

Decubiti, Sepsis, Dehydration: Jury Finds No Evidence Of Nursing Home Negligence.

A patient was discharged from the hospital to a nursing home following hip surgery. About six weeks later he was taken by ambulance back to the hospital. He died there one week after admission.

The hospital staff physician who admitted him believed the patient had suffered abuse and neglect in the nursing home and he notified the state Department of Health.

Specifically, according to the court record, on admission to the hospital the patient's tongue was noted to be coated with a thick membrane, his mucous membranes were dry, fecal material was smeared on his perineum and legs, his urine was cloudy, he had gangrene of the right foot and there were decubiti on the heels of his feet and his right hip.

After he died the family sued the nursing home for negligence. The jury ruled against them, finding no negligence. The Court of Appeals of Texas affirmed the verdict.

Hospital's Admitting Physician's Conclusions Ruled Speculative

The court ruled it would be pure speculation for the admitting physician to offer an opinion about the quality of care at the nursing home, as he had not seen the patient at the nursing home, reviewed the records, consulted with the staff, etc.

In the court's view the physician's comments would be highly inflammatory and prejudicial if brought to the jury's attention.

Basic assessment data from the hospital chart, on the other hand, was admissible evidence, although in and of itself it did not necessarily prove the quality of care at the nursing home.

State Investigation Ruled Confidential

Attorneys for the state Department of Health fought vigorously and successfully against the family's attorneys' efforts to open up the state's investigative file.

The Court of Appeals agreed that the investigator's notes, photographs and report were by law strictly confidential. These materials were meant only for inter-

As a general rule, a nurse can testify as an expert witness on the nursing standard of care.

However, a nurse with an impressive academic and consulting background is not necessarily an expert on the nursing standard of care in a nursing home.

This nurse conceded she had never worked as an administrator, charge nurse or staff nurse in a nursing home and had never performed routine shift work in a nursing home.

She is not qualified as an expert witness in a nursing home negligence case.

In civil medical malpractice cases the trial judge has a great deal of discretion whether to accept or to reject an offer of expert testimony.

The judge is required by law to ensure that an individual who is offered as an expert witness truly has expertise concerning the actual subject about which the witness is to testify.

The expert must have specialized knowledge, skill, experience, training or education regarding the specific issue before the court before the expert can give an expert opinion.

COURT OF APPEALS OF TEXAS, 2001.

nal use within the agency for quality review. The court believed nursing home residents will benefit in the long run if the courts maintain the confidentiality of the state's investigative and quality review functions and keep the results of the process out of the malpractice litigation arena.

Nursing Documentation

The most important factor influencing the court was the nursing documentation created at the nursing home.

Skin Assessment On Admission

The nurses carefully assessed the patient's skin integrity when he entered the nursing home. It was documented he already had pressure sores on his heels and redness and excoriation on his buttocks and perineal area on admission.

Care Plan

The care plan called for a nurse to check his status hourly. The plan was to turn him every two hours, and it was documented he was being turned, but with his cognitive deficits he needed closer monitoring to see that he stayed repositioned.

Nutritional Assessment/Flow Charting

There was a nutritional assessment. There was flow charting of how much fluid he was getting with his meals, with his medications and whether his bedside pitcher was being refilled q shift.

Input and output could not be monitored because he was incontinent. The facility did not have the capability for IV fluid replacement.

Nursing Progress Notes

The nurses carefully documented the progression of his skin lesions and noted they called in a physician who ordered antibiotics and a debriding agent.

The nurses documented that the family declined the nurses' recommendation that he go back to the hospital because of his skin lesions, just six days before he finally did go back to the hospital.

The patient was diagnosed with sepsis in the hospital, but there was no proof it did not develop in the hospital rather than at the nursing home. ***Pack v. Crossroads, Inc., 53 S.W. 3d 492 (Tex. App., 2001).***