

Substandard Skin Care: Court Agrees To Punitive Damages.

The eighteen year-old patient was rendered a quadriplegic as a result of a motor vehicle accident.

After seventeen days in acute care he was transferred to a rehab facility. On admission to the rehab facility he had a sacral pressure sore he contracted while in acute care.

During his stay in the rehab facility the sacral lesion progressed to Stage III. He was transferred from the rehab facility to another setting where it took six months for the wound to heal. Healing has not been complete and the wound still opens.

The patient's civil lawsuit against the rehab facility resulted in a \$250,000 compensatory verdict. However, the judge at the trial declined to allow the jury to consider additional punitive damages.

The Court of Appeals of Arizona ruled the judge was in error and should have allowed the jury to consider additional punitive damages for grossly substandard nursing care in the rehab facility.

Nursing Documentation Lacking

The facility's manual called for a patient like this one to be assessed, repositioned and cleaned several times each day. The physician had also ordered a topical medication to be applied twice daily.

For a twelve-day period there was no record in the chart of required nursing assessments of the wound. An eight-day gap showed no record of the topical medication having been applied.

Some of the facility's nurses were required to testify in the trial. They conceded they were aware of the interventions that were ordered for their patient's pressure lesion and admitted they knew that failure to uphold treatment standards posed a significant risk of exacerbation of their patient's skin lesion.

One of the patient's nurses testified further that the gaps in the charting should have prompted an investigation at the time to determine whether the patient was receiving adequate nursing care.

In the final analysis, according to the Court, the very harm that proper skin assessment and care are meant to prevent or minimize did in fact happen to this patient. **Newman v. Select**, ___ P. 3d ___, 2016 WL 1377634 (Ariz. App., April 7, 2016).

Something much worse than negligence is required for punitive damages.

Punitive damages may be awarded in a civil case when the defendant has intentionally harmed the injured party or has acted with knowledge that his or her conduct carried a substantial risk of harm to the injured party.

When the wrongdoer was aware of the harm posed by his or her conduct, but went ahead nevertheless in deliberate disregard of the rights of the victim, punitive damages are appropriate to punish the wrongdoer and to deter others from acting the same way.

The rehab facility's nurses were required to reposition the patient, clean his pressure wound and administer a topical medication.

The nurses understood the importance of those precautions and the potential for harm from substandard care of a pressure lesion, but failed to follow the facility's procedures and the physician's orders.

The evidence was sufficient for the jury to consider punitive damages.

The trial judge erred by refusing to allow the question of punitive damages to go to the jury.

COURT OF APPEALS OF ARIZONA
April 7, 2016

EMTALA: Nursing Home Transfer Did Not Violate Patient's Rights.

The patient was hospitalized for a two-week course of abdominal surgeries related to Crohn's disease which had been a chronic problem for her for more than sixteen years.

When her caregivers believed she was ready to leave the hospital she was transferred to a long-term care facility to manage her colostomy, even though the patient did not feel she was ready and did not want to leave the hospital.

The patient still had problems with her colostomy. She had to return to the hospital for more surgery.

The patient sued the hospital for, among other things, violation of her rights under the US Emergency Medical Treatment and Active Labor Act (EMTALA) for transferring her from the hospital allegedly before she was stabilized.

The patient claimed she was still having leg pains when she was transferred from the hospital to a nursing home.

However, that was not an emergency medical condition for which the patient had presented in the emergency department.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
April 11, 2016

The US District Court for the Middle District of Pennsylvania ruled the hospital did not violate the EMTALA by sending the patient to a nursing home.

The leg pains she was still having at the time of transfer from the hospital were not an emergency medical condition for which she had presented at the hospital as an emergency patient. Thus no emergency medical condition still existed that had not been stabilized at the time of transfer from the hospital. **Langston v. Hershey**, 2016 WL 1404190 (M.D. Penna., April 11, 2016).