

# Chicago Daily Law Bulletin

## Man chokes on food, dies; estate settles



John J. Perconti

By [Lauraann Wood](#)

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The estate of a man who died after choking on food in a West Side nursing home has settled its lawsuit for \$875,000.

Antonio Mares' estate sued Center Home for Hispanic Elderly as well as other physicians and companies associated with his care and meals in 2014, alleging they failed to ensure his meal fit his dietary orders and that he ate food that would prevent him from choking.

Mares — who was 77 and had a history of dementia, depression and an inability to swallow — was admitted to the home in 2012 after a short hospital stay. Through a physician's orders, he was to eat a "mechanical soft diet" during his stay.

"[Mechanical soft] actually means ground in a blender," said John J. Perconti, a partner with Levin & Perconti, who represents the estate. "It's like a blended type of food product as opposed to what he had."

Despite the dietary orders, Mares was served spaghetti and sliced Italian sausage for dinner one evening in November 2012.

The incorrectly prepared meal led to a number of missteps, Perconti said, from the home's dietary aide failing to ensure Mares' dinner matched his meal card to the nursing assistant placing the tray in front of him and turning to wash his hands despite realizing the meal and the meal card didn't match.

“By the time he had come back from washing his hands, Mr. Mares had already started eating the sausage,” Perconti said. “He choked and aspirated on the sausage, which led to eight minutes of conscious pain and suffering.”

The attending certified nursing assistant had to rush from the room and demand a 911 call be placed. This occurred after there was no answer when the call light was activated in Mares’ room, Perconti said.

That caused a delay in performing the Heimlich maneuver, he said, and eventually led to Mares’ death.

About a month later, the Illinois Department of Public Health issued a finding of immediate jeopardy on the home — which Perconti said means potential harm could come to other residents in the facility — based on the staff’s service failure in the Mares case.

Such a finding requires a facility to develop and implement a plan of correction before it can be removed from the finding, he said.

The defendants presented no defense in the case “except for the fact that our client was recently diagnosed with pancreatic cancer and therefore had a short life expectancy regardless of this incident,” Perconti said.

Richard G. Howser, a partner at Clausen Miller P.C. who represented the home and worked with Perconti to settle the suit, could not be reached for comment.

The parties mediated their case before Cook County Circuit Judge Lorna E. Propes in August 2015 in which Mares’ estate demanded the home’s \$1 million insurance policy to settle.

They couldn’t reach an agreement at that time because they valued the case differently, Perconti said, but learned the home’s insurance policy is one that deducts legal costs before any funds are made available for payout.

The parties continued to litigate the case and had completed some depositions in the case when Perconti made the demand he said led to their agreement.

“We determined that based upon the depositions that we had taken, this clearly was a policy-limits case, and we demanded the policy limits and gave them an expiration date to tender the full available policy limits,” he said. “Rather than litigate this case further and expose the nursing home to an excess judgment, they paid the remainder of what was left under their policy to settle the case.”

Although the settlement puts an end to the incident, Perconti said Mares’ family has been grieving the loss of someone they couldn’t say good-bye to despite his cancer diagnosis.

“That’s what was most troubling for the family,” he said.

Levin & Perconti partner Margaret P. Battersby Black and associate Daisy Ayllon Castaneda also represented the estate.