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QPWB PREVAILS WITH DEFENSE VERDICT IN NURSING HOME MALPRACTICE ACTION

TAMPA, Fla. — May 14, 2010 — **Peter J. Molinelli** and **Sheila K. Nicholson**, trial attorneys in the Tampa office of **Quintairos, Prieto, Wood & Boyer, P.A.**, achieved a defense verdict on behalf of a nursing home where the plaintiff alleged that the nursing home failed to provide appropriate skin care and follow physician orders, which resulted in severe heel ulcerations.

The resident was 88 years old when he entered the facility and turned 89 while residing there. He was at the facility for nine and a half weeks and alleged that a delay in the delivery of a trapeze caused him to develop pressure ulcers to his heels. These pressure ulcers required debridement and were allegedly extremely painful. In addition, the nurses failed to document 33 doses of oxycodone on the Medication Administration Records (MAR) which the plaintiff argued that the resident did not receive; thus suffering from untreated pain throughout his residency. Further, one nurse failed to document 24 of the 33 missed doses on the MAR. A facility investigation found there were missing narcotics for another resident. One of the nurses caring for the resident failed to document 24 doses of oxycodone on the MAR. During a drug screening, she tested positive for cocaine and her employment terminated immediately. However, the nurse's positive test was not for any of the resident's prescribed medications, nor of the missing medication that prompted the testing.

Plaintiff argued that not only did the nursing home cause the pressure ulcers but also failed to treat the resident's persistent pain because the nurses were diverting narcotics to support other drug habits. Plaintiff even called the police officer that investigated the missing narcotic drugs and solicited testimony that it was common for narcotics to be diverted and sold for money to support other drug habits. During the trial, the plaintiff also added that the resident suffered from untreated pain related to a prior medical condition of spinal stenosis and metastatic bone cancer in an effort to establish there had been an exacerbation of prior condition.

The defense was able to prove that the resident was alert and oriented so that if he was not receiving his pain medications he could and was the type of individual that would let someone know he had pain. Further, that the delay in receipt of a trapeze bar was not the cause of the heel wounds but rather, that the heel wounds were blisters that resulted from gait training with physical therapy. Additionally, based on the records, there were only two documented occurrences when the resident complained of pain and thereafter stated he had pain relief. Lastly, the defense was able to show over 55 entries in the medical records for the nine and a half weeks residency where it was documented that the resident had no pain. Thus, it became evident that the resident had not suffered from untreated pain. This documentation included the nursing home records as well as the wound care center and hospice records.

The jury delivered a defense verdict based on evidence indicating that a delay in equipment did not cause the wounds and that the resident did not suffer from untreated pain. The jury was able to separate the issue of the treating nurse testing positive for a drug that led to her employment termination.



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