

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Changes Made After An Accident Are Not Evidence Of Nursing Negligence, Court Says.

The nursing home resident's bed alarm sounded in the early morning hours. The CNA who had been caring for her for more than two years went to her room to check on her.

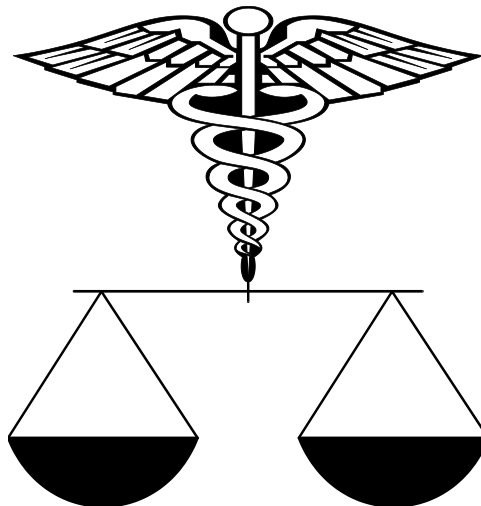
The resident was already on the toilet in her bathroom when the CNA arrived. The care plan called for the CNA to respect the resident's privacy, wait close by for the resident to finish and then provide one-person assistance.

When the resident was ready to get up the CNA told her to stay seated while she got gloves from a dispenser which was outside the bathroom itself but only five or six feet away.

While the CNA was getting gloves the resident stood up, fell on her face and sustained a head injury from which she died a week later.

The jury's verdict was no negligence in the lawsuit filed against the nursing facility on behalf of the family by the resident's estate, as to the CNA for her conduct on the morning in question and as to the nursing home itself for the resident's care planning.

The Supreme Judicial Court of Maine affirmed the jury's verdict, ruling it was correct for the judge to keep from the jury the fact that the nursing home put glove dispensers right in the bathrooms and told staff to carry gloves at all times, shortly after the accident.



***Shortly after the deceased fell, the nursing facility installed glove dispensers right in the patient bathrooms and instructed staff to carry gloves with them at all times.***

***The judge correctly refused to allow the jury to speculate that installing the new glove dispensers and educating staff after the accident could be evidence of negligence.***

SUPREME JUDICIAL COURT OF MAINE  
February 13, 2014

### Subsequent Remedial Measures Do Not Prove Negligence

The Court reiterated the longstanding legal rule that changes made after an accident to prevent the same thing from happening again, which the law calls subsequent remedial measures, are not allowed to be mentioned in court as proof of negligence.

The legal rule barring subsequent remedial measures as evidence of negligence is intended to encourage changes after the fact without fear that making such changes might prejudice a health-care provider's legal defense if litigation should arise.

It would have been prejudicial to the nursing home for the judge improperly to have allowed such evidence to go to the jury.

The nursing home was willing to concede it would have been feasible to have installed glove dispensers right in the bathrooms before the accident and to have told staff to carry gloves, but that in itself did not prove fault.

The CNA testified she did not carry gloves out of concern that infectious agents from one patient could be spread to others, which would not happen if fresh gloves were taken out of the box in the patient's room before use. ***Boulier v. Presque Isle, \_\_\_ A. 3d \_\_\_, 2014 WL 560915 (Me., February 13, 2014).***

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