

## Skin Care, Skilled Nursing: Civil Monetary Penalties Upheld.

A skilled nursing facility was cited and assessed a civil monetary penalty for violations of three separate Federal regulations in the care of one particular resident, which was upheld by the US Court of Appeals for the Fifth Circuit.

### Development, Progression Of Skin Lesions Is A Significant Change in Health Status

The resident developed two Stage II pressure ulcers, then two more two weeks later. A week after that one worsened to Stage III and a week later another worsened to Stage IV.

Facility staff did consult with the dietitian to see if changing the resident's diet might help with the problems with her skin. The Court saw this as an indication there was a realization that there had been a significant change in her health status requiring a comprehensive re-assessment of her needs, which was never done.

### No Documentation That Skin Lesions Were Unavoidable

The initial care plan on admission two years earlier called for lotion to the extremities twice daily, weekly skin assessments, turning and repositioning every two hours, an air mattress, whirlpool baths, nutritional supplements and use of a Hoyer lift for transfers. Basically none of this being done was documented in the chart.

A pressure sore can be considered unavoidable and not a violation of Federal regulations, despite the outcome, if routine preventive care was provided. However, according to the Court, routine care being in the care plan and routine care actually being done are two different things.

### Assistance With Activities of Daily Living Call Bells Not Accessible

The Court also ruled that call bells not being accessible to this resident and several others was a violation of Federal regulations that mandate help with ADL's for residents who need help. The call bell has to be in reach, not on the floor or on the bed where the resident cannot reach it.

It is also a violation to provide a bottle of eye drops to a resident without assessing the resident's ability to self-administer. **Windsor Place v. US Dept. of Health & Human Svcs.**, 2011 WL 2437804 (5th Cir., June 17, 2011).

***Federal regulations for skilled nursing facilities require the facility to complete a comprehensive assessment of a resident after it is determined, or should have been determined, that there has been a significant change in the resident's physical or mental condition.***

***Significant change can mean a major decline in the resident's health status that will not normally resolve itself without further intervention or implementation of standard disease related clinical interventions, that has an impact on more than one area of the resident's health status and which requires interdisciplinary review or revision of the care plan.***

***Federal regulations require that a resident who enters the facility without pressure sores does not develop pressure sores unless the resident's clinical condition demonstrates that they were unavoidable.***

***Federal regulations require that a resident who is unable to carry out activities of daily living receive the personal services necessary to maintain good nutrition, grooming and personal and oral hygiene.***

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
June 17, 2011

## Nurses' Duty To Monitor, Advocate: Court Sees Grounds For Suit.

The patient was in the nursing home for only two weeks before she was transferred to a hospital where she died in intensive care.

The family sued the nursing home for wrongful death due to nursing negligence.

The nursing home's lawyers filed papers with the Superior Court of Connecticut challenging the adequacy of the expert's opinion filed with the lawsuit, an expert's opinion being a mandatory prerequisite to filing such a lawsuit in Connecticut as in most US jurisdictions.

***The nurses violated the nursing standard of care by failing to monitor, assess, collect data, advocate for the patient, obtain necessary labs in time, notify the physician of changes in the patient and recommend discharge to a hospital.***

SUPERIOR COURT OF CONNECTICUT  
May 24, 2011

The Court ruled the expert's report in fact did state grounds for a lawsuit for nursing negligence.

The Court focused on the fact that the patient's vital signs, lab values and medical diagnoses pointed to life-threatening abnormalities.

The problems documented in the nursing home chart included low BP of 95/31, extremely elevated INR, high BNP and BUN, acidosis, hyponatremia, low bicarbonate, lower and upper extremity edema, *C. difficile* with diarrhea and chronic renal failure, according to the Court.

The nurses had the responsibility to monitor these data, understand their significance, report to the attending physician and advocate for transfer of the patient to a hospital much sooner than was eventually done, the Court said. **Estate of Vissicchio v. CSC Enterprises, Inc.**, 2011 WL 2418684 (Conn. Super., May 24, 2011).