

## Bowel Tones Absent, No Nursing Follow-Up: Court Sees Misconduct Justifying Nurse's Termination.

The resident had been complaining for about a week that she just did not feel good.

### No Bowel Tones No Nursing Follow-Up

At 5:00 a.m. the night LPN listened for bowel sounds and was unable to detect any. She made a note in the chart to that effect and did nothing further until later, right before her shift ended at 7:00 a.m., when she heard the resident moaning, went in, took her vital signs and found them within normal limits.

### Nursing Home's Standard Protocol Was Not Followed

Whenever a nurse is unable to obtain bowel tones, standard protocol at this nursing home is for the nurse to ask another nurse to listen for them.

If both nurses are unable to hear bowel tones, a physician must be alerted immediately and the director of nursing and the resident's family were also to be notified.

The LPN in question was unable to offer any explanation why she simply charted the abnormal finding and did basically nothing to fulfill her obligation to intervene on behalf of her patient.

### Misconduct Justifying Termination

The Court of Appeals of Arkansas ruled this was misconduct justifying the LPN's termination.

She had been required to attend inservices that explained her duties for specific actions when faced with abnormal physical findings when performing routine nursing assessments. She had been taught that nursing inaction which potentially threatens a resident's safety is a category-one violation of policies, that is, a violation for which there is no progressive discipline before immediate termination. Johnson v. Director of Employment Security, \_\_\_ S.W. 3d \_\_\_, 2004 WL 61017 (Ark. App., January 14, 2004).

***The resident was admitted to the hospital later that day in renal failure.***

***However, actual harm to a patient directly traceable to a nurse's misconduct is not necessarily the issue when the nurse's performance is seriously substandard.***

***Misconduct justifying termination is more than mere inefficiency, unsatisfactory conduct, inadvertence, isolated instances of ordinary negligence or good-faith errors in judgment or discretion.***

***There is an element of intent associated with misconduct serious enough to warrant termination without going through progressive disciplinary procedures.***

***There must be an intentional and deliberate violation of the employer's standards of behavior that impacts or has the possibility to impact a patient adversely.***

***At some point recurrence of negligence or carelessness can show evidence of an intent to disregard the employer's standards of conduct.***

COURT OF APPEALS OF ARKANSAS  
January 14, 2004

## Patient Falls: Court Believes She Should Have Been Restrained.

The patient's nurses found her on the floor at least twice. She had been admitted for complications of intracranial bleeding and bruised the side and front of her head when she fell.

The nurses knew she was a fall risk. They tried to teach her about her own safety issues but it could not be documented she understood. The teaching was not doing any good.

***The hospital had a policy for use of restraints.***

***The patient's documented confusion and inability to be taught for her own safety indicated a need for further protection.***

***The failure to provide additional protection in the form of physical restraint was below the medical standard of care.***

***Failure to provide physical restraints caused one or more of her falls in the hospital and the injuries from the falls compounded her difficulties in her end-of-life hospital course.***

COURT OF APPEALS OF TEXAS  
December 12, 2003

The Court of Appeals of Texas ruled the patient's family's medical expert was able to formulate valid grounds for a medical negligence lawsuit directly from the material documented in the patient's chart, that is, that she needed to be restrained based on her condition, was not restrained and suffered injury as a result. Estate of Birdwell v. Texarkana Memorial Hospital, Inc., \_\_\_ S.W. 3d \_\_\_, 2003 WL 22927420 (Tex. App., December 12, 2003).