

Confidentiality: Caretakers Not To Block Access To Medical Records.

Criminal charges were filed against the regional director of a nursing home's parent corporation after photographs were sent to state investigators of a resident with severe decubitus ulcers.

Patient confidentiality in medical records is very important, but a nursing home and its employees are not allowed to claim medical confidentiality to block access to relevant records in an investigation into possible abuse or neglect.

It does not make sense to allow a suspected wrongdoer to use another person's privilege to shield his or her own actions.

COURT OF CRIMINAL APPEALS
OF OKLAHOMA, 2001.

The Court of Criminal Appeals of Oklahoma ruled a nursing home does not have the right to claim medical confidentiality to block access to patients' medical records sought by Federal or state investigators, assuming the investigators have followed proper legal procedures to obtain the records.

The court also said that a high-level management employee can be considered a caretaker for purposes of a state criminal statute that forbids abuse or neglect by a caretaker. However, in a criminal prosecution the defendant has the right to trial by jury and can have the question whether or not he or she is a caretaker submitted to a jury. State v. Thomason, 33 P. 3d 930 (Okla. Crim. App., 2001).

Elder Abuse And Neglect: Court Extends Statute Of Limitations.

California has a one-year statute of limitations for healthcare malpractice, which is relatively short compared to other states. There may be grounds to extend the one year, but it cannot go beyond three years. Many other states also recognize grounds to extend the statute of limitations but have a similar arbitrary maximum regardless of the circumstances.

In civil cases, if a person who has cause to file a lawsuit is disabled from filing a lawsuit because of being a minor or insane, the time the person is disabled from filing the lawsuit is not part of the statute of limitations.

In this context the word "insane" means the person is incapable of caring for his or her property or transacting business or understanding the nature or effects of his or her acts.

A nursing home patient can be considered to fall within this definition of being insane, extending the time the patient can sue for substandard treatment.

CALIFORNIA COURT OF APPEAL, 2001.

The California Court of Appeal ruled recently that a nursing home resident could sue for all of the acts of neglect that occurred up to three years, not one year, before a lawsuit was filed on her behalf. Her mental status fit the civil-court definition of insanity, which extended the statute of limitations for a civil suit on her behalf. Alcott Rehabilitation Hospital v. Superior Court, 112 Cal. Rptr. 2d 807 (Cal. App., 2001).

Patient Burned In O.R.: Court Applies *Res Ipsa Loquitur*.

A patient awoke from surgery with third-degree burns on the back of her thigh.

It was not clear how it happened but an expert witness hired by her attorneys came up with two hypothetical explanations, both of which blamed the O.R. personnel for negligence.

The New York Supreme Court, Appellate Division, acknowledged the plaintiff's expert's theories were speculative. However, the court ruled this was something that would ordinarily not happen in the absence of negligence and allowed the case to go forward based on the legal rule of *res ipsa loquitur*, that is, "It speaks for itself." Babits v. Vassar Brothers Hospital, 732 N.Y.S.2d 46 (N.Y. App., 2001).

Patient Beaten In E.R.: Court Says No To *Res Ipsa Loquitur*.

A patient awoke in the emergency room with bruises all over his body.

He testified he had been drinking and went to the emergency room for chest pains, sat down, went to the restroom, sat back down and then woke up injured.

Two hospital security guards testified he came in highly intoxicated, picked up and swung a chair breaking a window and had to be physically restrained for the safety of staff and other patients.

The New York Supreme Court, Appellate Division, ruled *res ipsa loquitur* did not apply. The security guards may or may not have used excessive force. Under the circumstances the patient being injured, in and of itself, did not prove the hospital was negligent. Garcia v. Bronx Lebanon Hospital, 731 N.Y.S.2d 702 (N.Y. App., 2001).