

Decubitus Ulcers: Court Finds Nursing Care Substandard, Imposes Liability For Nursing Negligence On Corporate Licensee.

A recent case from the District Court of Appeal of Florida involved issues of nursing negligence in the care of an elderly Parkinson's patient who developed and eventually died from her decubitus ulcers, as well as issues of corporate responsibility for payment of the damages awarded by the jury.

Corporate Responsibility

The nursing home's physical premises were owned by an out-of-state corporation which held the license from the State of Florida to operate the nursing home under the d/b/a (*doing business as*) name by which the nursing home was known in the community.

The licensee and two sibling corporations were owned by a large national corporation which owns hospitals, nursing homes and other healthcare facilities around the US.

The nursing home licensee corporation had a contract with a management company. The management company was to have the sole right and responsibility for operating the nursing home, including sole discretion to recruit, retain, train, promote, supervise and terminate staff and to establish and maintain standards and practices for appropriate patient care.

The District Court of Appeals of Florida, looking at prior legal cases involving hospitals in Florida and a case involving a nursing home in California, ruled that a nursing home licensee has a non-delegable responsibility for patient care.

When an activity can only be legally conducted pursuant to a state licensee, the performance of legal duties entrusted by the state to the licensee cannot be delegated to others. That is, others, be they employees or independent contractors can be brought in to provide services to the licensee's clients, but the licensee retains full legal responsibility at all times.

The licensee's parent corporation, unlike the licensee, was not affected by the ruling.

The nursing home was owned by a Delaware corporation which had the state license to operate a nursing home.

The Delaware corporation and its siblings were owned by a larger parent corporation which owns many healthcare facilities around the country.

The Delaware corporation had a contract with another corporation which actually managed the nursing home.

The Delaware corporation, its property division and its asset holding company did not hire or fire employees of the nursing home, pay wages or salaries or exert any control whatsoever over the employees of the nursing home.

All functions at the nursing home were managed by the management company.

However, any company that holds a license to operate a nursing home cannot delegate responsibility to an independent contractor.

The nursing home licensee is liable for all acts of negligence by employees of the contractor managing the nursing home.

DISTRICT COURT OF APPEAL
OF FLORIDA
February 12, 2003

Nursing Negligence

The resident was admitted with mid-stage Parkinson's Disease. She was incontinent of bowel and bladder, had moderate to severe dementia, memory problems and limited mobility. She was totally dependent on the nursing home's personnel for mobility, toilet needs and bathing.

Two years later she had to go into the hospital for tests for colon cancer, then was re-admitted to the nursing home. At that time she had no decubitus ulcers or pressure sores anywhere on her body.

Two months after re-admission the nursing home's nursing documentation, or lack thereof, revealed a disturbing pattern of inattention to the resident's needs.

She was not being bathed on a daily basis, or at least there was no documentation of her care for a two week period. Then she needed treatment for redness on her hip and buttocks and a few days later had a Stage II decubitus ulcer on her coccyx. The decubiti kept getting worse and more appeared.

Finally the physician was notified. By that time there were gangrenous State IV ulcers in various locations. She had to be taken to the hospital and then to a hospice where she died from acute bronchopneumonia secondary to her decubitus ulcers.

Nursing Documentation Lacking

The court noted it was the nurses' responsibility to complete pressure-sore reports and to document bathing, turning, dressing changes, changes in skin status and to notify the physician in a timely manner. No documentation of competent nursing care could be found after the fact despite clear evidence her condition was deteriorating significantly and rapidly.

The court believed it was so bad that punitive damages of \$800,000 were indicated in addition to \$150,000 compensation to her probate estate for her conscious pain and suffering. ***NME Properties, Inc. v. Rudich, __ So. 2d __, 2003 WL 289415 (Fla. App., February 12, 2003).***