

Failure To Thrive: Arbitrator Finds No Negligence.

The seventy-nine year-old patient was in and out of the hospital with multiple medical conditions including diabetes, hypertension, coronary artery disease, high cholesterol, hypothyroidism, urinary tract infections, morbid obesity and degenerative disc disease.

The hospital's psychiatric service was called in on at least one occasion to evaluate the patient's apathy and unwillingness to participate in her own care.

The patient was transferred back and forth between a skilled nursing facility and the hospital for treatment of gastrointestinal bleeding from a duodenal ulcer, dehydration and altered mental status.

Failure to Thrive

Caregivers Recommended Palliative Care

The treatment team eventually sat down with the family and discussed their diagnosis of failure to thrive. They recommended palliative care in a hospice, but the family did not want to give up.

The family requested a percutaneous gastrostomy feeding tube. The physicians put it in and sent the patient back to the skilled nursing facility, where she died.

The family believed malpractice was involved in her death. The hospital and skilled nursing facility were associated with an HMO which contracted for arbitration.

The neutral arbitrator heard all the evidence as to alleged errors and omissions in the management of the patient's complex medical issues allegedly responsible for the patient's demise. Representatives from the hospital and nursing facility testified as to their efforts to make the patient as comfortable as possible, attend to her skin care, urge her to take nourishment but ultimately to allow her to pass.

The arbitrator endorsed the patient's caregivers' approach, saw no negligence and awarded the family nothing by way of damages. **Ulmer v. Kaiser Permanente, 2007 WL 5256757 (Medical Malpractice Arbitration, California, November 14, 2007).**