Who is Responsible for the Death of a Long-Term Care Resident?

Avoiding Liability Bulletin - May 1, 2015

In 2000, a female patient, age 54 years old, suffered a second debilitating stroke, and was admitted for total care at a nursing home.[1] The patient also suffered from other diagnoses, including diabetes, hypertension, and depression. At times, the patient experienced pressure ulcers at the facility.

The patient's daughter decided to transfer her mother to another nursing home. At the time she was admitted in April of 2003, she had no pressure ulcers, but due to her immobility, was still at risk for their development. The patient's transfer form listed this risk and a treatment plan was prescribed at the new facility to prevent another ulcer from developing. The patient was to be turned and repositioned by nursing staff frequently, kept clean and dry after incontinence occurred, and provided with adequate hydration and nutrition.[2]

The patient's condition deteriorated at the new facility and by July of 2003, she had both a low-grade fever and low blood pressure. Her daughter had her mother transferred again to another facility, and upon admission, she had a urinary tract infection and a number of pressure ulcers that had become infected. She was put on IV therapy, developed pulmonary swelling after the admission, and required assistive ventilation and a feeding tube. [3]

The daughter decided to halt all "aggressive measures" and the feeding tube and ventilator were removed. The patient died on July 26, 2003 of sepsis.

The daughter, as the Administratix of her estate, filed a lawsuit against all of the nursing homes (some were owned by the same corporation) alleging that the defendants' conduct in the care of her mother constituted ordinary negligence, negligence per se, and violations of a state adult protection act. She sought compensatory and punitive damage. The defendants' contended that the allegations were "medical malpractice" claims under the state medical malpractice act.[4]

There were differing theories as to the actual cause of death of the patient. However, pivotal testimony came from several certified nursing assistants (CNAs) who had treated the deceased patient while she was at the last nursing home. The CNAs allegations in their depositions were:

1. The CNAs provided most of the hands-on basic care of the residents, including feeding, bathing, cleaning them and changing pads underneath them after incontinence, and turning and repositioning them;
2. The CNAs understood the importance of this basic care;
3. Understaffing prevented the CNAs from performing basic care in a timely fashion;

4. Understaffing was caused by the nursing home administrators' failure to allocate enough funds for staff in order to avoid "cutting into…bonuses that were based on bottom-line profitability";
5. Due to short staffing and the lack of timely basic care, residents were sometimes left in their own urine and feces and multiple pads were used instead of changing a single wet pad;
6. The deceased patient was not turned and repositioned as needed due to the short staffing and was found lying in her own urine for such long periods of time that the urine had dried on the bed sheets;
7. The deceased patient would eat and drink when the CNAs encouraged her to do so, but they did not have the time to feed her or administer fluids;
8. The CNAs regularly reported staff shortages to supervisors, including the director of nursing and the administrator so the defendants were aware of this problem;
9. When state surveyors surveyed the facility, more staff would be on duty, increasing patient care temporarily;
10. CNAs observed blank spaces in patients' charts that were either filled in ahead of time or a secretary would take charts that needed ADLs to be charted and just filled in the blanks; and
11. The facility laundry staff, dissatisfied with the working conditions there, at times did not timely wash towels and sheets.[5]

The case's procedural history was lengthy and contentious, involving the interplay of the laws and case decisions applicable to the case. In the end, however, the Supreme Court of Tennessee held that the trial court erred in dismissing the part of the case concerning the allegations of negligence and negligent medical care.

The Court also ordered that the daughter could pursue recovery under a negligence per se theory and the state adult protection act. In addition, the Court also upheld the decision of the appellate court that the dismissal of the daughter's claim for punitive damages was incorrect.

The case was sent back to the trial court for proceedings consistent with the opinion of the Tennessee Supreme Court.

This case is an extremely important one because it emphasizes not only the essential role the CNAs had in keeping the case from being dismissed through their truthful testimony concerning the care of the patient, but also because short-staffing in this case was a substantial factor in the decision of the Tennessee Supreme Court. Moreover, the CNAs voiced their concerns to higher-ups in the administrative chain-of-command on a regular basis.

The duty to share concerns about patient care to those in charge is a critical one. The administrators/facilities could not say they knew nothing about the conditions this patient endured until her death. Each and every one of them had a duty to correct them.

It will be up to the trial court to determine who is liable for this patient's death, but the nursing homes, under the negligence theory of corporate liability, are prime candidates for a verdict against them.

FOOTNOTES

1. Estate of Martha S. French v. Stratford House et al., 333 S.W. 3d 546 (2011), 550.

2. Id .

3. Id .

4. Id ., at 551.

5. Id ., at 552

Author:
Nancy Brent