

## Patient's Falls: Court Overturns Verdict On Legal Technicality.

The patient was seventy-nine years old when he was admitted to a skilled nursing facility for rehabilitation.

He was alert at the time but had difficulty standing and walking and had a high risk of falling.

He fell nine times over a period of five weeks in the facility. The last of these falls caused a subdural hematoma which required hospitalization for brain surgery. Then he had a stroke.

Prior to his death he was admitted to the same facility a second time and had two more falls.

The patient's falls usually occurred when he tried to get out of bed to go to the bathroom.

After his first fall the patient was assessed as having poor safety awareness, poor judgment, unsteady gait and as attempting to function beyond his ability by climbing out of his bed or chair.

The recommended interventions were to lower the bed to its lowest position, start a two-hour toileting program and review his medications.

After his second fall he was assessed as being forgetful and impulsive and poor at using safety devices. The plan was to keep his walker within his reach.

After his third fall a self-release belt and a bed alarm were added.

However, two days later he fell twice on the same day. That led to a bedside commode with a urinal being provided as well as a tab alarm in bed.

Since he had been losing his balance while unzipping his pants the family was urged to get him pants with a Velcro fly closure.

After his sixth fall padded pants were recommended but he refused to wear them.

At that time it was noted that he was very adamant about transferring and ambulating without assistance.

The bedside commode was discontinued because he refused to use it.

After his seventh fall he was noted to be confused. A wheelchair alarm was added.

He was supposed to be visually monitored around the clock, yet his room was not visible from the nurses' station.

He fell again two days later.

***The Department of Public Health's investigator's conclusions which led to issuance of an administrative citation against the facility are not the final word in a civil lawsuit for professional negligence.***

***The jury was impermissibly and prejudicially swayed, and the jury's verdict awarding damages for negligence cannot stand.***

CALIFORNIA COURT OF APPEAL  
November 4, 2013

The last fall occurred around 1:00 a.m. After his bed alarm sounded a nurse did not get to the room for two minutes and he was already voiding in the bathroom. While a nurse was standing in the doorway he lost his balance and hit his head on the wall while he fell. This injury required brain surgery for a subdural hematoma.

### **Jury Verdict Overturned On Legal Technicality**

The jury awarded the family more than \$4,000,000. The California Court of Appeal, however, threw out most of the award on the grounds that the jury was improperly swayed by being informed that a citation was issued against the facility by the state Department of Public Health, which in a civil lawsuit is not dispositive of the issue whether the facility was guilty of negligence.

### **Restraints Not Used**

The Court rejected the facility's arguments that the jury should have been read state and Federal regulations that strictly limit the use of restraints.

That is, the fact that restraints require a physician's order and cannot be used for punishment or staff convenience and that side rails are considered a form of restraint did not mitigate the facility's responsibility to give better consideration to restraints, as argued by one of the family's experts. ***Nevarrez v. San Marino Skilled Nursing*, \_\_\_ Cal. Rptr. 3d \_\_\_, 2013 WL 5883460 (Cal. App., November 4, 2013).**

## Child Abuse: Aide's Suit Against Former Employer Dismissed.

A nursing assistant's job involved providing respite care to the parents of an autistic child. She stayed in the home four hours each day while the parents were able to go out for errands and other tasks.

The nursing assistant was suspended pending an investigation and then terminated after an incident in the home.

While preparing for a bath the child was momentarily left alone in the bathroom with the water running in the bathtub. When the aide came back the child was in the tub with very hot water running. The child had to be hospitalized for treatment of severe burns.

The nursing assistant's lawsuit against her former employer alleged defamation, libel and slander over a report of potential child abuse lodged by her employer with the state Department of Health.

The United States District Court for the Eastern District of Washington dismissed the case.

### **Abuse Reporting Statute Provides Legal Immunity**

A Washington State statute, similar to other state's laws, requires a healthcare employer to report any know or suspected abuse of a vulnerable person. An employer acting in good faith carrying out this legal obligation cannot face civil liability.

The Court said it was irrelevant that the nursing assistant was eventually cleared of wrongdoing by the state Department of Health and the local police.

### **Mitigating Circumstances**

The Court went on to say that the employer had no legal obligation to include what the nursing assistant believed were possibly mitigating circumstances in its report to the Department of Health, i.e., that the nursing assistant had not been trained for profoundly autistic children, that the homeowner had negligently set the thermostat for the water heater to a scalding 140° F and that the nursing assistant had a lower back problem which prevented her from lifting the child out more quickly. ***Griffin v. Beneficial In Home Care*, 2013 WL 6049011 (E.D. Wash., November 15, 2013).**