

VIRGINIA MEDICAL LAW REPORT

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LEGAL NEWS FOR THE MEDICAL COMMUNITY

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Nursing home resident dies from head injury

Confidential Settlement

This case involved a mandatory arbitration clause in a nursing home contract. However, the court denied the defendant's motion to compel arbitration because the person signing the contract had no legal authority to act for or bind the resident.

Plaintiff's decedent was a resident of a nursing home for 33 years and suffered from mental retardation related to a traumatic brain injury at the age of two. The decedent also suffered from left side paralysis and a seizure disorder due to an intra-cranial cyst. The resident was assessed as a high risk for falls.

One of the principal goals of the nursing home's care plan for the decedent was to keep the resident "free from falls through nursing intervention and prevention as evidenced by no falls." A second goal of the care plan was "to ensure resident will be maintained in a safe environment as evidenced by no injuries related to falls."

Between May 2005 and September 2007, the resident had fallen on 14 occasions. On Sept.



ZYDRON



SIX



GILL

1, 2007, the resident fell out of his bed and face down onto the floor when a certified nursing assistant turned away from the resident to go into an adjacent closet and left the side rail of the resident's bed down.

The resident sustained a large hematoma to the right side of his forehead, an abrasion on his head, and bleeding on his right arm, which required dressing. Nursing staff also failed to notify the doctor, failed to have the resident evaluated at the emergency room, and failed to complete the required neurological assessments after the fall. The resident died on Sept. 3, 2007, from an undiagnosed subdural hematoma, which was related to the fall on Sept. 1.

[10-T-156]

Type of Case: Medical malpractice - nursing home neglect

Injuries alleged: Wrongful death

Name of case: Confidential

Court: Williamsburg/James City County Circuit Court

Tried before: Mediation

Name of mediator: Thomas S. Shadrick

Verdict or Settlement: Settlement

Amount: Confidential

Date: July 29, 2010

Demand: \$625,000

Highest offer: No offer prior to mediation

Plaintiff's attorneys: John E. Zydron, Catherine M. Six, C. Stewart Gill