

## Patient's Latex Allergy: Nursing Facility Cited For Physical Abuse, Civil Monetary Penalty Upheld.

A nursing assistant wore latex gloves while caring for a nursing home resident with a known latex allergy documented in his chart, causing the resident to suffer an allergic reaction which necessitated hospitalization.

The facility was cited for a series of four staff errors:

1. The nursing assistant was unfamiliar with the resident and his allergy;
2. Warning signs about the latex allergy were missing from the resident's room;
3. The nursing assistant did not receive a verbal warning in report at the beginning of her shift about the allergy; and
4. The nursing assistant herself failed to consult the resident's chart until the end of her shift.

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***Federal regulations require long-term care facilities to develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents (42 CFR 483.13 (c)).***

***Inspectors saw a pattern of neglect in implementing basic safeguards for residents who had life-threatening allergies, that is, a situation of immediate jeopardy did exist.***

UNITED STATES COURT OF APPEALS  
FOURTH CIRCUIT  
July 20, 2007

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### **Court Sees System-Wide Weaknesses in Facility's Quality of Care**

The US Court of Appeals for the Fourth Circuit turned down the facility's appeal. The court agreed with North Carolina state inspectors this was not an isolated error by a single caregiver, but instead showed a wider pattern of failure to implement protective measures for the safety of dependent patients. Thus this particular violation of Federal regulations did pose immediate jeopardy to the health and safety of the other residents.

The measuring rod for penalties for non-compliance with CMS regulations is not the actual harm to a particular resident but the potential for harm to other residents that the incident reveals. Liberty Commons Nursing and Rehab Center v. Leavitt, 2007 WL 2088703 (4th Cir., July 20, 2007).