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Nursing home residents involved in car accidents: Who's to blame?
Posted on: 6.8.2010 11:55:59 AM Posted by Jonathan Rosenfeld, LTC Lawyer

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If you were playing a word association game, I bet you'd be hard pressed to combine nursing home residents and auto accidents. While the terms may mix like oil and water in many contexts, in my world as a nursing home lawyer I frequently see the two intermixed.

There are three major categories of automobile injury cases affecting nursing home residents and the respective liability issues for both driver and skilled nursing facility. As I see it, residents are involved in injuries due to: other drivers (when the resident is a pedestrian); being passengers in vehicles; or, in the case of a resident with dementia or Alzheimer's, wandering from the home.

For the purposes of this blog we will be focusing on nursing home residents involved in accidents as pedestrians.



Unfortunate case

Several years ago my office represented a resident who, while on his way to a convenience store across the street from the nursing home, was struck by a truck making a right turn. The man suffered severe orthopedic injuries to his legs—bilateral femur fractures and degloving—when he was thrown from his electric wheelchair and run over by the rear wheels of the truck.

Though the man's family initially contacted us on a perspective negligence claim against the nursing home, we quickly learned that the truck driver was really the one responsible. During the course of litigation, the truck driver acknowledged that he was unable to see the elderly man due to the height of his truck and the relatively low height of the electric wheelchair, despite the fact that he was in the crosswalk and obeying the traffic signal.

Pedestrians have the right of way

Most jurisdictions have traffic laws that give pedestrians the right of way when sharing the road with automobiles. In this context, the driver of the vehicle is usually the one primarily responsible for injuries that may occur, especially if the pedestrian was obeying the traffic signals.

Following a collision with an elderly pedestrian, an assertion may be made by the offensive driver that the person was too old or had diminished senses. In my experience, such arguments typically backfire—badly.

Not surprisingly, in most elderly pedestrian vs. auto collisions cases, I see the real fault falling on the drivers who fail to keep a proper lookout or who refuse to wait the literal seconds it takes for a person to get out of harm's way.

Liability of nursing home or driver?

In situations where a pedestrian really has no business walking around unassisted, there may be a cause of action against the facility where he or she resided for a failure to provide assistance.

However, if a nursing home patient is capable of appreciating the risks associated with walking around—and is attentive enough to follow traffic signals—they certainly should be entitled to do so.

Jonathan Rosenfeld is a lawyer who represents people injured in nursing homes and long-term care facilities. Jonathan has represented victims of nursing home abuse and neglect throughout Illinois and across the country. Visit his personal blog at www.nursinghomesabuseblog.com and his Web site BedsoreFAQ.com.

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