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WRONGFUL DEATH**Medical Malpractice—Failure to Treat—Negligent Treatment—Nurse—Nursing Homes—Slips, Trips & Falls**

Series of falls to blame for plaintiff's death, family alleged

VERDICT **\$33,900,700****CASE** Christine Smartt and Ruby Kilgore, as co-executors of the Estate of Cheatum Myers v. NHC Healthcare/McMinnville LLC, d/b/a NHC Healthcare, McMinnville, National Healthcare Corp. and National Health Corp., No. 2182**COURT** Circuit Court of Tennessee for the 31st Judicial District, Warren County, TN**JUDGE** Larry B. Stanley Jr.**DATE** 02/22/2007**PLAINTIFF****ATTORNEY(S)** Lisa E. Circeo, Wilkes & McHugh, P.A., Nashville, TN
Kenneth L. Connor, Wilkes & McHugh, P.A., Leesburg, VA
William P. Murray, Wilkes & McHugh, P.A., Leesburg, VA
John P. Partin, Galligan & Newman, McMinnville, TN**DEFENSE****ATTORNEY(S)** Bruce D. Gill, Leitner Williams Dooley & Napolitan PLLC, Chattanooga, TN
Cherie D. Jewell, Leitner Williams Dooley & Napolitan PLLC, Chattanooga, TN
John B. Curtis Jr., Leitner Williams Dooley & Napolitan PLLC, Chattanooga, TN**FACTS & ALLEGATIONS** Between March 2004 and July 2005, plaintiffs' decedent Cheatum Myers, 89, who had dementia, was a resident at NHC HealthCare/McMinnville in McMinnville.

During that time, Myers' two daughters alleged that he fell eight times, with seven falls documented, and that more than 50% of his falls occurred on his way to the bathroom. They claimed that seven days after his last fall on Jan. 31, 2005, Myers had a hip X-ray at the facility and was then diagnosed with a non-displaced hip fracture, and that after he was diagnosed, the facility's certified nursing assistants had Myers bear weight on his hip,

despite the doctor's instructions not to do so. On Feb. 18, Myers underwent hip replacement surgery at a hospital. He then returned to the facility, and on Aug. 24, he suffered a heart attack and subsequently died.

On Myers' behalf, his daughters sued NHC HealthCare/McMinnville, National HealthCare Corp., its parent company, and National Health Corp., the employer of all employees of National HealthCare Corp., for medical malpractice, seeking wrongful death damages.

Plaintiffs' counsel alleged that Myers' death was caused by NHC HealthCare's negligence. Plaintiffs' counsel argued that due to the facility's focus of admitting an abundant amount of residents, it failed to properly care for Myers, who suffered at least eight falls, and that his last fall led to a non-displaced hip fracture, which went untreated in the facility for seven days.

Plaintiffs' counsel argued that NHC HealthCare's documents showed that during the relevant time, the facility focused on bringing in as many Medicare residents as possible while under-spending the amount budgeted for staffing. Plaintiffs' counsel further argued that in between Myers' falls, facility interventions were nonexistent, untimely and inappropriate, and that the facility should have implemented skid mats on Myers' bathroom floor, lowered his mattress to the floor and instituted a toileting program, in which Myers would be checked on more frequently and assisted when using the bathroom.

Plaintiffs' nursing expert, Ellen Lewis, testified that during the seven days that passed after Myers' Jan. 31 fall, he received insufficient pain medication until he was finally taken to the hospital. Plaintiffs' counsel claimed that after returning from his hip surgery on Feb. 26, Myers' immobility led to his increased risk for pressure ulcers and contractures and required him to use a catheter. Plaintiffs' counsel argued that the short-staffed facility did not provide the care he needed, leading to a Stage IV heel pressure ulcer, severe bilateral leg contractures, an infection that caused pus to discharge from his penis and urosepsis.

James Sexson, the plaintiffs' internal medicine expert, testified that the contractures were preventable if Myers was given the proper range-of-motion care that was needed, and that the urosepsis contributed to causing the fatal heart attack.

Lewis testified that if the facility prevented Myers from falling, there would have been no need for hip surgery, and that three of

his five ulcers developed prior to his hip-replacement surgery. He added that the nursing facility allowed Myers' wound to progress to a Stage IV wound that went all the way to the heel bone.

Lewis also testified that NHC HealthCare/McMinnville completed an inadequate medical assessment on Myers following his last fall on Jan. 31, in spite of him being unable to straighten his left leg. Lewis and Sexson both testified that that the preventable Jan. 31 fall caused Myers' subsequent immobility, and that it left Myers more reliant on the short-staffed facility, leading to his development of pressure ulcers, contractures and urosepsis.

The defense denied the allegations. Defense counsel contended that the patient was appropriately assessed as to his risk for falls, and that numerous and appropriate interventions were added to his care plan.

The defense contended that the patient continued to fall because he persisted in getting up without calling for assistance despite his demonstrated ability to use the call button.

Defense counsel argued that he developed the six pressure ulcers while in the hospital for the surgery. The defense contended that the nursing facility was able to heal five of the ulcers, and the other wound was clean and uninfected when he left the facility. The patient's lower extremity contractures developed despite appropriate therapy and range-of-motion exercises, and pain management was provided consistent with the attending physician's orders, according to the defense.

The defense further contended that Myers had a history of urinary tract infections and pneumonia before his admission, and that a recurrence of these conditions led to his last transfer to the hospital. Defense geriatrics expert James Powers testified that the facility's care complied with community standards and was not the cause of the patient's injuries and death. He further testified that the facility's staffing exceeded the community standard.

INJURIES/DAMAGES Myers suffered four spinal compression fractures from his falls and his last fall resulted in a non-displaced hip fracture. He also sustained six pressure ulcers and urosepsis, which contributed to his fatal heart attack. His two daughters, Christine Smartt, 50s, and Ruby Kilgore, 50s, sought an unspecified amount in damages.

VERDICT INFORMATION Judge Larry B. Stanley Jr. directed a verdict in favor of National HealthCare Corp. and National Health Corp. as to punitive damages since there was no evidence of any reckless behavior by these defendants, but allowed the issue to be decided by the jury. On Feb. 21, the jury returned a verdict for \$4,102,298 in compensatory damages and found all three remaining defendants liable for punitive damages, but not liable for the patient's death. On Feb. 22, the jury returned a verdict for punitive damages in the amount of \$28,635,000 as to National HealthCare Corp., \$1 million as to National Health Corp. and \$163,402 as to NHC HealthCare/McMinnville. The punitive verdicts against National HealthCare Corp. and National Health Corp. were vacated by Judge Stanley consistent with his prior ruling on their directed verdicts.

ESTATE OF

CHEATUM MYERS \$102,298 Personal Injury Past Medical Cost
\$975,000 Personal Injury Past Loss
Enjoyment Of Life
\$29,798,402 Personal Injury Punitive
Exemplary Damages
\$2,450,000 Personal Injury Past Pain And
Suffering
\$575,000 Personal Injury Past Disfigurement

PLAINTIFF

EXPERT(S)

Ellen Lewis R.N., Nursing, Lilburn, GA
James Sexson M.D., Internal Medicine,
Marietta, GA

DEFENSE

EXPERT(S)

James Powers M.D., Geriatrics, Nashville, TN

POST-TRIAL Plaintiffs' counsel motioned for the court to enter a judgment that conformed to the verdict of the jury. Defense opposed the motion.

EDITOR'S COMMENTS This report is based on information that was provided by plaintiffs' counsel and defense counsel.