

Unsanitary Nursing Practices: Court Imposes The Strictest Penalties Allowed By Law.

The US Court of Appeals for the Sixth Circuit reviewed the evidence and decided to uphold a \$24,300 civil monetary penalty imposed on a skilled nursing facility by surveyors from the state's office of inspector general working through an agency agreement with the US Centers for Medicare and Medicaid Services, based on deficiencies found to constitute immediate jeopardy to patients' health and safety.

Resident #4

Surveyors saw a nurse use unsanitized scissors she took out of her pocket to care for a resident's coccyx pressure sore. While changing the dressing the resident had a bowel movement. The nurse put a new dressing on the pressure sore without adequately cleaning the skin, then continued to wipe the fecal matter in a manner that pushed it up under the dressing. The fecal matter was wiped from back to front despite the fact the female resident had a Foley catheter. Then the nurse repositioned the patient wearing the same soiled gloves she had worn while doing the dressing change and cleansing the feces.

Resident #2

Another nurse also used unsanitized scissors just taken from her pocket to remove a soiled dressing and then to cut a fresh dressing.

The soiled dressing was put into a bag the nurse used to carry around a box of personal cleansing cloths she and an aide used to wipe their hands.

This resident had come in with a history of vulnerability to pressure sores but got no skin assessment or care plan on admission, then went on to develop a purple and black necrotic lesion on her heel.

Her chart said her heel protectors were being put on on a daily basis by staff, which if actually being done would have given staff the opportunity to observe the start and early progression of what became an avoidable late-stage lesion. Barbourville Nursing Home v. US Dept. of Health & Human Services, 2006 WL 908631 (6th Cir., April 6, 2006).

A skilled nursing facility can be shouldered with a civil monetary penalty of \$3,050 to \$10,000 per day of noncompliance for deficiencies constituting immediate jeopardy.

Immediate jeopardy means a situation in which the provider's noncompliance with one or more requirements of Medicare or Medicaid participation has caused, or is likely to cause, serious injury, harm, impairment or death to a resident.

Considered less serious are widespread deficiencies which cause harm but not immediate jeopardy.

Considered even less serious are deficiencies which are widespread and have a potential for more than minimal harm but not for immediate jeopardy.

Surveyors and their supervisors ought to have some degree of flexibility in applying these concepts which are less than precise.

Administrative law judges and the courts must uphold the surveyors' judgments as to level of seriousness they find unless they are clearly erroneous.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
April 6, 2006