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Highlights of Legal News & Information



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Assessment In The Nursing Home Setting

If you start walking down the wrong path you are ultimately going to get to the wrong destination. It's pretty simple actually. This truth is most obvious in the nursing home setting. If you want to protect your loved one from an understaffed and over-worked nursing home facility make sure that your loved one starts off on the right path. Every nursing home admission or re-admission begins with an Assessment. As you will see from this article if these initial stages of care are done incorrectly all the effort in the

world on the nursing home's part will not avoid a negative and possibly fatal outcome.

The assessment process was established by the federal law to set standards of good nursing home practice and to guarantee and protect a resident's right to individualized care. Assessment coupled with care planning (see next issue for a full discussion of care planning) form the foundation of all care ordered to a resident. Let's start by defining our terms. Assessment is the process of gathering and collecting information

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Warning Issued For Birth-Control Users

On November 10, 2005, Ortho McNeil, a division of Johnson & Johnson, warned millions of women using Ortho Evra that the birth control patch exposes them to significantly higher doses of hormones and may put them at greater risk for blood clots and other serious side effects than previously disclosed. This warning comes after the Food and Drug Administration has received 21 reports of life threatening blood clots and other problems associated with the use of this patch. Earlier

this year, it was reported that patch users die and suffer blood clots at a rate three times higher than women taking a birth control pill.

FDA records show that 17 patch users between the ages of 17 and 30 have suffered fatal heart attacks, blood clots and possible strokes since August 2002.

If you or someone you know has been affected by a birth control patch, please contact us. There is no obligation and no fee unless we recover compensation for your injuries, pain and suffering.

Rights Of Nursing Home Residents

Nursing home residents have many rights, including:

- Freedom from discrimination based on race, color, national origin, disability, age or religion.
- The right to be treated with dignity and respect.
- Freedom from abuse and neglect. Residents have the right to be free from verbal, sexual, physical, and mental abuse.
- Freedom from restraints. Physical or chemical restraints can't be used, unless needed to treat medical symptoms.
- The right to be informed about their medical condition, medications and to see their own doctor.



Aronberg, Kouser & Paul, P.A. Awards & Settlements

The following are some of Aronberg, Kouser & Paul's successful nursing home malpractice outcomes:

- \$535,000 for a 100-year-old woman who sustained multiple fractures in a fall from the back of a nursing home facility when a door was negligently left open.
- \$225,000 for the family of a deceased nursing home resident who sustained a fractured ankle when a nurse aide failed to properly transfer the resident from her wheelchair to her bed.
- \$250,000 for a nursing home resident who contracted bedsores and suffered from malnutrition.
- \$150,000 for an 88-year-old woman who sustained a fractured hip from a fall.

Assessment In The Nursing Home Setting, *continued*

about an individual and their needs in a nursing home. Your participation as a family member with unique untapped information is essential to the process regardless of whether or not the nursing facility performing the assessment thinks so or not.

The assessment period following an admission or re-admission is generally a multi-day long process that includes and incorporates multiple disciplines from nursing, medicine, pharmacy, dietary and therapy. The assessment will include the resident's abilities to function in areas such as walking, talking, communicating, eating, hearing, dressing and sight. This will establish how much assistance the resident needs in any of these areas. Finally, the assessment should also include the likes and dislikes of the resident, their activities, habits, relationships, hobbies, etc. As you can see,



family members are the ideal people to supply this useful information to the assessment team at the facility. For example, if your loved one sleeps much sounder through the night if they have a glass of milk before bedtime, then this information can aid the staff in helping the resident get rest and avoid the use of "sleeping aids" which can lead to other serious problems such as falls, loss of appetite and lethargy. It might be hard to believe but something as simple as letting a resident listen to soft music 10 minutes before bed can avoid overmedication, medication errors, fractures from falls and other horrific injuries.

To best protect your loved one during the assessment period you should prepare yourself at the time of admission to provide the staff with the following information:

- a) Date of birth and place of birth
- b) Names, addresses and telephone

numbers of spouse, siblings, parents, family members

- c) Ethnicity and religious affiliations
- d) Educational background
- e) Marital status and date of marriage
- f) Employment during life of resident
- g) Hobbies
- h) Date of divorce or widowhood if applicable
- i) Living arrangement prior to nursing home admission
- j) Special problems or issues encountered with resident prior to admission

k) Reason for your loved one's placement in a nursing home

l) Resident's daily schedule prior to admission

m) Particular things that resident enjoys

n) Dietary, sleeping and activity preferences

o) Medications

p) Prior primary care physicians and specialists

q) Location of pharmacy

r) Any signs of medical, social, familial, or occupational events that have changed resident's life drastically in the last 5 years

If you give the nursing home this vital information the odds that your loved one will receive the proper careplan will increase dramatically. As a nursing home abuse litigator, I can tell you that several fatal and devastating abuse and neglect situations could have been avoided had the nursing assessment been properly performed. While this is the nursing home's responsibility, your access to critical information makes you an essential part of the process.

If you or a loved one have questions about nursing home care please do not hesitate to contact the Office of Aronberg, Kouser & Paul, P.A. If you are noticing a problem your time may be limited before serious consequences occur for your resident.

