

Osteoporosis: Burden Of Proof On Caregivers To Account For Fracture.

The New York Supreme Court, Appellate Division, pointed to the fact that for several months the eighty-seven year-old nursing home patient was non-ambulatory and required staff assistance even for repositioning in bed.

While getting her out of bed for a shower an aide noticed her right ankle was swollen. It was reported it to the nurse on duty and the patient was promptly taken by ambulance to an emergency room.

X-rays revealed that the ankle and the femur were fractured. The leg had to be amputated above the knee.

The Court accepted testimony from the patient's probate estate's nursing expert that the fractures most likely occurred during routine care.

The patient's advanced osteoporosis, in the estate's expert's opinion, required a very special level of caution when handling the patient. Osteoporosis most likely explained, but unlike what the nursing home's expert testified, did not excuse what occurred, the Court said. **Estate of Tedesco v. Eden Park Health Services, Inc.**, ___ N.Y.S. 2d ___, 2009 WL 3380517 (N.Y. App., October 22, 2009).