

## Purplish Ecchymoses: US Appeals Court Rules Agency Failed To Look At All The Evidence, Reverses Civil Monetary Penalty.

An eighty-six year-old patient was admitted to a skilled nursing facility (SNF) with multiple diagnoses including arteriosclerotic heart disease, hypertension, congestive heart failure, COPD and Alzheimer's.

Two days after admission she had a stroke. She was taken to the hospital, started on Plavix and aspirin and transferred back to the SNF.

During the hospital stay a physician noted the presence of multiple ecchymoses on the patient's body. A nurse from the SNF reportedly overheard a comment by the physician that he had never seen another case quite like it.

The nurse relayed this to her director. The director phoned the physician for an explanation but they never heard back from him.

After the patient passed away a few days later the family filed a complaint with the state. State investigators interviewed the nurse who had been at the hospital and several CNA's and decided that the ecchymoses were bruises from physical abuse. The SNF was hit with a \$3,500 per day penalty for immediate jeopardy.

Immediate jeopardy is defined by Federal regulations as a situation in which the provider's non-compliance with patient-care standards has caused, or is likely to cause, serious injury, harm, impairment or death to a resident.

### **Investigators Never Consulted the Physician**

The SNF nurse mistook the physician's comment at the hospital as veiled innuendo that the patient was a victim of abuse. The physician's actual testimony, which was never heard until the SNF filed its appeal in Federal court, related the purplish skin discoloration to the blood-thinning medications, Plavix and aspirin.

The US Court of Appeals for the Eighth Circuit ruled it was pure speculation for the investigators to jump to the conclusion that a condition of immediate jeopardy to patient safety existed at the SNF without delving into what was really going on with the patient medically. The SNF's DON could have been more conscientious following up with the physician, but that did not justify the harsh penalty. Grace Healthcare v. US DHHS, 589 F. 3d 926 (8th Cir., December 21, 2009).