OF APPEALS, 2000.

Nutrition / Snacks

The dietitian at the facility saw to it that snacks were provided, but there was a continuing problem with staff having the time to pass snacks to the residents. Passing of snacks on a frequent and consistent basis and encouraging residents to eat proper nutrition is known to aid in bed sore healing, the court pointed out.

The operator/administrator said not passing snacks was not a problem, as residents' nutritional needs were being met in other ways. He did elaborate further, and the court did not buy his argument.

Special Beds, Mattresses

One of the residents who died had had a special bed ordered by her doctor. The operator/administrator refused to purchase it for her because he said it was too expensive. The specific type of bed and the cost were not specified in the court record.

The court found there was a practice that egg crate pads, special mattresses and special beds were systematically denied to Medicaid patients, on the grounds that for them the facility could not afford it.

Nursing Documentation

The court found serious deficiencies in nursing documentation of preventive care and interventions for pressure sores, such as turning, wet linens being changed, snacks being passed, etc.

The nursing home's argument was that nursing care not being documented does not necessarily mean nursing care was not given.

The court thought otherwise. When the quality of nursing care is at issue in a legal proceeding, the courts infer that nursing care that was not charted most likely was not given, and if it was not given, neglect occurred.

Director of Nursing

The director of nursing has the same level of responsibility as a corporate officer when it comes to criminal culpability for neglect of residents, the court ruled. ***State v. Boone Retirement Center, Inc., 26 S.W. 3d 265 (Mo. App., 2000).***