

Unexplained Bruising Not Reported: Court Sees Immediate Jeopardy, Upholds Penalty.

Two CNAs discovered that a one-hundred-one year-old cognitively impaired nursing facility resident had extensive bruising covering much of her body as well as swelling in some areas.

The CNAs reported their finding to their charge nurse who immediately informed the director of nursing.

The director completed an incident report. Suspecting a hematological disorder, the director waited four days for lab results, which ruled out that theory. Then the director surmised the bruising was simply caused by a Hoyer lift.

Neither the director or higher management at the facility reported the bruising to state officials.

State survey inspectors happened to come by ten days after the CNAs first reported the bruising.

The survey inspectors discovered the situation involving the resident's bruising and imposed daily civil monetary penalties for immediate jeopardy to patient health and safety which totaled \$84,000 before the surveyors were satisfied the facility had come back into compliance.

The facility filed an appeal. The US Court of Appeals for the Fifth Circuit (Texas) upheld the penalties.

Whether the resident's bruising was potentially related to abuse is the core issue in this case.

The resident's blood work ruled out a hematological disorder as a cause of the resident's bruising.

The CNAs' statements that a Hoyer lift was not in the care plan and not actually used with her ruled that out.

The nursing director's theories of causation were mere hypotheses that were not grounded in fact.

The director resting on unsupported hypotheses showed a lack of a systematic investigative process.

The facility's obligation to prohibit mistreatment, neglect and abuse mandated a report to the State so that an impartial outside investigation could have been started immediately.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
February 4, 2016

Federal regulations require nursing facilities to develop and implement written policies and procedures that prohibit mistreatment, neglect and abuse of residents.

According to the Court, a policy that exists only on paper provides no benefit to the residents. Procedures which are not carried out in practice are worthless.

The facility's investigation was superficial and self-serving and thus was far from a systematic process necessary to protect its residents from possible neglect or abuse, the Court said.

Federal regulations further specifically require nursing facilities to insure that all alleged violations involving mistreatment, neglect or abuse, including injuries of unknown source, are reported immediately to the administrator of the facility and to outside officials in accordance with state law.

The facility must insure that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

The results of the investigation must be reported to the administrator and to outside officials in accordance with state law within five working days of the incident.

Federal regulations also require in general terms that a nursing facility must be administered in a manner consistent with residents being able to attain or maintain the highest practicable level of physical, mental and psychosocial wellbeing. ***Brenham v. US Dept. of HHS, ___ Fed. Appx. ___, 2016 WL 454320 (5th Cir., February 4, 2016).***

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