

SIXTH CIRCUIT DETERMINES NURSING FACILITY MUST PROVE LACK OF NEGLIGENCE WITH MISSING DOCUMENTS

In a suit brought against an Ohio nursing facility related to improper medication administration, the U.S. Court of Appeals for the Sixth Circuit allowed the use of *res ipsa loquitur* in finding a facility responsible for lapses in a resident's medication regime.

Res ipsa loquitur is a legal theory of negligence that is Latin for "the thing speaks for itself" and is utilized to prove negligence when the evidence eliminates other potential causes. This is frequently argued in medical malpractice lawsuits involving actions such as surgical tools left in a patient's body or amputating the wrong limb.

In this particular case, a nursing facility was alleged to have chronically failed to properly administer medications correctly. The Court cited multiple prior medication errors and only two nurses responsible for eighty residents' medication regimes in awarding punitive damages. Since the medication administration was solely within the exclusive control of the two nurses and the medical records and medication administration records for the affected residents were missing, the Court shifted the burden to the nursing facility to prove they were not negligent under the *res ipsa loquitur* theory.

Typically, a plaintiff has the burden of proving negligence. However, since the nursing facility was in exclusive control of the medication administration, and with the Court permitting the *res ipsa loquitur* theory, the nursing facility had an obligation to dispute the allegations of negligence. In this instance, the nursing facility should have provided the medical records, including medication administrations, for the affected residences. Unfortunately, the nursing facility states the records in question had "gone missing." Further, testimony at trial revealed falsification of medical records and altered records attempting to cover up errors.

Unable to dispute the allegations of negligence, the nursing facility was faced with a significantly greater hurdle of proving a lack of negligence at trial. Unable to do so, the facility was found liable and the plaintiff awarded \$800,000 in punitive damages.

While this case highlights the responsibility providers have in ensuring residents and patients are properly administered medications, it also highlights the importance of accurate and reliable medical records and medical record systems.

Should you have any questions, please contact:

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