

Style Frances Gross and Annette Miller, a/n/f of Frances Gross vs. Horizons/CMS Healthcare Corporation

Attorneys P-David T. Marks & Henry P. Giessel of The Marks Firm, Houston; David Hill of Wellborn, Houston, Atkinson, Mann, Sadler & Hill, Henderson; Tim Lee of Ware, Snow, Fogel, Jackson and Greene, Houston. D- Cynthia Shea Goosen of Cooper & Scully, Sherman; Ira Thomas King of Ira Thomas King & Associates, Dallas.

Type of Claim NURSING HOME NEGLIGENCE - Frances Gross was admitted to Heritage Park Nursing Home operated by Horizons/CMS Healthcare Corporation on March 23, 1995. At the time of admission, she was 72 and totally dependent, having suffered three strokes over the past two years and had a small pressure sore on her coccyx. She resided at defendant's nursing home just 30 days until April 21, 1995. During this 30 day time frame Ms. Gross developed the following:

1. a massive (11 x 9centimeters) Stage IV decubitus ulcer on her coccyx which penetrated to the bone, was necrotic and infected;
2. a Stage III pressure sore of the right gluteal fold covered with brown eschar;
3. hypernatremic dehydration, despite the fact that Ms. Gross's fluid intake was controlled by staff who were required to hydrate her through a G tube and
4. weight loss of 21 pounds in 30 days despite the fact that defendant controlled the nutrition Ms. Gross was receiving by providing required feedings through a G tube.

On April 21, 1995, Ms. Gross was transferred to Vencor Hospital where she was discovered to be profoundly dehydrated and malnourished. The wound on her coccyx was discovered to extend to the bone and required repeated debridements during her three-month hospitalization to remove the necrotic tissue from the wound. Vencor was successful in rehydrating and re-nourishing Ms. Gross, as well as cleaning the infected tissue from her coccyx pressure sore At time of discharge from Vencor, Ms. Gross was well hydrated, well nourished and had only one pressure sore, which was clean and beginning to show signs of granulation. Ultimately, approximately 600 days later, the wound on the coccyx closed, leaving a large area of scar tissue.

In July, 1995, Ms. Gross was discharged to another nursing home in Collin County where she resided until July, 1996, at which time she moved to a facility in Dallas County where she presently resides. During her residencies at these two nursing homes, her coccyx and right gluteal fold have broken down on several occasions, resulting in Stage III and Stage IV wounds. As of today, Ms. Gross suffers from no pressure sores and is well hydrated and nourished.

Plaintiff contended that the catastrophic injuries of Ms. Gross were the product of prolonged care deprivation during her 30-day residency at Heritage Park. More specifically, Plaintiff alleged that defendant, as a matter of practice, failed to: 1) turn and reposition; 2) provide water; 3) provide ordered G tube feedings; and 4) protect Ms. Gross's skin from extended exposure to urine and feces. These failures were the result of defendant Horizon's practices of understaffing its nursing home and utilizing inadequately trained employees. Such practices resulted in the ongoing failures that caused Frances Gross to be a picture of neglect" when admitted to Vencor Hospital on April 21, 1995.

Defendant contended that the injuries made the basis of plaintiff's lawsuit were the result of Ms. Gross's complex and deteriorating medical condition ,as opposed to any negligence on defendant's part. More specifically, Frances Gross had a history of three strokes prior to admission to Heritage Park. Further, she was a diabetic, aphasic, paralyzed on one side of her body, incontinent and had a Stage I pressure sore on her coccyx at the time she was admitted to Heritage Park on March 23, 1995. Defendant argued that if Doctor's Hospital, where Ms. Gross was a patient before being admitted to Heritage Park, could not prevent the deterioration of Ms. Gross' skin, then how could Heritage Park be expected to prevent such deterioration? Further, defendant argued that after Ms. Gross was transferred from Heritage Park, she developed other pressure sores at two subsequent facilities. According to defendant, this indicated that no health care provider could prevent the occurrence of pressure sores in this woman. Additionally, defendant argued that Ms. Gross had an allergy to duoderm which her family did not communicate to the nursing home. When duoderm was applied at Heritage Park, the coccyx area deteriorated further. This was not due to negligence on the part of the nursing home, but rather to an allergic reaction which defendant was not told existed.

With respect to the weight loss., defendant argued that Ms. Gross lost only two pounds, not 21 pounds. Defendant took issue with the accuracy of hospital weights taken by Doctor's Hospital immediately before admission to Heritage Park and the accuracy of weights taken by Vencor Hospital immediately after Ms. Gross's 30-day residency at defendant's nursing home. As to Ms. Gross' dehydrated condition, defendant contended that her diabetic condition would have predisposed her to rapid fluid loss. This rapid fluid loss would have increased when blood sugars were elevated. Since Ms. Gross' blood sugars were elevated during her residency at Heritage Park, this fact would explain her dehydration at the time of admission to Vencor Hospital on April 21, 1995.

Finally, defendant took the position that even if there was some negligence on its part, the damages in this case were limited. Defendant contended that Ms. Gross recovered from each of the injuries that was alleged to have occurred, arguing that today Frances Gross is in essentially the same shape she was at the time of admission to Heritage Park. According to defendant, there was no permanent injury and therefore, damages were restricted to the 30-day window of time Ms. Gross was at Heritage Park.

Verdict This lawsuit, which had been specially set to begin September 13, 1999, settled for \$5,000,000. (Initial settlement demand was \$6.5M.)