

## Medical School for Attorneys

# The Trouble with Nursing Homes

With the aging population, the trouble with nursing homes will likely continue. Attorneys will continue to face growing numbers of questions from clients regarding possible abuse and neglect of family members who are placed in nursing homes for skilled nursing care.

Most nursing home cases do not involve a single act of negligence by a single health care provider. In fact, substandard care may be the result of a team of individuals. Take for instance the negligent care of a patient who develops a decubitus ulcer. Which team members may have been involved?

Certainly the resident's doctor, who is required by federal regulations to assess the patient's condition every 30 days, may be involved. Physician documentation should show evidence of evaluation of the patient's skin for evidence of shearing, pressure, dryness, maceration, and adequate circulation.

The nursing home administrator, although not responsible for direct patient care, was responsible for hiring adequately trained and experienced staff. The federal Nursing Home Reform Act (NHRA) requires Medicare and Medicaid certified homes to have at a minimum an RN director of nursing; an RN on duty 8 consecutive hours/7 days a week and 1 RN/LPN for the two remaining shifts. (Continued on back)



**Kathy G. Ferrell, BS RN LNCC**  
Legal Nurse Consulting – Board  
Certified

[www.ferrellconsulting.com](http://www.ferrellconsulting.com)

205-566-5406

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There are no staffing requirements for certified nurse's aides (CNA) but these staff members are required to have a minimum of 75 hours of training. Total licensed nursing requirement converted to hours per resident day (HPRD) in a facility of 100 residents is around 0.30 HPRD. State regulations may differ with only minimal increases in staffing requirements.

Based on federal and state staffing ratios, RNs/LPNs have about 30 minutes per resident per day to provide daily assessment, review labs/data, provide wound assessment and treatment, communicate with the MD as needed, communicate changes in the nursing care plan to the CNA regarding turning and repositioning, and to document all of this information in the medical record. In a population of 100 patients this is equivalent to 30 hours of licensed nursing care per day. The problem is...there are only 24 hours in a day.

Consider that the CNA is often assigned to a "hall" which can mean 20 or more patients each day. The CNA provides such services as toileting or incontinent care, bathing/dressing, patient position changes and transfers, ambulating the patient, setting up meal trays and feeding those unable to feed themselves, offering water/fluids, providing snacks, changing linens, and answering call lights.

Just these examples provide some insight into the trouble with nursing homes. Our fictitious patient requires a nutritionist to ensure adequate caloric intake, especially protein. Protein is necessary for building new tissues and repair of damaged tissues. The nutritionist is required to monitor food intake, labs, calculate calorie needs and adjust the diet and meal supplements as

needed. The nutritionist's failure to provide these services can result in deterioration of the decubitus ulcer and slow wound repair regardless of the nurse's actions.

Physical therapy services may be required by this patient to evaluate the patient's positioning in the bed or chair and to recommend special pressure relief surfaces, such as pressure relief mattresses or cushions or protective boots for the feet/ankles, etc.

The certified wound care nurse (CWON), and often a physician specializing in wounds are consulted to provide in-depth evaluations and treatment decisions regarding the decubitus ulcer. The wound care nurse re-assesses the wound on a weekly basis for evidence of healing or deterioration of the decubitus ulcer in response to the prescribed treatment plan.

And lastly, a speech therapist might be consulted to evaluate the patient's ability to swallow solid foods and liquid. The inability to eat and take in adequate nutrition is a key factor in the prevention and healing of decubitus ulcers.

Therein lays the trouble in determining nursing home negligence. Who failed to deliver the standard of care? Where is the evidence of negligence? The evidence of quality of care must be located, integrated, and trended by the legal nurse consultant for evidence of improvement or decline in the patient's condition and the timely actions taken in response to key indicators. Key information may also be obtained from the patient, family, employees, former employees, nursing home inspection reports, cost reports, and staff turnover data.