

## Nursing-Home Falls: Court Summarizes Legal Basics.

The Court of Appeals of Kansas recently had an opportunity to summarize some general principles of law that pertain to negligence cases involving residents' falls in nursing homes:

A nursing home is not absolutely required by law to insure the safety of its residents. That is, a nursing home is not held accountable for something a reasonable person would not have anticipated would be likely to happen.

The legal duty of a nursing home does not ordinarily include having to have someone follow a resident around at all times. That would be highly impractical.

A nursing home is not required to have attendants stay with ambulatory residents at all times. The legal standard of care for a nursing home is reasonable care taking into consideration each resident's known mental and physical condition.

A nursing home is not a hospital. What might be negligence in a hospital would not necessarily be negligence in a nursing home, because a hospital has more extensive resources, more extensive physician staffing and more control over staff physicians who practice at the hospital, compared to a nursing home.

The mere happening of an accident or fall at a nursing home does not give rise to an inference of negligence. Negligence cannot be implied simply because there was a fall, inasmuch as a resident's fall can be occasioned with or without negligence on the part of the nursing home.

The mere fact that a resident fell in a nursing home does not create an inference of negligence since it is equally probable that elderly people in nursing homes frequently fall purely accidentally.

It is just as realistic to assume a resident simply fell out of bed, tripped and fell while walking, or any number of other possibilities, as it is to assume the resident's injury was the result of the nursing home staff's failure to assist the resident. That is why the law requires there be specific proof of negligence by the nursing home's staff before damages for negligence can be

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***The mere happening of a fall or some other accident at a nursing home does not give rise to an inference of legal negligence.***

***It is possible for a nursing home resident to fall without any negligence on the part of the nursing home.***

***Elderly people in nursing homes frequently fall.***

***Just because a resident falls does not mean it is probable or even more likely than not that negligence caused the fall.***

COURT OF APPEALS OF KANSAS, 1999.

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awarded against the operators of a nursing home.

An unexplained impact or twisting motion causing injury to an elderly patient who is residing in a nursing facility does not necessarily establish a case of negligence against the nursing home.

In order for the law to assign fault to the nursing home, the source of the impact or twisting motion must be established by reasonable medical probability, not just possibility.

If there are two possible explanations, both of which are equally probable, there must be solid evidence upon which the jury can eliminate one possibility and accept the other.

A jury is not allowed to engage in speculation or conjecture as to the source of an injury sustained by a nursing home resident or the cause of an impact or twisting motion.

If the source of an impact or twisting motion was the resident's normal activities of daily living, that is not a proper basis for a negligence lawsuit against the nursing home. ***Hoover v. Innovative Health of Kansas, Inc.***, 988 P. 2d 287 (Kan. App., 1999).

## Smoking In Nursing Home: Court Says Close Watch Is Required For A Resident With Dementia.

According to the Court of Appeals of North Carolina, the resident had been in the nursing home for more than two months. The nursing staff had assessed her and they were well aware of her physical and cognitive limitations.

It was well known she needed direct observation and close supervision while smoking, even in the nursing home's designated smoking area.

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***Knowing to observe and supervise a nursing home resident to prevent her from dropping a match or lighted cigarette on herself while smoking does not involve specialized professional knowledge or skill.***

***Letting a resident of a nursing home start her own clothing on fire and inflict fatal burns upon herself is not malpractice, it is ordinary negligence.***

***No expert witness's affidavit is required in a case of ordinary negligence.***

COURT OF APPEALS OF NORTH CAROLINA, 2000.

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The court held the nursing home liable for ordinary negligence in the family's civil wrongful death lawsuit after the resident started her nightgown on fire and sustained fatal burn injuries. The family needed no expert witness to prove their case. ***Taylor v. Vencor, Inc.***, 525 S.E. 2d 201 (N.C. App., 2000).