

Patient Abuse – Nursing Home Resident Force-Fed Ensure: Court Upholds Nurse’s Aide’s Disqualification.

A certified aide in a nursing home used a bulb syringe to force Ensure into the mouth of an elderly resident, even though the resident was protesting she could not take any more. The Missouri Court of Appeals noted for the court record that Ensure is a thick liquid dietary supplement.

After forcing the Ensure into her patient, the aide went to lunch. Fifteen minutes later a nurse found the resident slumped over in her wheelchair. She was having trouble breathing and her lips were blue. The nurse tried suctioning her and obtained what the nurse thought was Ensure. The resident died after another fifteen minutes. Her physician ruled the cause of death was aspiration pneumonia.

The court upheld the state Division of Aging’s permanent disqualification of the aide from direct patient care work. The court went on to say the aide’s right to due process of law was not violated because

The Division of Aging investigated the charges and determined the aide force-fed a ninety-four year-old nursing home resident and caused her death.

It was appropriate to place the aide’s name on the list of persons who have recklessly, knowingly or purposely abused or neglected a resident while working in a nursing facility, who are now permanently disqualified from employment in direct patient care.

MISSOURI COURT OF APPEALS, 2000.

the hearing examiner at the Department of Aging refused to subpoena the resident’s medical records from the nursing home.

The aide’s lawyer claimed the records would have shown she died from infectious pneumonia rather than aspiration pneumonia. The court ruled the hearing examiner should have examined the medical records to see if that was true, but only if the aide’s lawyer had subpoenaed the records and offered them as evidence.

The Division of Aging did a fair investigation and the aide got a fair hearing, the court ruled. It was the aide’s and her lawyer’s responsibility to obtain and submit their own evidence at the hearing.

Administrative hearing examiners have specialized expertise, the court noted. Their decisions whom and what to believe carry a lot of weight when appeals are filed in court. **Tate v. Department of Social Services, 18 S.W. 3d 3 (Mo. App., 2000).**

Patient Abuse – Chloral Hydrate O.D.: Court Says Nurses Who Did Not Report Were Denied Their Rights.

A child resident of a center for the developmentally disabled became agitated in class. A teacher phoned her nurse at the center. She came to school, gave the child chloral hydrate for her agitation and brought her back to the center.

Nurses and mental health techs checked the child every fifteen minutes for five hours and then found her unresponsive. They started CPR and called paramedics but were unable to revive her.

Two registered nurses who were not on duty that day and one who was on duty but did not give the chloral hydrate investigated and decided nothing was wrong because the nurse who gave the chloral hydrate had a physician’s order.

The state Department of Social Services investigated and found patient abuse. The nurse who gave the medication did not appeal the state’s decision to disqualify her

The nurses believed there was no patient abuse because the nurse who gave the chloral hydrate was following physician’s orders.

The nurses were disciplined without first being told they were under investigation for not reporting it. They did not get a hearing to present their version and were not allowed to present or cross-examine witnesses or to subpoena records.

COURT OF APPEALS OF MINNESOTA, 2000.

from direct patient care work.

The three other nurses were also found guilty, not of direct patient abuse but of failing to report abuse. They got letters informing them they also were disqualified from direct patient care.

The Court of Appeals of Minnesota threw it out because they were denied their right to due process of law. Before they spoke they should have been told they were also under investigation. There is also a fundamental right to state your side of the story, present your witnesses, cross-examine witnesses against you and subpoena relevant documents before the government can take official action which takes away a citizen’s ability to practice a profession, the court ruled. **Fosselman v. Commissioner of Human Services, 612 N.W. 2d 456 (Minn. App., 2000).**