

Skin Care: Fatal Sepsis From Decubitus Ulcer, Court Finds Nursing Facility Not Liable.

The patient was admitted to the nursing facility at age eighty and taken to the hospital five years later where she soon died at age eighty-five.

Three months before she was sent to the hospital the family were informed by the nursing home staff that the patient had a decubitus ulcer and would be receiving treatment from an outside wound care nurse. A month later they were told she was responding well to treatment.

Two months after that they received a call she was being taken to a hospital E.R. Five days later she passed away.

No Departure from the Standard of Care

The Court of Appeal of Louisiana dismissed the family's lawsuit.

The patient was eighty-five years old and extremely debilitated. She had end-stage Parkinson's, dementia, diabetes and hypertension, needed assistance to eat, was totally dependent for transfers, was totally incontinent of bowel and bladder and had contractures that had progressively worsened.

Over time all of these conditions, according to the Court, compromised her skin integrity and increased the risk of skin breakdown. In fact, on admission to the nursing home the patient was already so debilitated that surgery had to be declined in favor of conservative management of a femoral neck fracture and the patient was classified as "Do Not Resuscitate."

The nursing home was treating her lesions appropriately, started nutritional supplements as adjunct therapy, saw some improvement and then when the wounds deteriorated brought in an outside consulting wound care nurse and bought the patient a specialty mattress.

Deterioration of skin integrity, even to the point of sepsis which threatens the patient's life, in an elderly and highly debilitated patient, in and of itself, does not prove negligence, without proof of some actual departure by the patient's caregivers from the applicable standard of care, the Court said. **Pecue v. Plantation Mgt., 2014 WL 667489 (La. App., February 18, 2014).**

Federal regulations require a nursing facility to ensure that a resident who enters a facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that pressure sores were unavoidable.

A resident who has pressure sores must receive necessary treatment and services to promote healing, prevent infection and prevent new sores.

However, in a civil malpractice lawsuit these regulations do not shift the burden of proof to the health-care provider to prove that loss of skin integrity was unavoidable due to the patient's clinical condition.

The patient or the patient's family still must show what the standard of care is and prove that it was violated.

The development and progression of the patient's sacral decubitus lesion does not prove negligence.

The record contains ample proof the facility undertook a comprehensive assessment and performed all reasonable interventions for the patient, notwithstanding the unfavorable and unfortunate outcome.

COURT OF APPEALS OF LOUISIANA
February 18, 2014

Nurse Denied Her Work Breaks: Court Sees No FLSA Violation.

A charge nurse was fired after voicing a series of complaints and insisting on certain changes she believed were needed to correct alleged staffing issues at the hospital which often prevented her from taking her meal breaks.

The nurse sued her former employer claiming that she was a victim of retaliation for complaining that her rights had been violated that were guaranteed by the US Fair Labor Standards Act (FLSA).

There is nothing in the nurse's lawsuit to suggest her complaints pertained to any violation by her employer of the US Fair Labor Standards Act.

UNITED STATES DISTRICT COURT
NEVADA
February 25, 2014

The US District Court for the District of Nevada agreed in general terms that employees have the right to sue an employer or former employer if there has been retaliation for complaints about violation of their rights protected by the FLSA.

However, according to the Court, the FLSA says nothing about an employee's right to work breaks and does not pertain to staffing issues in healthcare facilities. Thus the nurse's reliance on the FLSA as legal authority for her case was misplaced.

The issue in this case was governed by the collective bargaining agreement between the hospital and the nurses' union.

The collective bargaining agreement did not guarantee nurses the right to take breaks but merely provided that when nursing personnel were required to work through their breaks the hospital was required to pay them for the time worked.

There was no question that the nurse was in fact paid when she had to work through her meal breaks, and that was the end of the case. **Richard v. Carson Tahoe, 2014 WL 775259 (D. Nevada, February 25, 2104).**