

Restraint-Free Facility: Aide Supervised Resident Properly, No Negligence Found.

The eighty-two year-old resident was returned to the nursing facility from the hospital following surgery.

He was reported to be extremely agitated at the time of his readmission, and this was reported to the nursing assistant assigned to care for him.

That evening the nursing assistant did not observe any agitation.

The nursing assistant brought him out of his room for dinner, then took him back to his room to use the restroom, be bathed and to be dressed in his pajamas.

Then he was returned to the day room in his recliner chair.

According to the court record the nursing assistant checked on him at least twelve times while he was in the day room.

He did not seem to be agitated, nor did he ever attempt to rise from his recliner chair.

The nursing assistant last looked in on him three minutes before he was found on the floor having fallen from his recliner.

He sustained injuries, not specified in the court record, from which he died. The family sued for negligence.

There is no specific proof the aide in this case did anything wrong.

The actions of personnel working in a restraint-free nursing facility will not be questioned after the fact for failing to consider use of restraints.

A Federal regulation for long term care states that the facility must ensure that the residents' environment remains as free of accident hazards as possible and each resident receives adequate supervision and assistance devices to prevent accidents.

The regulation does no more than vaguely promote keeping the environment as free from hazards as possible. It does not make a long term care facility liable any time an accident occurs, without proof of an error or omission below the standard of care.

APPEALS COURT OF MASSACHUSETTS
UNPUBLISHED OPINION
May 20, 2004

The jury found no negligence. The Appeals Court of Massachusetts agreed with the jury and ruled the case against the facility should be dismissed.

Restraint-Free Facility

The court upheld the facility's restraint-free policies. That is, the court refused to question an employee's actions in such a facility after the fact for not considering use of restraints.

A memo from a newly-hired nursing home supervisory employee stating that confused or helpless residents were not to be left alone unrestrained was at odds with the facility's policies as explained to the nursing assistant.

The court ruled the memo irrelevant, that is, it was not a correct statement of overall institutional policy and was not how the nursing assistant in question had been oriented to institutional policy.

Federal Regulations

A Federal regulation states that a nursing facility must ensure that a resident's environment remains as free of accident hazards as possible and must ensure that each resident receives adequate supervision and assistance to prevent accidents.

The court ruled the regulation is meant to promote a common-sense approach to environmental safety.

There must be specific proof that an employee committed a violation of the standard of care before a facility can be sued for violating this Federal regulation. In this case there was nothing anyone could show that this nursing assistant did wrong. **Higgins v. Lifecare Centers of America, Inc.**, 2004 WL 1124736 (Mass. App., May 20, 2004).

LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

ISSN 1085-4924

© 2004 Legal Eagle Eye Newsletter

Indexed in
Cumulative Index to Nursing & Allied
Health Literature™

Published monthly, twelve times per year.
Mailed First Class Mail at Seattle, WA.

E. Kenneth Snyder, BSN, RN, JD
Editor/Publisher

12026 15th Avenue N.E., Suite 206
Seattle, WA 98125-5049
Phone (206) 440-5860
Fax (206) 440-5862
info@nursinglaw.com
http://www.nursinglaw.com

Circle one: \$155 print	\$120 electronic	Phone toll free
Check enclosed _____	Bill me _____	Credit card _____
1-877-985-0977		
Mail to:		
Legal Eagle		
PO Box 4592		
Seattle WA		
98194-0592		
Signature _____	Expiration Date _____	
Name _____		
Organization _____		
Address _____		
City/State/Zip _____		