

Amputation: Court Rules Nursing Home Not Liable.

The sixty year-old patient had multiple ulcerations of his legs related to diabetes and severe peripheral vascular disease.

While being transferred to his wheelchair his ankle struck the footrest. An old partially healed lesion was reopened.

The injury itself was fully documented by his nurses along with cleansing and dressing of the wound and administration of a course of antibiotics.

Eventually an above-the-knee amputation was ordered. The plan was later changed to below-the-knee, which was actually carried out.

The patient sued. He claimed the amputation was in fact caused by negligent mishandling by his caregivers which reopened the old lesion which, in turn, made the amputation necessary.

The New York Supreme Court, Appellate Division, disagreed and dismissed the patient's lawsuit.

Whether or not the facility was negligent, the medical evidence pointed to the amputation being inevitable due to the patient's multiple medical co-morbidities.

In fact, amputation of the same leg had been recommended seven months earlier. Ciano v. Franklin Nsg. Home, __ N.Y.S.2d __, 2014 WL 1699986 (N.Y. App., May 1, 2014).

Involuntary Discharge: Nursing Home Resident Cannot Sue.

The US Nursing Home Reform Act sets out transfer and discharge rights.

A nursing facility must permit each resident to remain in the facility, except under certain circumstances which include endangerment of other individuals at the facility.

The reason for involuntary transfer or discharge must be documented in the clinical records by a physician and proper written notice must be given to the resident and the family thirty days in advance unless that is not practicable.

However, the Nursing Home Reform Act was not intended to allow nursing home residents to sue for alleged violations.

Instead, procedures are outlined for administrative oversight by state and Federal authorities.

UNITED STATES DISTRICT COURT
ILLINOIS
May 12, 2014

After a verbal dispute with a nurse and a verbal dispute with another resident a nursing home resident was told he would have to leave the facility.

An ambulance was called to take him to the hospital. The next day the hospital sent him to a behavioral health facility. Two weeks after that he was sent from there to a different nursing home.

An Emergency Notice of Involuntary Transfer or Discharge issued by the first nursing facility stated that the safety of individuals was endangered.

The patient appealed to the state department of public health, but his appeal was denied. Then his attorneys sued the first nursing facility for damages.

The US District Court for the Northern District of Illinois ruled that the US Nursing Home Reform Act and Illinois state statutes, while imposing restrictions on involuntary discharge and transfer of nursing facility residents, do not allow a nursing home resident or former resident to sue the nursing home. This resident's civil lawsuit was dismissed.

According to the Court, the US Nursing Home Reform Act contemplates enforcement of its provisions by state and Federal inspectors through denial of reimbursement, termination of participation and civil monetary penalties.

However, a Federal statute which sets out standards and procedures for administrative enforcement of those standards does not give a private individual the right to file suit unless that right is expressly stated in the law. Schwerdtfeger v. Alden Long, 2014 WL 1884471 (N.D. Ill., May 12, 2014).

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