

NURSING HOME LITIGATION “DOING WELL BY DOING GOOD”

Chicago Bar Association – YLS Criminal Law/Torts Committee

Friday November 20, 2009

12:00 p.m.

CBA Building



Steven M. Levin

Levin & Perconti

325 N. LaSalle Ste 450

Chicago, IL 60654

(312) 332-2872

www.levinperconti.com

www.nursinghomelaw.com

www.medmalillinois.com



LEVIN &
PERCONTI

ATTORNEYS AT LAW

*Representing clients who have suffered
serious or catastrophic injuries*

I. Family Values

A. Nursing home cases are predicated on basic family values

B. In essence the defense to any nursing home case is that the plaintiff, our client, is sick, old and near death and that any untoward event that happens to he or she is unavoidable. This is simply not true. In a properly prepared case, this defense is unacceptable to a jury.

C. Trust and Promises:

1. Nursing homes ask you to trust them with the lives of the people you love most, your family members.

2. Nursing homes promise to provide your loved ones with the care and treatment they need.

3. They promise to provide a safe and dignified environment.

4. They promise to meet your loved ones needs based on their physical and mental conditions and protect them from the harms and the risks associated with those conditions.

II. The Nursing “Model” – In order to meet your loved ones needs the nursing home MUST do the following:

A. ASSESS your loved ones needs when he or she is admitted to the nursing home.

B. Develop a CARE PLAN based on those needs that are designed to protect your loved one from harm and the risks associated with the individuals physical or mental conditions.

C. COMMUNICATE the care plan to the direct care staff.

D. IMPLEMENT the care plan on a daily basis.

- E. Continuously RE-ASSESS your loved one to ensure the care plan is working.**
- F. If the care plan is not working they must TRY NEW INTERVENTIONS AND APPROACHES**
- G. If the nursing home feels that a harm or injury is truly unavoidable they must CALL THE DOCTOR AND THE FAMILY OF THE RESIDENT.**
- H. Example – Pressure Ulcers a/k/a Bed Sores**
 - 1. Assess the resident as at risk for bed sores because of limited or lack of mobility, nutritional issues, cognitive issues, etc.**
 - 2. Develop a Care Plan to ensure the resident is on an appropriate turning and repositioning schedule, receives proper nutritional and hydrational support, proper wound care if a pressure ulcer exists, appropriate pressure relieving devices (mattresses, chair cushions, heel support, etc.)**
 - 3. Communicate the plan and Implement the plan on a daily basis**
 - 4. Try new things and communicate with the doctor and the family**

III. “Profits over People”

- A. Why are an alarming number of NH operating below appropriate standards of care?**
 - 1. Work is labor intensive. Nurses and Certified Nurses Assistants have extremely difficult jobs.**
 - 2. It takes a lot of hard work to do what is necessary to prevent pressure sores, malnutrition, dehydration,**

falls, and all other injuries that occur far too frequently in nursing homes.

3. Nursing homes frequently operate with a staff that is insufficient in numbers, training and supervision.
4. Hard work requires motivated and adequately compensated workers.
5. Labor is the largest cost of the operation of a nursing home. When nursing home owners have to spend a lot of money on labor their profits are reduced. Nursing home cases are about “Profits over People”.

IV. Connecting with Juror Values

A. A Belief is something you accept as true. A Value is an emotional attachment to a belief.

B. The Basic Themes:

1. No responsibility without accountability
2. Society has a right to set rules of conduct and for individuals or entities that violate those rules there must be consequences.
3. If you incur a debt you must pay it. No welching.
4. If you break a rule and harm, injure, or kill someone you must compensate or make up for that harm. The only way we do it in this country is by balancing the harm with money.
5. There is no privileged class in America and regardless of someone’s age, frailness, or vulnerability, everyone is entitled to be treated with dignity and respect.
6. Behavior that is subsidized is encouraged.

7. **Behavior that is penalized is discouraged.**
8. **The best government is the government that is closest to the people, the jury. The jury is the conscience of the community. This theme works in all cases. No matter what the case, if you don't connect your facts and themes to jurors' values then you most likely will be unsuccessful.**
9. **All legal matters whether litigation or not are a collection of facts but no matter what those facts, somebody is doing something to or with someone else and it involves promises, wrongs, hurts and/or retribution.**

V. Reptilian Theory of Lawsuits / Spreading the Tentacles of Danger

- A. Appealing to the unconscious**
- B. Survival as even trumping values**
- C. We have all seen movies where the most avowed racist will abandon racism and seek help from an African American if it is a matter of life and death.**
- D. Less dramatically, there are no "atheists in fox holes".**
- E. The debate over so called "Tort Reform"**
 - 1. If I tell you that 15 times more people die from medical errors than murders would that influence your opinions on the debate.**
- F. The jury must believe that their verdict will make the world safer for them.**