LEGAL BRIEFS

■ New Case Shows Special Rules For Making Claims Against The Government

Many accident victims have a valid claim against the government. For example, they may have been in a car accident with a government employee, or a road may be improperly maintained. As a new case shows, seek legal help promptly if you have a potential claim against the government. There are special rules for making government claims, and not following them can cause you to lose your claim.

A husband and wife were driving when they got into an accident. The wife was killed, but the husband waited many months before calling a lawyer. Though the husband had a strong claim against the state for improper road maintenance, the court dismissed the case. The court noted there are shorter time limitations

for making claims against the government. The husband's claim was dismissed because it was filed after the deadline, and the court ruled that the husband did not have a justifiable excuse for the delay.

■ Personal Injury Reminder: Making A Claim If You Are Partly At Fault

Many accident victims do not make a claim because they think they were partly at fault and therefore won't be able to recover any money. It's important to remember that in most states, you can still recover money even if you are partly at fault for an accident. Your award will just be reduced by the amount of your fault. For example, if you were 25% at fault for the accident and your damages are \$10,000, your award will be reduced by 25%, or \$2,500. You will still recover \$7,500.

Did You Know . . . ?

Did you know . . .

A doctor who is about to treat you, or operate on you, or prescribe you medication, must explain the risks as well as the benefit of what he/she is recommending, or he/she can be liable to you for money damages? This is called the doctrine of Informed Consent, and it is the law everywhere. Most doctors will say that they explained everything in detail to every patient, so you must be certain to ask lots of questions . . . and get straight answers. Before you allow yourself or your loved ones to go "under the knife," remember that the only stupid question is the one you did not ask.

Did you know . . .

If you are a passenger in someone else's car, or driving a company car, and are unfortunately injured, if an uninsured driver of another car was at fault, you may not be able to recover any money greater than

your own insurance limits? The courts have held that insurance policy "step down" clauses can be used by your own insurance company to limit the amount you recover, even if you were not at fault. You may have such a clause in your policy, and not even know it, stepping you down to the lowest possible coverage. This is why you must be certain to carry at least \$100,000 of uninsured motorist coverage on your auto policy . . . hundreds of thousands of drivers are out there on the streets with no coverage at all! You must protect yourself and your loved ones by making sure you that you have adequate coverage.

Did you know . . .

We here at Aronberg, Kouser & Paul are here to serve you and answer all of your questions about the law. Call us for a free consultation on any legal matter you have . . . we will be glad to be of service to you.



Our firm receives many new clients based upon the references of our current clients and friends of our firm. We would like to express our deep appreciation to everyone who refers anyone to our firm. We sincerely appreciate the trust and confidence you place in us by making these referrals.

Thank you for thinking of us when you or someone you know needs legal help. We welcome and encourage your referrals. We will continue to strive to provide top quality legal services and representation to you and anyone you refer to our firm.

Aronberg, Kouser & Paul

Questions & Answers About Buying or Selling A Home

For most people, a home is their largest investment. It's therefore vital to take steps to protect yourself against problems with home purchases. Here are some often asked questions about buying or selling a home.

Q. I am selling my home and want to avoid legal problems. What's the best way to do this?

A. Most disputes arise from problems the buyer later discovers with the home. To help prevent this:

- Disclose defects in writing.
- Make repairs before selling. This includes plumbing, electrical and other problems.
- Sell the home "as is." This means you are selling the home in its current condition and won't pay for repairs. In most states, this does not eliminate your duty to disclose defects you know about.

Q. What can I do to avoid legal problems with the home I buy?

A. You should also take steps to avoid problems over defects discovered after buying the home. Do this by learning as much as you can about the home before buying. Ask the seller what needs to be fixed or replaced. Have a professional home inspection done before you buy.

If you buy a home and later

discover problems, you may have a valid claim against the seller if he or she knew about the problem but did not disclose it. Call us about this.

Q. What is title insurance and why is it important?

A. Title insurance is an insurance policy assuring that you got good title from the seller. You will want to be sure you really own the property, rather than finding out later the seller did not have the power to sell, liens are still on the property, or the boundaries differ from what you were told. The insurer checks the property's history and public records to see its owners, boundaries, and who has liens on it. Later, if an error is in the title, the insurer must pay for a lawyer to fix it or to defend your good title, or must pay you.

Q. What is a "closing"?

A. Buying and selling a home is complex. Documents must be signed. The seller's home loan and liens must be paid and released. The buyer's new loan must be funded by a bank, and the bank's new lien recorded. Most important, title must pass from the seller to the buyer. To protect everyone in the process, all these steps need to happen at the same time. A "clos-



ing" is where all of these things happen. At closing, final agreements are signed, money is transferred, and new ownership is recorded with the county recorder. It's the meeting where you and the seller complete the sale, and the property becomes yours.

Q. Do I need an advisor, like a lawyer?

A. With real estate disclosures, loans and long contracts, consulting a lawyer is wise. A lawyer guides you through the process and reduces the risk of bad surprises. A lawyer also helps you understand the documents, helps you add language to the documents to protect you, and answers all of your questions without a conflict of interest.

If you are buying or selling a home, call us. We will help you in many ways, including guide you through the process and make sure the contracts protect you.

★ ★ ★
Happy New Year! ★ ★ ★

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PERSONAL INJURY MATTERS

Auto Accidents Work Injuries
 Slip and Falls Nursing Home Abuse
 Product Injuries Malpractice

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 DWI/DUI Real Estate
 Criminal Matters Traffic Violations