



### **Nursing Home Litigation: What Caused the Fall?**

This is Pat Iyer with the newest edition of *Iyer's Insights*. Here is a story of a fascinating case.

This nursing home case reported in March 2018 struck me for several reasons. It involved a sixty-one-year-old man who was a long-term resident of a nursing home because he had right-sided paralysis due to a stroke. His left leg was also amputated. On February 4, 2014, he became sweaty, nauseated and had severe abdominal pain and vomiting. It was not until the next day that paramedics were called, and he was taken to the hospital, where he stayed 8 days with a diagnosis of severe dehydration.

Upon discharge from the hospital he was returned to the nursing home. Four days later, he fell from bed to the floor. He suffered severe and comminuted fractures of his leg at multiple levels. Since he was not a candidate for surgery, he had to endure a lot of pain until the fractures healed. He left the nursing home after that incident and never returned.

The plaintiff alleged he had eight dehydration events that culminated with his hospitalization while at the nursing home. He was critical of the defendant nursing home for having just a single employee assist him. Beyond a simple claim for nursing home negligence, he also presented a Resident's Rights Act claim based on the alleged violation of his dignity, hygiene, and family communication. He alleged a dual cover up, that the nursing home was lying about their neglect not only to the plaintiff's family but also misleading a state investigation into the matter.

The defendants denied the allegations and denied the fractures were sustained in a fall. They argued they were pathological in nature and might have been sustained in a Hoyer lift while the plaintiff was in the hospital.

The jury awarded the plaintiff 2.5 million on negligence, and \$1.05 million in compensatory damages on the Resident's Rights violation. That is not all. The jury awarded \$25 million in punitive damages. The verdict totaled \$28.55 million in this Kentucky case called Cecil Gary v. McCracken Nursing and Rehab Center.

This is an amazing case. I have no first-hand knowledge of this case. Here are some of the concepts I get out of looking at the defense. It sounds like they

disputed that the fall in the nursing home caused the fractures. Yet in my experience pathological fractures are far less common than ones caused by trauma. Pathological fractures are caused by osteoporosis or cancer. They can affect any bones, but the stronger legs of the bone typically don't break without some trauma.

It also sounds like the defense tried to point to a hospital incident as the cause of the fractures. Here is where a sharp legal nurse consultant could construct a timeline of symptoms to pinpoint when the plaintiff began complaining of leg pain.

Juries may react with anger if they feel the nursing home was attempting to cover up an incident. The punitive damages award was no doubt fueled by this kind of reaction. Punitive damage awards are not very common in medical malpractice cases and this award is a huge one.

There is an unexplained mention in the case write up of the plaintiff being critical of the nursing home for having a single employee help him. Was the fall due to low staffing? Should staffing be mandated in nursing homes?



Before I continue, I need to share details of online training that directly addresses the setting of this case.

- Do you want to sharpen your skills in understanding nursing home litigation and liability issues?
- Are you a legal nurse consultant who has not worked in a nursing home, but yet needs to assist attorneys with nursing home litigation?
- Are you a nursing home expert witness who wants to broaden your knowledge?

My online training called ***Hot Spots in Nursing Home Litigation*** takes you into the world of nursing homes where documentation requirements, staffing, and regulations are markedly different from hospital ones. Learn from Barbara Johanson, an experienced nursing expert witness, about the special regulations that govern nursing home care. You will become familiar with the standard of care and best practices so that you may be better able to evaluate liability, damages and defenses for three hot spots in nursing home litigation:

- Pressure sores
- Dehydration/weight loss

- Accidents and incidents

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Let's return to the show.

While the idea of mandating higher staffing in long term care appears to have merit, this cannot be accomplished unless attention is given to those factors that are responsible for the current staffing crisis. Long term care has an image problem. Isolated events paint a picture of nursing home staff as uncaring and, in some cases, abusive.

Hospital nursing is perceived to be more glamorous while long term care nursing is often viewed as distasteful, custodial care of confused older individuals.

Workloads are heavy, reimbursement systems force salaries that are below those paid by hospitals, and schedules are often inflexible. Regulations, instituted to prevent Medicare fraud, have resulted in an overwhelming amount of paperwork, preventing the nurses from working with the residents and overseeing the care provided by other levels of staff.

Compounding the problem is the fact that nursing homes often suffer from lack of managerial and clinical resources. Many managers are under-prepared educationally for the roles they have assumed. They are ill-equipped to mentor staff or to effectively communicate their needs to those in the organization who control the resources.

Unfortunately, low staffing breeds low staffing. As staff shortages become more evident, workloads increase, and people become overwhelmed and leave. Turnover is costly to the nursing home. New staff must be oriented and trained before they are permitted to work. In the meantime, their position is filled by staff who are working overtime or by temporary workers.

In addition to the financial implications, a high turnover rate affects the morale of both staff and residents and interrupts the continuity of care that residents and families have come to value.

Nursing home litigation is often initiated because of clinical issues such as pressure ulcers, medication errors or falls when the root cause of these may be understaffing. Without specific staffing requirements that are relevant to the

number and types of residents in the home, it falls to the administration of the nursing home to define adequate staffing and to provide such. With cuts in reimbursement, coupled with dramatic increases in the costs of salaries, benefits and liability insurance, the nursing home administrator faces a monumental challenge in attempting to meet the quality of care and quality of life needs of the nursing home resident.

Falls and fall-related injuries are common liability concerns in nursing homes. Injurious falls may result in fractures of major bones, including the hip, arm, pelvis and skull, paralysis from spinal cord injury, or decline or death from intracranial bleeding.

The administration of Coumadin worsens the injuries from falls. The incidence of falls in nursing homes is 1.6 falls per bed per year. You've probably seen that a fall can set in motion a spiraling series of events, starting with a fracture in a relatively mobile person. This resident, after surgical repair, becomes more immobile, and is at risk for pneumonia, pressure sores, depression, and incontinence and an earlier death.

Fall cases are viewed by some attorneys as one of the most defensible types of allegations. The nursing home has an obligation to provide the least restrictive environment and to permit the resident to have some mobility. The first fall is usually the easiest to defend. A resident with no prior history of falling, who is not at risk for falls, and with no documented change in status, may suddenly fall.

A resident who falls out of a Hoyer lift might have contributed to the fall by unexpectedly moving, causing the Hoyer lift to topple. The circumstances of the fall must be carefully examined, as well as all the supporting documentation such as care plans, interdisciplinary team meetings, incident reports, and therapy and nursing notes.

Be sure to get access to the training called ***Hot Spots in Nursing Home Litigation*** at this link: <http://LNC.tips/NHLitigation> and use the code Listened to get a 25% discount.

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