

Involuntary Transfer: Court Upholds Citation Issued To Nursing Home.

A seventy-six year-old nursing home resident who suffered from Parkinson's disease and vascular dementia was abruptly transferred from the nursing home to the emergency room of a local hospital after he allegedly tried to wrap his call-button cord around a caregiver's neck.

A phone call was placed and a form letter was mailed to the resident's son the same day.

The hospital had trouble evaluating his mental state, due to his limited English, and tried to send him right back to the nursing home. The nursing home refused to take him back. Then the hospital moved him to its behavioral health unit for a 72-hour mental health hold, found no danger to self or others and again tried to send him back to the nursing home.

The family filed an appeal of his transfer with the state health department, then withdrew the appeal on the grounds the resident did not want to go back.

Nevertheless, the California Court of Appeal upheld a citation issued to the facility for wrongfully transferring this resident.

Notice of Transfer Required

The court ruled that the prior notice requirements in the Federal statute are strictly mandatory as is the Federal requirement to follow state regulations for holding a bed open for the resident pending a successful outcome of the treatment for which the resident was transferred.

There were fifty-five documented prior episodes of aggressive acting out. There may have been justification for properly transferring him to a more secure setting, but there was no justification for abruptly sending him off to the emergency room and then flatly refusing to take him back. Even a true emergency requires as much prior notice to the resident and/or the family as is practicable under the circumstances. Kindred Nursing Centers West, LLC v. Calif. Health & Human Services Agency, 2005 WL 1460714 (Cal. App., June 22, 2005).

Federal regulations for involuntary transfers of nursing home residents require prior notice to be given.

Even in an emergency, prior notice must be given as many days as practicable before the proposed transfer or discharge.

There were at least 55 instances of aggressive behavior before the incident which resulted in his abrupt "emergency transfer" to a local hospital's emergency room. Prior notice would have been practicable.

Federal regulations do not allow notice to be given contemporaneously with the decision to transfer or discharge the resident.

For transfers, Federal regulations also require the resident and/or the family to be notified of the facility's bed-hold policy. Regulations on bed-hold policies vary from state to state. The rationale is that therapeutic leave in the facility to which the resident is transferred, e.g. a psychiatric hospital, might possibly resolve the issues for which the resident needed to be transferred.

CALIFORNIA COURT OF APPEAL
OPINION NOT OFFICIALLY PUBLISHED
June 22, 2005