

# Skilled Nursing: Facility Failed To Follow Steps For Patient's Involuntary Discharge.

The seventy-two year-old patient was admitted to a skilled nursing facility with a terminal illness. Four months later she was placed under the care of a hospice provider under contract to the facility.

A few months went by uneventfully until the patient experienced a psychotic episode which involved threatening and disruptive behavior including choking two nurses, trying to strike another and throwing an object at yet another. She was transferred to a single room for the safety of other residents.

A month later when the patient's mental health was evaluated by the state department of health she reported she had been raped at the skilled nursing facility.

At this point the hospice attending physician had her transferred to a hospital for a psychiatric evaluation and care.

After her hospital stay, however, the skilled nursing facility refused to readmit her, citing the above safety issues.

That refusal was taken up by the state's long-term care ombudsman who obtained an order from the state's department of health care services that the skilled nursing facility had to readmit the patient.

Once the patient was readmitted a ruling was still needed on the facility's appeal because a separate civil case is still pending against the facility over whether the original refusal to readmit her is grounds for an award of damages to the family.

The resident's adult daughter has sued for damages, among other things, for the fact she was not able to reside with her mother in the same nursing facility for care for her own serious medical issues.

## **Facility Should Have Readmitted The Patient**

### **Then Taken Proper Steps For Involuntary Transfer or Discharge**

The California Court of Appeal ruled the facility's initial refusal to readmit the patient and then go through the proper involuntary transfer or discharge process was an illegal violation of the patient's rights.

### **Transfer and Discharge**

Transfer and discharge are defined to include movement of a resident to a bed outside the nursing facility, whether in the same physical plant or not, but not movement to a different bed within the facility.

***Nursing facilities are bound to follow the procedures outlined in the US Code of Federal Regulations at 42 CFR § 483.12 when a resident is involuntarily transferred or discharged, or potentially face a lawsuit from the patient or family.***

***The skilled nursing facility in this case argued in its defense that the resident's transfer to acute care was arranged by the hospice provider, not by the facility itself.***

***The Court must reject that argument.***

***The facility is still subject to US Federal regulations outlining the steps necessary for involuntary transfer or discharge of a resident from skilled nursing care.***

***The facility's rationale for wanting this resident out of the facility is not an issue.***

***The only issue is the fact the resident was refused readmission from the hospital without proper notices being given or other proper steps being taken.***

***The facility should have readmitted the resident and then given proper notice and taken the other proper steps to transfer or discharge her involuntarily from the facility.***

CALIFORNIA COURT OF APPEAL  
August 17, 2016

## **Grounds for Involuntary Transfer or Discharge**

A resident of a nursing facility has the basic right to remain in the facility unless one or more defined conditions arise:

The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

The resident's health has improved so that services are no longer needed;

The health or safety of other individuals in the facility is endangered; or

The resident has not paid for services.

The Court did not question the need to transfer or discharge this resident, only the way it was done.

## **Documentation of Transfer or Discharge**

When a nursing facility finds it necessary to transfer or discharge a resident the resident's clinical record as to the rationale for the transfer or discharge must be documented by the physician.

## **Transfer and Discharge Planning**

The facility must provide sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge, and notify the resident of the effective date of the transfer or discharge.

## **Notice of Bed-Hold Policy And Readmission Rights**

In California when a resident is sent away from a nursing facility the bed must be kept open for seven days. If the resident is out longer than seven days, the resident has the right to the next available bed when ready to return from the hospital.

Bed-hold and readmission rules vary from state to state, but Federal regulations applicable everywhere in the US require prior notice to the resident of the resident's bed-hold and readmission rights.

Federal law mandates at least thirty days notice to the resident of the resident's bed-hold and readmission rights, unless the safety of individuals in the facility would otherwise be endangered, in which case the notice must be given as soon as practicable before transfer or discharge.

Notification of bed-hold and readmission rights is also required to the resident and/or a family member at the time of transfer or discharge. ***St. John v. Department***, \_\_ Cal. Rptr. 3d \_\_, 2016 WL 4379335 (Cal. App., August 17, 2016).