

# Nursing Home Care: Court Finds Nursing Facility Violated Federal Regulations.

The long-term care facility argued in its defense that state surveyors had imposed sanctions for violations of Federal regulations based upon erroneous interpretation of those Federal regulations.

The US Circuit Court of Appeals for the Sixth Circuit, in an opinion that will not be published in the Federal Reporter, agreed with the facility that Federal regulations do not impose a strict-liability standard, notwithstanding language in the regulations that facilities are required to ensure that skin breakdown and accidental injuries do not occur.

The presence or absence of an adverse outcome does not determine whether a violation of Federal standards occurred. The focus instead is on the quality of care.

## Pressure Sores

One particular resident had pressure sores. A resident having pressure sores in and of itself does not constitute a violation of Federal regulations.

However, he was observed sitting restrained in his wheelchair for extended periods without protective padding. He was also seen lying in urine-soaked bed linens for more than two hours, with urine contaminating a pressure sore. The court ruled that is substandard care and that it does violate Federal regulations.

## Waist Restraint

Another resident was found with a waist restraint wrapped around her chest and tied to a non-movable part of the bed frame. That could have led to injury to the resident, the court believed.

No actual injury occurred to this resident. However, her care was still held to be substandard in that the facility failed in its duty to provide adequate supervision and assistance devices to prevent accidents.

There was a reasonable probability of an accident, the court said, and that probability would support the surveyors' decision to cite the facility. **Clermont Nursing & Convalescent Center v. Leavitt**, 2005 WL 1869652 (6th Cir., August 4, 2005).

***Federal regulations for skin care require a long-term care facility to ensure that a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.***

***If a new pressure sore does develop or an existing pressure sore does progress, that does not necessarily prove a violation of Federal regulations.***

***The focus is not to look at the outcome with 20/20 hindsight. The focus is whether necessary treatment was provided to promote healing, to prevent infection and to prevent new sores from developing.***

***Federal regulations also require a facility to ensure that each resident receives adequate supervision and assistance devices to prevent accidents.***

***Again, looking at the outcome with 20/20 hindsight is not the proper focus.***

***The focus is whether the facility to steps to reduce the risk of accidental injury to the resident to the greatest degree practicable.***

UNITED STATES COURT OF APPEALS  
SIXTH CIRCUIT  
August 4, 2005