

Faulty Respiratory Assessment: Patient's Death Tied To Nursing Negligence.

The Superior Court of Connecticut upheld the jury's verdict of \$827,000.00 for the widow of a patient who died in a nursing facility, based on a finding of faulty respiratory nursing assessments.

Patient's Medical History

The sixty-seven year-old patient was hospitalized with Guillain-Barre syndrome to be intubated and mechanically ventilated.

A month later he was extubated and sent to a skilled nursing facility.

A month and a half after that he was sent to the long-term, sub-acute facility where he died.

Nursing Negligence

The evidence in the trial was that the sub-acute facility's nurses did not provide proper tracheostomy care, including assessment of breath sounds by auscultation of the lungs with a stethoscope to rule out the presence of fluid in the lungs, every two hours or more frequently as needed.

The court ruled this was sufficient evidence of negligence to sustain the jury's verdict in the widow's favor.

Although the fluid found post-mortem in his lungs was ruled hemorrhagic, that is, related to his underlying ischemic heart disease rather than upper respiratory secretions, the nurses' failure to do complete and timely assessments was ruled a substantial factor causing his death.

A substantial factor, by law, is something which sets in motion the final injurious force which immediately produced or preceded the ultimate injury.

Loss of Chance of Survival

Many states, like Connecticut, allow the family to recover damages for wrongful death when a patient who is already very seriously ill experiences some percentage loss of a chance of a successful treatment outcome, even when a successful outcome was far from certain in the absence of a caregiver's negligence. Osiecki v. Bridgeport Health Care Center, Inc., 2005 WL 1331225 (Conn. Super., May 12, 2005).

The court accepts the opinions of the patient's widow's expert witnesses.

The nursing standard of care calls for tracheostomy care and respiratory assessments, which would include assessment of breath sounds by auscultation, to be done every two hours at a minimum, or as needed.

Further, the court accepts the widow's medical expert's opinion that failure to assess the patient properly was a substantial factor in bringing about his death.

The patient died of cardiac arrest brought about by pulmonary congestion.

It is true that the primary purpose of auscultation of a tracheostomy patient's lungs by the nurse is to detect the presence of upper-respiratory secretions in the lungs.

However, had the nurses stayed on top of this patient's care they most likely would have detected the presence of fluid in the lungs related to his ischemic heart disease so that appropriate medical care would have been started before he died.

SUPERIOR COURT OF CONNECTICUT
May 12, 2005

Understaffing: Large Verdict Against Nursing Home.

A nursing home resident was in and out of the hospital with pneumonia, dehydration, anemia, urinary tract infections and pressure sores that progressed to Stage IV decubitus ulcers.

After she died her family sued the nursing home. The family was able to prove that the nursing home was so critically and chronically understaffed that the deceased did not and could not have been given anything approaching proper personal care.

The jury's verdict was \$1,600,000.00 for compensatory damages.

The judge was in error not to allow the jury to consider awarding punitive damages on top of that.

COURT OF APPEALS OF ARKANSAS
June 1, 2005

The jury awarded substantial monetary damages to the family.

According to the court record, aides at the facility did not even have time to fill residents' water pitchers and they had to cry out for water. Residents were left lying in beds saturated with urine and feces. Dressings were not properly changed; one dressing was simply placed over an older, soiled dressing. This resident's call light was intentionally placed out of her reach. I/O charting was completely neglected. On at least one occasion janitors were required to pose as aides when state inspectors were on the premises.

The Court of Appeals of Arkansas ruled the verdict was in error, but only because the jury was not allowed to consider awarding additional punitive damages. Rose Care, Inc. v. Ross, __ S.W. 3d __, 2005 WL 1283679 (Ark. App., June 1, 2005).