

## Quadriplegic man's bedsores deemed results of neglect

March 09, 2011

<b>Amount:</b>	\$750,000	<b>Type:</b>	Verdict-Plaintiff
<b>Court:</b>	Bronx Supreme, NY		
<b>Case Name:</b>	Gaulbert Francesco Alvarez, by His Mother and Power of Attorney Lilian Lenis v. Beth Abraham Health Svcs. and Beth Abraham Hospital, No. 7124/05		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• John Dalli; Dalli &amp; Marino L.L.P.; Mineola NY for Gaulbert Francesco Alvarez</li><li>• Dennis Kelly; Kelly, Grossman &amp; Flanagan, LLP, Hauppauge, NY, trial counsel, Dalli &amp; Marino L.L.P., Mineola, NY; Mineola NY for Gaulbert Francesco Alvarez</li><li>• David Grossman; Kelly, Grossman &amp; Flanagan, LLP, Hauppauge, NY, trial counsel, Dalli &amp; Marino L.L.P., Mineola, NY; Mineola NY for Gaulbert Francesco Alvarez</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Jay W. Levy; Wilson, Elser, Moskowitz, Edelman &amp; Dicker LLP; Whie Plains, NY for Beth Abraham Health Services, Beth Abraham Hospital</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Hospitals Insurance Co. Inc.</li></ul>		
<b>Facts:</b>	<p>In February 2002, plaintiff Gaulbert Francesco Alvarez, a quadriplegic man in his 20s, became a resident of the Beth Abraham Health Services facility, which provides skilled nursing care. During the ensuing 28 months of his residency, Alvarez developed bedsores, which are alternately termed "decubitus ulcers" or "pressure sores." Alvarez claimed that the bedsores were a result of the facility's staff's failure to regularly reposition his body.</p> <p>Alvarez sued Beth Abraham Health Services and an affiliated hospital that had treated him, Beth Abraham Hospital. Alvarez alleged that the defendants failed to render proper treatment.</p> <p>Alvarez's counsel noted that bedbound or sedentary patients are prone to the development of bedsores, and they contended that such patients must be regularly repositioned. They claimed that the defendants' records indicated that their staff failed to perform some 35 percent of Alvarez's scheduled positional changes. They also contended that Alvarez should have received cushions that could have prevented the development of bedsores. Alvarez claimed that his treatment suffered because he resided among elderly patients that required constant attention. He contended that the defendants' staff also failed to provide other necessary treatment, such as regular baths. Alvarez's counsel argued that the inadequate treatment constituted a violation of the Patient's Rights Statute, New York State Public Health Law § 2801-d.</p> <p>Defense counsel contended that Alvarez received appropriate treatment. He suggested that the defendants' staff merely forgot to document much of the treatment.</p> <p>Defense counsel also contended that Alvarez's bedsores stemmed from Alvarez's failure to undergo recommended treatment. He claimed that Alvarez declined to wear footgear that would have prevented the formation of bedsores that occupied his feet, that Alvarez ignored warnings that he had to occasionally leave his wheelchair and that Alvarez often dodged treatment. He contended that Alvarez's bedsores were unavoidable products of his actions and his quadriplegia.</p>		
<b>Injury:</b>	<p>Alvarez developed stage-II bedsores that occupy his feet and heels. He also developed a stage-IV bedsore that occupied his buttocks. He underwent surgical debridement of the latter wound, and he also underwent about 16 weeks of follow-up treatment that included the application of topical ointments.</p> <p>Alvarez claimed that he experiences pain and discomfort that worsen during prolonged periods in which he is seated. Alvarez's pain-management expert opined that Alvarez's paralysis does not prevent his ability to detect pain. Alvarez's expert nurse opined that Alvarez bears a residual susceptibility to the development of further bedsores.</p> <p>Alvarez sought recovery of a total of \$6 million for his past and future pain and suffering.</p> <p>Defense counsel contended that Alvarez's debridement aggravated what was a merely superficial wound, though he also contended that Alvarez experienced a good recovery.</p>		
<b>Result:</b>	The jury found that the defendants' staff was negligent in its treatment of Alvarez, though it also found that the negligence did not constitute a violation of the New York State Public Health Law. It determined that Alvarez's damages totaled \$750,000.		
<b>Judge:</b>	Alexander W. Hunter, Jr.		