



TREATING THE ELDERLY WITH DIGNITY

by: Regina A Casey, Esq.

In recent years there has been a dramatic increase in the number of claims filed for Violations of Patients Rights. Health & Safety Code § 1430(b) states "A current or former resident or patient of a skilled nursing facility...may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Code of Regulations, or any other right provided for by federal or state law or regulation..." One of the rights listed in the Patients' Bill of Rights is the right to be treated with consideration, respect, and full recognition of dignity in care of personal needs.

In addition to state law, there are federal regulations establishing patients rights in a nursing home. Title 42 Code of Federal Regulations § 483.10 states "The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility."

A frequent allegation in lawsuits is that a Defendant nursing home showed a lack of consideration and respect for a Plaintiff and insulted his or her dignity by leaving Plaintiff in urine and feces for long periods of time. Poor hygiene alone can be a basis for a lawsuit under the theory that the staff at the skilled nursing facility violated a patient's right to dignity by failing to provide proper grooming. If a patient is totally dependent on staff for his or her activities of daily living, all that is required for plaintiff to establish a violation and recover costs of litigation and attorneys' fees is testimony of a family member who convinces the jury that every time they visited the patient he or she was not bathed, appeared unkempt or was in soiled clothes.

Healthcare professionals are trained to treat their patients with dignity and respect and strive to do so. There are times, however, when a patient refuses care, so their hair was not combed or their teeth had not been brushed when the family comes to visit. To avoid being falsely accused of not meeting the patient's personal needs and exposing the facility to a claim for violation of the patient's right to dignity, remember to follow the steps outlined below.

- 1) Document all patient refusals of care-When the patient refuses care, it is not only important to document that the patient refused, but you should document what you did to try to obtain compliance.
- 2) Notify the family and physician of refusals of care-Not only should patient refusals be documented, but the record should note the family and physician were notified of the refusal.
- 3) Involve the family in the plan to obtain compliance-In addition to documenting the refusal and who was notified, a plan should be implemented outlining measures to

take in an attempt to obtain the patient's cooperation. Asking the family to assist in the process not only increases the chances that the patient will accept the offered care, but is also a good way to demonstrate to the family that efforts are being made to provide the care that was refused.

- 4) Educate family on the dignity of risk-There are occasions when honoring a patient's refusal is the only way to treat him or her with dignity. Many times family members are overly protective of their loved one and expect the nursing staff to provide care even if refused. In those situations the family may need to be educated that the patient's wishes should be honored. To treat the elderly with dignity requires that you respect their right to autonomy and control whenever reasonable.

About the Author:

A shareholder at Wroten & Associates, Regina Ann Casey has been defending physicians, hospitals and various other healthcare providers for over 20 years. Previously serving as a litigation partner at an East Coast firm with offices in Maryland and Washington D.C., she then worked with a West Coast medical malpractice defense firm. She has been with Wroten & Associates since it was founded.

Ms. Casey has successfully defended medical malpractice cases in federal and circuit courts in Maryland. She has also tried cases in the U.S. District Court and Superior Court for the District of Columbia, and in California's Superior Court. She has participated in a number of arbitrations and is a mediation specialist. She has represented physicians in administrative hearings before the Medical Board in Maryland and at hearings to defend physicians' hospital privileges.

She graduated magna cum laude from Duke University earning a Bachelor of Science in Nursing in 1975. After working as a nurse at the University of Virginia and Georgetown University Hospitals, she earned her Master of Science in Nursing at Catholic University America, where she was a member of the Nursing Honor Society, Sigma Theta Tau. She graduated with honors from the University of Maryland Law School and was admitted to the Maryland Bar in 1986; the District of Columbia Bar in 1987, and the California Bar and U.S. District Court for the Central District of California in 2001.

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