

RECENT NURSING HOME JURY TRIAL

In *Muller, et al v. St. Joseph's Nursing and Rehabilitation Center*, filed in Gretna, Louisiana, plaintiffs' decedent stood up out of her wheel chair after completing occupational therapy, fell straight down and struck her head on August 4, 2005. Plaintiffs' decedent died 15 days later. Three years after discovery was complete, defendant discovered an autopsy report which opined that the plaintiffs' decedent suffered a stroke which caused the fall and the subsequent death.

The plaintiffs sought to challenge the autopsy report of the forensic pathologist with their previously retained geriatric expert. Defendant's objection to this challenge was ultimately overruled by the Louisiana Supreme Court. Thereafter, the matter was set for trial on August 13, 2012. Plaintiffs, prior to trial, retained three new experts to opine the patient did not have a stroke and died solely due to trauma.

The plaintiffs argued that the occupational therapist breached the standard of care because the therapist moved twenty (20) feet away to speak to the nursing home administrator at the time the plaintiffs' decedent stood up and fell. Arguing that the plaintiffs' decedent, an 80 year old Alzheimer's patient, was injured during "rehabilitation" as opposed to being in a nursing home, the plaintiffs retained an expert in rehabilitation medicine. Plaintiffs' expert argued that the standard of care required the occupational therapist to be within five (5) feet of the resident at all times during therapy. St. Joseph's maintained it was a conventional nursing home offering certain therapies to increase the quality of life to its residents. The plaintiffs' expert had no medical literature to substantiate his claim that the therapist should be within five (5) feet of the patient.

The defendant retained physicians treating similar patients in nursing homes, who opined that the occupational therapist met the standard of care and that they had personally observed similar situations wherein a geriatric patient sustained a "cerebral event" which caused a fall. A verdict was returned in favor of the defendant.