

## Lift Chairs: Court Throws Out Citations Against Nursing Home.

A nursing home was cited for violations allegedly rising to the level of immediate jeopardy for allowing residents to use recliners with a lift feature that their families had brought in for them.

The facility was accused by survey inspectors of violating Federal regulations which require an assessment of the resident's physical capacity and care planning to go along with the use by the resident of any assistive device. The facility was also accused of creating an accident hazard in violation of Federal regulations.

The US Court of Appeals for the Sixth Circuit threw out the citations and exonerated the nursing facility.

Nowhere in the regulations, Resident Assessment Protocol, Minimum Data Set or State Operations Manual is there any indication that a chair with a lift feature provided by a resident's family for the resident's comfort is an assistive device as that term is used in the Federal regulations.

Nor was there any reasonable basis for concluding that these lifting recliners posed an accident hazard, the Court went on to say. **Cal Turner Extended Care v. US Dept. of Health & Human Services**, 2012 WL 4748146 (6th Cir., October 5, 2012).

## Unsupervised Absence: Suit For Dependent Adult Neglect Upheld.

**Neglect is defined as the negligent failure of any person having the care or custody of an elder or dependent adult to exercise the degree of care that a reasonable person would exercise.**

**Neglect includes failure to assist in personal hygiene, failure to provide food, clothing, shelter or medical care for physical or mental health needs and failure to protect from health and safety hazards.**

**The nursing home had the legal responsibility for meeting the patient's basic needs. They knew he was a disabled man suffering from mental-health issues and was under psychiatric care. They knew he was not supposed to leave alone or without taking his mental-health medications.**

**They failed to follow his physician's orders by letting him leave alone.**

CALIFORNIA COURT OF APPEAL  
October 4, 2012

The fifty-one year-old wheelchair-bound nursing home resident was blind in one eye and had had one leg amputated. He also had disordered thought processes, paranoia, schizophrenia, delusions, anxiety and agitation.

His attending physician had written orders permitting him to leave the facility on a temporary pass, if he left with a responsible party and if he was taking his lithium and his anti-psychotic Zyprexa.

Nevertheless he was allowed to leave by himself after he told the charge nurse he wanted to "go to the gym." He had not taken his medications that morning.

He was due back at 1:00 p.m. but his failure to return was not reported to the local police until the next a.m. He was found face down on a street with severe head trauma and taken to a local hospital.

Even though a CT revealed intracranial bleeding he was allowed to leave the hospital AMA and died shortly thereafter.

The family's civil lawsuit alleged neglect of a dependent adult by the nursing home for allowing him to leave in violation of his physician's orders and for not reporting his failure to return promptly so the police could start looking for him. He had left the facility unsupervised once before.

The family's lawsuit also faulted the hospital for failing to realize he was gravely disabled due to his head injury and his psychiatric issues and failing to institute an involuntary mental health hold.

The California Court of Appeal ruled there were grounds for the family's lawsuit. **Chaidez v. Paramount**, 2012 WL 4713093 (Cal. App., October 4, 2012).

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