

Fall: Nurse's Fraudulent Concealment Of The Facts Extends Statute Of Limitations.

The elderly nursing home patient was taken to the hospital when she started vomiting a few hours after she sustained a head injury.

Her head injury led to her death in the hospital nine days later.

When she was hospitalized a nurse from the nursing home told the family that the patient had had sudden transient ischemic attacks in the past which could not be anticipated or prevented and that such an event was most likely what caused her to fall this time.

Family Learned the Truth Almost Three Years Later

However, almost three years after the death a former employee of the nursing home told the daughter that her mother did not simply fall, but was attacked and pushed to the floor by another resident.

An attack by another resident, unlike the story the nurse from the nursing home gave to the family, could be grounds for a lawsuit alleging negligent failure to assess, monitor, supervise, restrain, transfer or separate the aggressor from other residents.

The family filed a negligence lawsuit against the nursing home, but filed it well beyond Indiana's two-year statute of limitations. The Court of Appeals of Indiana ruled that the family's lawsuit could go forward nevertheless.

Fraudulent Concealment Extends Statute of Limitations

The Court ruled that fraudulent concealment by a healthcare provider of facts from the patient or from the family, facts which could be the basis of a malpractice lawsuit, extends the statute of limitations.

The statute of limitations begins ticking not when the negligence occurs, but when the patient or the family who have been misled learn or with due diligence should have learned the true version of what happened.

The Court allowed the family's lawsuit because it was filed within two years of when the former employee told the daughter that her mother actually was pushed down by another resident. Allredge v. Good Samaritan Home, __ N.E. 2d __, 2013 WL 372651 (Ind. App., January 31, 2013).

The nurse's fraudulent concealment from the family of the true version of how their loved one was killed will extend the statute of limitations.

The family must file suit not within two years after the resident was injured but two years from the date a former nursing home employee told them what really happened.

Under the circumstances it would be wrong to deny the family the right to forward with a lawsuit on the grounds that the statute of limitations expired before they filed it in court.

The nursing home should not be allowed to take advantage of the fact that the true version of what happened was concealed from the family until after the statute of limitations ostensibly had passed.

Assuming they file their lawsuit within the extended time frame allowed, they will get their day in court, where the family still has to prove, as in any other professional negligence lawsuit, that the patient's death was caused by a negligent error or omission by the nursing home's care-giving staff.

COURT OF APPEALS OF INDIANA
January 31, 2013

Abuse: Charge Nurse Did Not Follow Procedure, Discrimination Case Dismissed.

The RN charge nurse was the only African-American nurse at the skilled nursing facility.

One Friday evening she saw a male Caucasian CNA grab the arm of an elderly female resident and yell at her to pick up a cup she had dropped on the floor.

The RN finished a tube feeding that was in progress. Then she phoned the DON who told her to send the CNA home immediately, so she told him to leave.

When she came in Monday morning the RN charge nurse wrote an account of the incident. She refused to speak further with a nurse sent from corporate to investigate. She was suspended and fired.

Facility policy required the charge nurse immediately to escort the abuser from the premises and then immediately to begin documenting eyewitness statements.

UNITED STATES DISTRICT COURT
MISSISSIPPI
February 7, 2013

The US District Court for the Northern District of Mississippi dismissed the lawsuit alleging race and age discrimination.

She was a minority, she was fired and she was replaced by a non-minority.

However, there was a legitimate, non-discriminatory reason behind her termination, the Court ruled, her failure to follow the facility's strict policies and procedures for responding to resident abuse.

The RN charge nurse should have escorted the abuser from the premises. She simply told him to leave and could not account for what he did before leaving or whether he actually left. Obtaining fresh eyewitness statements was also a crucial aspect of the facility's procedures, which she ignored. Barrentine v. River Place, 2013 WL 494074 (N.D. Miss., February 7, 2013).