



## And The Defense Wins

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DRI member [Alexander F. Giovanniello](#) of **Giovanniello & Michels** in Brea, California, obtained a defense verdict in a jury trial involving allegations of elder abuse and wrongful death. The plaintiffs maintained that the decedent was neglected in a long term acute care hospital. The plaintiffs claimed that the decedent became deconditioned while at Kindred Hospital, due to lack of physical therapy and an inability to be weaned off a ventilator. Additionally, the plaintiffs claimed that at Kindred Hospital, his preexisting sacral pressure wound deteriorated from lack of turning and hygiene.

They further claimed that the decedent was ignored after he apparently bit his tongue, resulting in a laceration that bled all night until it was surgically repaired 10 hours later. Due to loss of blood resulting from the tongue bite incident, the decedent went into hypovolemic shock and never really recovered. The plaintiffs contended that the decedent died from the effects of the tongue bite two months later.

Kindred Hospital proved that physical and occupational therapy were provided, but were discontinued due to the surgery and lack of participation by the decedent. The decedent was kept clean, dry and bathed every day. He was adequately repositioned, as evidenced by the fact that he did not develop any new pressure wounds. Furthermore, the decedent's sacral wound did not deteriorate, as surgery to repair the wound was indicated from the inception of his admission. Concerning the tongue bite, he was attended to by several physicians, nurses and a respiratory therapist. The bleeding was under control until a surgery consult resulted in suturing of the tongue.

Over the next few months, the decedent was continually hospitalized and transferred to different locations. On July 20, 2007, while being transferred from one hospital to another for a MRI, he suffered cardiac arrest in the ambulance. He died two days later and according to his death certificate, the causes were cardiopulmonary arrest, multi-organ system failure, septic shock and coronary artery disease.

The plaintiffs sought economic and noneconomic damages for the wrongful death of the decedent, Carroll Welch. They claimed \$318,933.43 in past and lost earnings, as well as \$250,000 in general damages for elder abuse and \$500,000 in general damages for wrongful death. There were no other special damages claimed by the plaintiffs.

Bakersfield Memorial Hospital and Vista Specialty Hospital of San Gabriel Valley settled before trial and were dismissed. Century City Doctors Hospital was in bankruptcy and never appeared in the action.

After an 11-day trial the jury returned a 10-2 verdict in favor of the defendant after three hours of deliberations.

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