

Patient Falls In Nursing Home: Court Rules Out Patient's Expert Witnesses, Dismisses Case.

An elderly patient was admitted to a nursing home with diagnoses of mental confusion, dementia and disorientation. Her admitting nursing assessment indicated she was ambulatory only with assistance, was confused and was only sometimes oriented to place and time.

She was categorized as a high risk for falling. She fell twice, once out of bed and a second time in the dining room. The falls occurred fifteen and sixteen days after her admission. She started to deteriorate after the second fall and ten days later was taken to the hospital. At the hospital a hip fracture was diagnosed and operated upon with a prosthesis.

She sued the nursing home for damages. She died of unrelated causes before trial and the personal representative of her probate estate continued the lawsuit on behalf of her family who stood to inherit the proceeds of the lawsuit.

Expert Witnesses Disallowed

One of the personal representative's physician experts had been in general medical practice for years and had seen countless geriatric patients.

However, according to the Supreme Court of Virginia, he had no particular expertise in care planning in nursing homes to testify how the lack of a care plan could have caused a resident to fall.

A second physician was not allowed to testify about the delay in diagnosing the hip fracture, presumably from the second fall, because he had no facts to support his opinion how the fracture could or should have been detected earlier.

Finally, the court disallowed the family's nursing expert because she had not worked in nursing homes and was not familiar with the standard of care for nurses in nursing homes. Her extensive experience with geriatric patients in acute-care settings did not make her an expert on nursing home care, the court ruled. **Perdieu v. Blackstone Family Practice Center, Inc., ___ S.E. 2d ___, 2002 WL 31048324 (Va., September 13, 2002).**

The nursing expert the resident's family's lawyers wanted to have testify was not qualified as an expert in nursing home care.

Expert testimony is generally necessary to establish the appropriate standard of care, to establish a deviation from the standard of care and to establish that such a deviation was the legal proximate cause of the damages claimed in the lawsuit.

The resident's family's lawyers alleged two theories as to how the nursing care she received was substandard.

The lawyers alleged the nursing home was negligent for failing to implement a care plan that would have prevented the resident's falls.

They also alleged the nursing home generally failed to properly attend, restrain, assist, examine, diagnose and treat her.

Either of these legal theories would require expert testimony.

Without expert testimony the resident's family's case must necessarily be dismissed.

SUPREME COURT OF VIRGINIA
September 13, 2002

Alzheimer's: Resident Killed On Freeway, Wandered From Nursing Home.

An elderly Alzheimer's patient wandered from the nursing home at least twenty times over a five-month period before she walked onto a nearby freeway and was struck and killed by a car.

In an unpublished opinion, the Court of Appeals of Texas approved a \$9000 civil verdict against the nursing home.

The nursing home plainly had inadequate facilities to monitor this resident's wandering.

The nursing staff should have communicated to the rest of the staff that this resident was prone to wandering and instructed them to watch her more closely.

COURT OF APPEALS OF TEXAS
August 22, 2002

Door Alarm Was Disconnected

It was three days before Christmas. Groups of family, volunteers and civic organizations were frequently going in and out the front door, so someone disconnected the alarm. The patient apparently slipped out with a group of visitors.

Patient Let Out of Geri Chair

The nursing staff had placed the patient in a geri chair. A member of the kitchen staff apparently let her out to eat, but apparently had not been instructed and did not understand the need to see she got back into the chair when she was done.

Attempt to Transfer Was Too Late

The court acknowledged the nursing staff that very afternoon was actively trying to place her in a more secure nursing home or in a psychiatric hospital. **Love v. CF & H Corporation, 2002 WL 1939152 (Tex. App., August 22, 2002).**