

Skilled Nursing: Court Finds Substandard Procedures, Upholds Civil Monetary Penalty.

After the death of a seventy-eight year-old patient who had been on Coumadin for a blood clot in her leg, survey inspectors decided that the facility's procedures for laboratory work were out of compliance with Federal standards.

A civil monetary penalty was levied of \$3050 per day for more than half a year, the period of time during which the facility's procedures were deemed out of compliance, more than \$587,000, which was upheld by the US Court of Appeals for the Fourth Circuit (North Carolina).

Resident's Death Sparks Investigation

A nurse saw and charted swelling in the patient's lower leg and reported it to the patient's physician. He ordered a Doppler test which found a blood clot. The physician ordered 10 mg of Coumadin plus Lovenox daily and daily PT/INR tests.

The care plan was "badly mishandled" according to the Court and the PT/INR testing did not begin for over a month. The first result showed a critically high Coumadin level.

After the same result two days later the physician scaled back the Coumadin to 6 mg. The order for a follow up PT/INR was not properly transcribed and the PT/INR was delayed two more days until another nurse caught the mistake.

The blood sample was sent back by the lab as too small to test so a nurse tried to draw another the next day. The patient refused the blood draw, which was her right, but any such refusal has to be reported promptly to the physician, which was not done.

The nurse did see and charted unusual bruising around the breast and shoulder, possible signs of a Coumadin overdose, but that also was not reported to the physician as it should have been.

Finally a sample was drawn which showed a critically high Coumadin level and the patient was sent to the hospital. The hospital administered one dose of Vitamin K, but the family then decided to decline further treatment and the patient passed away the next day. **Universal Healthcare v. Sebelius**, 2012 WL 6217619 (4th Cir., December 14, 2012).

A skilled nursing facility is required by Federal regulations to ensure that each resident's drug regimen is free from drugs given in excessive doses, for excessive duration or without adequate monitoring in the presence of adverse consequences which indicate the dose should be reduced or discontinued.

A skilled nursing facility must have a system in place to ensure that labs are drawn when ordered, drawn correctly, processed correctly and the results reported to the patients' physicians.

Residents on anticoagulant therapy require not only lab tests but also protocols for monitoring and observation by direct caregivers.

Special instructions for Coumadin should be placed in care plans that any subtle signs of injury should be recorded.

At this facility there was a systematic failure to anticipate and plan for the risk of bleeding, to monitor for adverse reactions and to instruct rank-and-file staff on touching and handling residents on Coumadin.

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
December 14, 2012

Flu Immunization: Public Health Emergency, Nurse Cannot Be Sued.

In 2009 in response to an outbreak of H1N1 influenza the US Secretary of Health and Human Services made a formal declaration that a public health emergency existed and recommended administration of a specific antiviral vaccination.

The Secretary's authority came from the US Public Readiness and Emergency Preparedness (PREP) Act of 2005.

The Governor of New York then issued an executive order authorizing state and local authorities to take steps to distribute and administer the vaccine.

A local county health department held a vaccination clinic in a local school where a nurse gave a kindergartener the flu vaccine without either parent's consent.

The child's mother sued the county health department for negligence and civil battery. The New York Supreme Court, Appellate Division, dismissed the case.

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The US Public Readiness and Emergency Preparedness Act protects licensed health professionals who are authorized to administer or dispense countermeasures in response to a public health or bioterrorism emergency.

The Act does not detract from a licensed healthcare professional's legal immunity when a countermeasure is administered without consent.

As a Federal law the Act takes precedence over any state statute or rule of the common law that goes contrary.

NEW YORK SUPREME COURT
APPELLATE DIVISION
November 21, 2012