

## Service Of Process: Default Upheld.

A deceased resident's probate administrator filed suit on behalf of the family against the nursing home for medical malpractice, negligence and violations of the nursing-home residents' rights law allegedly leading to the resident's death.

The court papers for the lawsuit apparently were misplaced or misdirected such that the nursing home's legal counsel, unaware of the lawsuit, was not able to file a formal response within the short time frame granted by state law.

Not having received a response to the lawsuit, the court decided the case in favor of the patient's family by default.

The Court of Appeals of Arkansas was unable to find any excuse for the defendant's neglect and ruled that resolution of the case by default should stand.

### **If Legal Court Papers Are Delivered Prompt Action is Required**

The case points up the importance of all healthcare personnel being trained that legal court papers cannot be ignored.

Staff should already know where such papers are to be sent and appreciate the dire importance of taking action immediately if court papers should appear.

State laws generally provide very short deadlines, fourteen to thirty days, for the defendant to file a response to a civil lawsuit, after which the ability to defend the lawsuit can be forfeited altogether.

Coverage under a professional liability insurance policy can potentially be voided by the insurance company under the non-cooperation clause if the insurance company's ability to defend the lawsuit is compromised by neglect in promptly forwarding the lawsuit papers.

It is not for non-legal personnel to judge the validity of a lawsuit filed against the facility where they work. Even if the lawsuit is not valid, say because the statute of limitations has expired, that must be presented to the court as a defense by qualified legal counsel in the manner and within the time frame allowed by law.

**Beverly Enterprises v. Jarrett, 2007 WL 466810 (Ark. App., February 14, 2007).**