Dear Dr. Jeff:

I am perplexed over new instructions from Medicare regarding residents who are at risk of choking or of aspirating food. Apparently, even if the resident or the responsible party accepts the risk to allow the resident the pleasure of eating, the facility will be cited for a deficiency if the resident has a bad outcome. Whatever happened to resident choice and informed consent? As a facility that participates in the Pioneer movement and other culture-change efforts, I am wondering if staff to maximize resident choice, we feel totally betrayed by the Centers for Medicare & Medicaid Services. What do you suggest?

Dr. Jeff responds: One of the most dangerous but pervasive falsehoods in American life is that every bad thing that happens is someone’s fault. Where once an apple falling from a tree onto your head raised the notion of a new principle in physics, now it is clearly the fault of the person who planted the tree (faulty choice of location), owns the tree (failure to pluck apple in a timely fashion), or was hired to pick the apple (negligent failure to remove said apple). Lawyers actually run ads asking, “Were you injured in an accident?” What is there about the word accident that we don’t seem to understand?

CMS operates in that culture and so is extraordinarily risk averse. Twenty-five years ago, the New York City Long-Term Care Ethics Network sponsored a panel that included a senior official of the state’s survey agency. We presented a hypothetical case involving an unsafe smoker and asked how the agency would respond if the facility removed the resident’s cigarettes. He responded that he would cite the facility under Resident Choice and Resident Rights. Then we asked what he would do if the resident actually injured himself while smoking. He replied that he would cite the facility under Resident Safety. What made these responses particularly disturbing was not his honesty but that he couldn’t see any problem with his answers. There is nothing new in this double bind.

When CMS appears to take a position directly contrary to its avowed philosphy, it is responding to the part to pressure from unhappy consumers. Families place patients under our care with an emphasis on safety. Often, what precipitates institutional placement is wandering or other behavior and the facility’s food.

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