

Elder Abuse, Neglect, Nursing Negligence, Pain Management, End-Of-Life Issues: Court Rules On Complex, Multifaceted Lawsuit.

The eighty-two year-old patient was a resident of a nursing facility.

While at the nursing facility she signed documents from time to time stating that she did not want to be resuscitated or given CPR or placed on life support in the event of a medical emergency. The documents were witnessed by her personal physician who attested she was fully competent to express her own wishes with regard to healthcare decisions.

At the nursing home she developed a severe Stage IV decubitus ulcer on her shoulder which exposed the underlying bones. Her treatment was basically routine doses of strong pain medications which supplemented what she had already been taking for pain from her advanced rheumatoid arthritis.

She began having abdominal pain and vomiting. So that she could be taken to the hospital the nursing home gave her daughter a copy of papers from her chart, including the medical directives for no CPR. At the hospital she suffered respiratory failure and a code was called. She survived for ten days in the ICU before she died. After she died her son sued all her caregivers on behalf of the probate estate.

The California Court of Appeal, in an opinion not officially released for publication, dismissed the lawsuit on technical grounds. However, the Court did express a certain amount of dissatisfaction with the care the patient received.

Pain Management

The hospital's ICU Critical Care Flow Sheet required the nursing staff, among other things, to assess the patient's pain at least once during each 12-hour shift.

The court was very concerned that for seventeen of the last nineteen shifts of her life the nursing staff merely noted that her pain was difficult to assess or unable to be assessed verbally. That was the only indication any attempt was to comply with the pain management plan required by the ICU nursing flow chart.

The patient's family's lawyers have chosen to rely upon the state's Elder Abuse Law as the basis for this lawsuit.

They have voluntarily dismissed all the allegations of negligence they previously filed against the patient's nursing and medical caregivers.

Presumably they made that decision because the Elder Abuse law, if it applies, allows the jury to award punitive damages.

There are questions about the care this patient received in the nursing home and about what happened in the hospital during her last days and hours.

However, the Elder Abuse law was not violated, so technically the whole case must be thrown out.

Elder abuse goes beyond ordinary negligence.

There must be intentional, egregious, reckless, oppressive or malicious misconduct by a lay or professional caregiver before the Elder Abuse law comes into play and before a jury can consider awarding punitive damages in a civil lawsuit.

CALIFORNIA COURT OF APPEAL
UNPUBLISHED OPINION
December 22, 2004

Pain Assessment Non-Verbal Cues

This patient, like many in the ICU, was intubated and obviously could not reply if the nurses had asked her verbally to rate her pain on a pain scale. Her nurses were expected to try to assess her pain through non-verbal cues, obtain orders if needed, give pain medication, assess non-verbal cues as to whether the medication was working and proceed accordingly, the court believed.

Nursing Home Skin Care

The court was unable to find fault with the skin care the patient received, even though she did develop a severe, progressive decubitus ulcer. A bad outcome does not necessarily imply negligence.

The court pointed to legal case precedents where nursing homes have been liable for sub-standard skin care. Liability cases are usually only those that are borderline outrageous, patients left for extended periods lying in soiled bed linens or left unmoved and unturned in their beds and not provided with adequate nutrition and hydration.

End-Of-Life Wishes Disregarded

The hospital apparently did put the copies of the patient's end-of-life directives into her chart which the daughter brought from the nursing home. The hospital apparently did not conduct its own interview with the patient as to her end-of-life wishes as required by Federal law.

The physician who responded to the patient's respiratory arrest in the hospital went ahead with resuscitation without trying to clarify the patient's wishes.

The court did not expressly fault the hospital's nurses for this aspect of her care. The nurses were not faulted for calling the physician to the bedside. It would be negligent for a physician to ignore a patient's end-of-life wishes, but certainly not abusive, in the court's judgment. **Furlong v. Catholic Healthcare West, 2004 WL 2958274 (Cal. App., December 22, 2004).**