

## Nursing Home Liability: Patient's Family Cannot Use State Surveys.

The eighty-six year-old patient was expected to be able to return home after stroke rehab in a nursing facility.

During her stay her daughter contacted the state Department of Health with concerns about her mother's care. The Department investigated and prepared an internal report.

The day after the inspectors visited the facility the patient passed away still a patient in the facility. The daughter sued the facility for negligence.

---

***Documents prepared by state survey inspectors are not admissible in a civil lawsuit against the facility.***

***A state inspection is meant to determine if the facility is being operated in accord with state and Federal standards, which is a separate issue from professional malpractice.***

COURT OF APPEALS OF OHIO  
October 22, 2014

The Court of Appeals of Ohio upheld a jury's verdict that there was no negligence by the facility or the attending physician.

The Court ruled the family was not entitled to bring to the jury's attention the written report of the state survey inspectors who visited the facility the day before the patient died. By law that sort of report is not admissible in a civil lawsuit.

The rationale behind the rule of inadmissibility is that a violation of a state or Federal regulation is not necessarily the same as negligence or malpractice.

The jury was swayed by the testimony of the facility's nursing and medical experts who independently reviewed the patient's chart and found no evidence pointing to negligence in the patient's nursing or medical care. Slivinski v. Village, 2014 WL 5358284 (Ohio App., October 22, 2014).

## Nursing Home Liability: Court Sees No Grounds For Lawsuit.

The patient, a traumatic brain injury victim, was admitted to a nursing home by his sister who had been appointed as his legal guardian.

The sister became dissatisfied with her brother's care and moved him to another facility. Then she sued the first facility for alleged mistreatment.

---

***The guardian's lawsuit did not allege any physical injury to the patient.***

***The lawsuit did not point to any medical evidence that the patient's condition changed in any way for the worse while he was a patient at the facility.***

COURT OF APPEALS OF OHIO  
October 22, 2014

The Court of Appeals of Ohio dismissed the case.

The lawsuit alleged the patient was not cleaned regularly or thoroughly, that his bed linens were not changed frequently and that he was placed in a recliner chair with the back lowered as a method of physical restraint that was not called for.

The Court said that none of these allegations amounted to something for which monetary compensation could be awarded.

### **Nursing Home Patients' Bill of Rights**

However, the Court did state that the allegations of the sister's lawsuit might well amount to violations of the state's Nursing Home Patients' Bill of Rights.

That law guarantees nursing home patients' right to caring and dignified treatment. If a complaint is filed with state authorities for violation of the patient's rights, the facility can face administrative sanctions if a violation occurred, whether or not a patient experienced actual physical or emotional harm. A civil lawsuit, however, requires some sort of actual harm to the patient. Brooks v. Montgomery, 2014 WL 5361549 (Ohio App., October 22, 2014).

## Emergency Room: No Nursing Negligence Found.

The patient came to the emergency department with complaints of a headache, nausea, dizziness and neck pain. She reported that she had been shoveling snow.

The triage nurse's vital signs showed high blood pressure and low O<sub>2</sub> saturation. The nurse had the patient seen by the physician who diagnosed a cervical sprain and ordered her discharged. A second nurse discharged her, even though her blood pressure was still elevated at the time.

Ten days later the patient was found in her home unresponsive after a hemorrhagic stroke which left her with serious complications.

---

***An exercise in judgment that results in an unsuccessful outcome does not necessarily mean that a caregiver was negligent.***

COLORADO COURT OF APPEALS  
October 9, 2014

The Colorado Court of Appeals upheld a jury verdict in favor of the hospital which found no nursing or medical negligence.

The Court ruled the trial judge was not wrong to give the jury an instruction to the effect that an unsuccessful outcome, by itself, in no way proves or even implies negligence by a patient's caregivers.

In this case the patient did not report a headache more intense than anything experienced before, a sign of stroke, and the triage nurse found no obvious neurological signs pointing toward that possibility.

The second nurse was not guilty of failure to advocate for the patient with the emergency department physician for a CT scan, MRI or lumbar puncture, because there was no solid basis for a further neurological work-up, based on the patient's presentation, the Court said.

The second nurse was not remiss to discharge her even with elevated blood pressure, as there was nothing to indicate she was not in stable condition. Eder v. Catholic Health, \_\_ P. 3d \_\_, 2014 WL 5073152 (Colo. App., October 9, 2014).