

## Fall: Court Sees Deviations From Nursing Standards.

The eighty-four year-old patient was admitted to the nursing home directly from the hospital.

Her hospital discharge summary informed the nursing home staff that she had a history of falling and being injured, as well as osteoporosis, dizziness of unknown etiology, gait disturbance and chronic anemia. The discharge summary further noted that the patient had very poor physical stamina and needed assistance with bathing, dressing, walking and toileting.

The patient fell at least three times at the nursing home. The last fall reportedly happened when she was trying to transfer by herself from her wheelchair to the toilet. This time she fractured her hip and had to be taken back to the hospital.

After she got back from the hospital she developed bedsores on her buttocks, one of which progressed to a Stage II decubitus which sent her back to the hospital where sepsis was diagnosed. She was sent back to the nursing home, then to another nursing home where she died.

### Nursing Care Faulted

The patient's family's nursing expert's opinion was that the nursing home had a perfectly adequate fall-prevention care plan in the chart.

The problem, in the expert's opinion, was there was basically no documentation that the plan was being implemented.

It was well known this patient needed assistance with basic ADL's. However, she apparently was consistently not getting the help she needed, right up to the event that started her terminal downward spiral.

There was likewise no documentation in the chart of the fall-care plan being evaluated and re-evaluated as part of the ongoing nursing process.

### Nurse Accepted As Expert Witness

The Superior Court of New Jersey, Appellate Division, declined to follow the traditional rule, which is now being questioned across the US, that a nurse cannot testify about medical cause-and-effect. The court said it is within a nurse's sphere of competence to testify that predictable sequelae can come from a broken hip from a fall caused by substandard nursing care. Detloff v. Absecon Manor, 2009 WL 2366048 (N.J. App., August 4, 2009).

***The patient's family's expert on nursing standards is a registered nurse who specializes in wound care and nursing administration.***

***Her expert opinion will stand up in court with respect to the nursing standard of care for this patient and departures by the facility's nurses from the standard of care.***

***The law does distinguish between nursing diagnosis and medical diagnosis. Nurses, as a general rule, are not permitted to make medical diagnoses in clinical practice or in court.***

***However, the allegations in this case do not have to be proven with a physician's testimony.***

***The patient fell due to failure to follow the nursing standard of care for implementing, evaluating, re-evaluating and documenting fall precautions.***

***As a result of falling the patient fractured her hip.***

***Post-injury immobility contributed to the development of a bedsores, one of which progressed to a Stage II decubitus that led to sepsis.***

***A nurse is qualified to testify in court in this case on the issue of cause and effect.***

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
August 4, 2009

## Dementia Patient Scalded, Was Left Unattended In Hot Shower.

A jury in the Circuit Court, Manatee County, Florida reportedly awarded \$4,522,617.61 to the widow of a seventy-six year-old resident of a nursing facility.

The deceased sustained second and third degree burns over his lower body after he was left alone in the shower. The judge allowed the jury to see photos of the patient's burns during the trial.

On top of inadequate supervision by the facility's care-giving staff, it came out in court that the facility had been issued a warning beforehand by government inspectors that the building's hot-water thermostat needed to be adjusted because the water in the showers was too hot.

Most of the damages, all but several thousand dollars, were not for the patient's pain and suffering during the month before he expired, but for the widow's own emotional pain over the tragic loss of her companion of sixty years. Eisenwinter v. Palmetto Guest Home, 2009 WL 2385333 (Cir. Ct. Manatee Co., Florida, April 28, 2009).

## Dehydration: Verdict Against Nursing Home.

A sixty-one year-old patient who had had a stroke in 1984 died from dehydration and kidney failure two days after being removed from a nursing home.

His family moved him out because of concern over a bloody rash, urine-soaked bedding and his room being in disarray.

The family's lawsuit filed in the Court of Common Pleas, Franklin County, Ohio resulted in a \$6,500,000 verdict for negligence by the nursing home staff in failing to appreciate a stroke patient's need for assistance from his caregivers to take in enough fluids to maintain adequate hydration. Southard v. Whetstone Gardens, 2009 WL 2501842 (Ct. Comm. Pl., Franklin Co., Ohio, April 23, 2009).