

Jury Awards \$1.5 Million for Death at Nursing Home

John Caher, New York Law Journal

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A jury in Clinton County has awarded \$1.5 million, including \$800,000 in punitive damages, on behalf of a 94-year-old nursing home resident who died after he was mistakenly administered morphine intended for another patient.

After a four-day trial, the jury awarded the estate of John Solari \$200,000 for compensatory damages, \$500,000 under a Public Health Law claim and punitive damages in connection with a mishap that occurred at a facility in Plattsburgh.

Estate of Solari v. Champlain Valley Physicians Hospital Medical Center Skilled Nursing Facility, 1360-2012, resulted from the 2011 death of an elderly patient who suffered from dementia and respiratory issues.

At a trial before Supreme Court Justice Robert Muller, the plaintiffs' attorney, Sean Doolan of Doolan Platt & Setareh in Windham, produced evidence that a nurse newly assigned to the nursing home floor of the hospital mistook Solari for another patient and fed him that individual's medication mixed in applesauce.

Doolan said that the nurse testified she had examined Solari's wrist band before administering the drug, but claimed there was no name on it.

The attorney said the nurse contended that she asked Solari if he was "Floyd," the patient who was supposed to get the morphine, and gave him the drug-laced applesauce only after he indicated that he was Floyd.

The nurse was subsequently fined \$1,000 following a state Department of Health investigation, but \$500 of the fine was suspended and she was allowed to keep her job, Doolan said.

The defense, led by Justin Meyer of Stafford, Piller, Murnane, Kelleher & Trombley in Plattsburgh, argued that Solari's death three days after receiving the morphine resulted because the family, respecting the patient's "do not resuscitate" order, refused to have him moved to an intensive care unit. Additionally, the defense said the patient's primary care physician was negligent, according to Doolan.

But the jury faulted the facility, with much of the award centered on a Public Health Law provision that allows nursing home residents to recover for damages resulting from the denial of a right or benefit, which the law defines as a code or rule in place for the

benefit of the resident. Here, the code or rule at issue was a state regulation that nursing home patients have a right to be free of medication errors.

Doolan said the Public Health Law claim allowed the jury to conclude that Solari's death constituted an "injury" under the law.

The bulk of the award, however, was the \$800,000 in punitive damages.

Doolan, who said he spoke to jurors after the verdict, said the panel was upset that the nurse continues to work at the facility, and in fact was featured in an advertisement for her employer. He also said the jury was troubled that both the patient's wrist band and a photograph of it had gone missing.

There was no immediate reaction from Meyer or the hospital.