

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

The Supreme Court of Indiana has upheld the decision of the Court of Appeals of Indiana we reported in March, 2013. See *Fall: Nurse's Fraudulent Concealment Of The Facts Extends Statute of Limitations*, Legal Eagle Eye Newsletter for the Nursing Profession (21)3, March 2013 p 4.

As the resident was being hospitalized for what would prove to be a fatal head injury, a nurse from the nursing home phoned the resident's daughter and said that the resident was prone to sudden transient ischemic attacks which could not be anticipated or prevented and that such an event was most likely what caused her to fall and strike her head.

Then almost three years after the death a former employee of the nursing home happened to tell the daughter 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 about an accidental fall, would be clearer grounds for a lawsuit which could allege negligent failure to assess, monitor, supervise, restrain, transfer or separate the aggressor from other residents.

The family filed a healthcare malpractice lawsuit against the nursing home, but they 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.

In this case the statute of limitations began ticking not when malpractice occurred, but when the patient or the family who were misled learned or with due diligence should have learned the true account of what happened.

The Court allowed the family's lawsuit because it was filed within two years of when the family learned the truth. Allredge v. Good Samaritan Home, ___ N.E. 3d ___, 2014 WL 2504551 (Ind., June 3, 2014).

The nurse's fraudulent concealment from the family of the true story 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 killed but within 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 go forward with a lawsuit because the statute of limitations expired before they filed their lawsuit 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 filed 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.

SUPREME COURT OF INDIANA
June 3, 2014

NPO Status Prolonged: Court Awards Damages.

The patient was admitted to the hospital with abdominal pain that led to diagnoses of gallstones and an inflamed gallbladder. Surgery was scheduled for the next morning to remove his gallbladder.

However, the surgery did not take place the next day, or the next day or the day after that.

All that time, while he was a hospital inpatient, the patient was kept on NPO status in preparation for surgery that never took place. He apparently never received any food or oral fluids.

On the afternoon of the fourth day in the hospital the patient began to show signs of systemic sepsis. He coded and then died within minutes of being intubated.

The hospital admitted liability. The family's lawsuit went before a jury only to determine the amount of damages. The jury awarded \$7,579,560 which the judge reduced to \$6,354,560.

The hospital appealed.

For three and one-half days the patient had ongoing sharp gallbladder pain, increasing anxiety as each day passed with no surgery and no explanation for the delay and growing discomfort due to the regimen of no food or drink.

NEW YORK SUPREME COURT
APPELLATE DIVISION
June 11, 2014

The New York Supreme Court, Appellate Division, ruled the jury verdict as modified by the judge was not excessive.

The patient's ordeal of prolonged NPO status was compounded, according to the Court, by insufficient sedation when he was paralyzed for intubation in his last moments after suffering agitation, sense of impending death, pain, respiratory distress, shivering, shaking and chills leading up to the code during which he finally lost consciousness and died. Lee v. New York Hosp., ___ N.Y.S.2d ___, 2014 WL 2595165 (N.Y. App., June 11, 2014).