



vital signs

DIAGNOSING THE CHANGING STATE OF MEDICAL MALPRACTICE & NURSING HOME LIABILITY

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Do Senior Living Facilities Owe a Duty to Monitor Residents?

By Lisa Sabon Anstess

A senior living facility was sued in Federal Court recently by the family of a resident who was found dead outside the facility. The suit alleges that the facility failed to appropriately monitor the exterior doors so as to prevent an elderly, confused resident from being locked out of the building. The facility denies having a duty to monitor or supervise its residents, emphasizing that it is an independent living facility.

The facility provided various levels of service to elderly people, several of whom had some degree of dementia. The residents lived in their own apartments with doors to the outside. There were also doors in the common areas that allowed residents and/or visitors to enter and leave the building. The common area doors were locked at all times. Residents with cars were issued key cards for entry.

The resident in question was not issued a key card as she did not drive. This resident exited the building from one of the common area doors on a cold winter night and was unable to get back in when the door closed and locked behind her. She moved on to a neighbor's patio door, trying to regain entry but apparently fell, sustaining a rather serious injury. She was found the following morning unresponsive, not far from a rear service door. The autopsy concluded that she died from hypothermia or exposure to extreme cold.

Applying Michigan law, the Court analyzed the facility's position that it had no duty. The Court opined that due to the community the facility catered to, many of whom had cognitive impairments, it was foreseeable that a resident could exit the outside door and not be able to re-enter the building. The Court commented that the facility's failure to take proactive measures to prevent such an incident played a significant role in this woman's unfortunate outcome.

The Court next commented that the population living in this type of facility had to seek out such a living arrangement because they needed protection from ordinary risks of every day life; they no longer had the ability to completely look after themselves. The Court stated that by deliberately marketing to a special group of at risk individuals, independent living facilities carry a significantly higher degree of moral blame when they fail to provide

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The Court in this case found that despite a title of "independent living facility," services were marketed to a specific group of at risk individuals who could no longer take care of themselves and required some degree of assistance. Thus, there is a duty to the residents to take proactive steps to prevent foreseeable harm, such as from a resident being unable to regain entry to the building once outside, and in particular, to install a sensor, operative doorbell/buzzer system, or monitoring device at exterior doors. The Court commented that employing such a measure was relatively inexpensive, compared to the risk if no such measure was put in place.

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the most basic of protections to their residents. The burden of imposing such a duty was weighed against the liability associated with the breach. The relatively minor act of installing a sensor, an operative doorbell/buzzer system, or a video camera at the periphery of the exterior doors was found to be a very small burden.

Thus, the court disagreed with the facility's position, holding that the facility indeed has a duty to take necessary steps to monitor the residents in its specialized facility to prevent them from being locked out of the building.

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We welcome your questions and comments.

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