

LEGAL EAGLE EYE NEWSLETTER

March 2004

For the Nursing Profession

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Patient Falls, Develops Decubitus Ulcer: Court Upholds Verdict For Negligence.

The elderly patient was admitted to the hospital with numerous medical problems including diabetes, hyperglycemia, diabetic retinopathy, neuropathy, peripheral vascular disease and hypertension.

Her right leg had been amputated below the knee.

The specific reason for admission was to be close to her dialysis treatments for end-stage renal disease.

She was placed in a chair near the nurses station during a bout of confusion from her dialysis. Unrestrained, she tried to stand, fell and fractured her right hip.

After surgery for the hip she developed a sacral bedsore that progressed to an infected Stage III decubitus. Eventually the family stopped dialysis and she passed away from renal failure.

The family sued for nursing negligence. The Court of Appeals of Kentucky approved the jury's verdict awarding medical expenses (reduced post-trial to eliminate double recovery from Medicare) and punitive damages. The Court also upheld the jury's award of zero compensation to the family for the deceased's pain and suffering.

The verdict was for negligence leading to her fall and negligence leading to her skin breakdown.



A nurse can testify it is a personal habit and the institution's routine practice to turn patients every two hours on patient-safety rounds.

However, the medical records will be used as evidence. The lawyers can probe the records and question the nurses for specific chart references showing that the patient was actually turned.

COURT OF APPEALS OF KENTUCKY
February 6, 2004

Habits and Routine Practices Nursing Documentation

As a general rule the courts accept testimony about a person's habits or an institution's routine practices. A nurse can testify after the fact that he or she out of habit turns and repositions patients as necessary and that it is routine institutional practice to do so.

However, in this case the patient's chart did not show turning actually being done q 2 hours. This deficiency in the charting supported the family's allegations of nursing negligence.

A jury is not required to accept testimony about nurses' personal habits or the facility's routine practices in the face of ambiguous charting as to habits and routines actually being followed.

Delays in Treatment

The chart also pointed to a glaring two-day delay in getting the air mattress after the physician ordered it based on the nurses' own skin-breakdown assessment and the advice of the wound-care nurse.

Delays were also obvious directly from the patient's chart in how promptly the wound-care nurse responded to requests for consultation, according to the court. ***Thomas v. Greenview Hosp., Inc., ___ S.W. 3d ___, 2004 WL 221198 (Ky. App., February 6, 2004).***

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Decubitus Ulcer: Court Accepts/Rejects Nurse's Expert Qualifications.

The family of a deceased elderly nursing home patient filed a malpractice lawsuit against the nursing home alleging that nursing negligence caused the resident to develop a decubitus ulcer and/or that the decubitus ulcer was permitted to worsen to the point it caused his death.

The Court of Appeals of Texas pointed out, in its unpublished opinion, that Texas requires the plaintiff to get an expert witness report not later than six months after filing a malpractice lawsuit.

Every US state requires at some point before a jury can consider a medical malpractice lawsuit against a physician, nurse or other healthcare provider that the patient or the family of a deceased patient provide expert testimony supporting all the basic elements of the case.

Nurse's Expert Qualifications Accepted Standard of Care / Breach

The family's nursing expert had been an RN for decades. She was certified in gerontological nursing, worked a few years as a nurse, had been a nursing instructor for many years and had published numerous journal articles on nursing home care and personnel management issues.

The court ruled she was a highly qualified expert on the standard of care in this case, that is, every nursing home's basic legal duty to prevent avoidable bedsores and to prevent avoidable progression of such lesions to potentially fatal decubiti.

Nurse's Expert Qualifications Rejected Medical Causation

That being said, the court ruled in fairness to the nursing home that it could not allow the family's nursing expert to testify to a reasonable degree of certainty that this particular resident's decubitus ulcer actually caused his death. That would require a physician's testimony, if in fact it was true. The possibility in general of death from a decubitus ulcer is not enough in a court of law. Highland Pines Nursing Home, Ltd. v. Brabham, 2004 WL 100403 (Tex. App., January 21, 2004).

There are three basic elements to a lawsuit for medical malpractice, whether the lawsuit is against a physician, nurse or other healthcare provider.

1. There must be evidence of the legal standard of care applicable to the provider in question under the specific circumstances presented by the case.

2. There must be evidence of a breach of the legal standard of care by the provider.

3. There must be evidence linking the provider's breach of the legal standard of care to harm suffered by the patient.

All three basic elements must be present and all three must be proven by expert testimony.

A nurse is competent to testify as to the first two elements of a malpractice case involving allegations of negligence by nurses.

However, a nurse is generally not considered qualified to render an expert opinion on medical cause-and-effect. There are exceptions for nurses with specialized education and practice experience.

COURT OF APPEALS OF TEXAS
UNPUBLISHED OPINION
January 21, 2004

Decubitus Ulcers: State Surveys Do Not Prove Negligence.

The probate administrator of a deceased nursing home resident's estate sued the nursing home for wrongful death. The administrator's lawsuit claimed her mother's death was attributable to avoidable decubitus ulcers which developed and/or were allowed avoidably to progress while she was a resident in the facility.

The physician's note on the death certificate indicated that multiple decubiti were a significant contributing factor, although not the cause of death.

The legal rules of evidence state that other acts of a similar nature are not relevant to prove the commission of a particular act.

Even if relevant, evidence can be excluded if it is unduly prejudicial or misleading to the jury.

COURT OF APPEALS OF KENTUCKY
UNPUBLISHED OPINION
February 6, 2004

State survey reports showing multiple violations at the facility of state regulations requiring proper positioning and frequent turning of residents were ruled irrelevant and inadmissible as evidence by the county court judge. The Court of Appeals of Kentucky, in an unpublished opinion, approved the judge's ruling and the jury's finding of no negligence.

The surveys did not necessarily establish that the resident in question received substandard care and could easily prejudice the jury toward a punitive verdict even if there was no proof the resident in question was mistreated. Renfro v. E.P.I. Corp., 2004 WL 224397 (Ky. App., February 6, 2004).

Decubitus Ulcers: Court Finds Substantial Compliance With Patient's Care Plan, Downgrades Sanctions From State Agency.

State survey inspectors on more than one occasion found a certain nursing home resident was not wearing padded boots as per his plan of care.

Pressure Sores Present At Time of Admission

The padded boots were to be worn at all times. They were included in the care plan because he entered the facility with pressure sores on both his heels.

While in the facility one of the pressure sores healed completely and the other became much smaller. The District Court of Appeal of Florida attributed this to the high quality of care he got in the facility.

In Bed Without Boots

On one occasion the resident was found in bed without his padded boots. The nursing home argued the pressure mattress which it provided him made the boots unnecessary while he was in bed.

Sitting in Wheelchair in Street Shoes

On another occasion he was sitting in his wheelchair in his street shoes, but there was no weight bearing on his feet and fresh, clean dressings had been placed on his heels.

If the state surveyors are bent on requiring perfect compliance with every detail of every patient's care plan, every inspection of every nursing home will result in a finding of some sort of deficiency.

Some of the details of an admission care plan can be ordered hastily without full investigation of the resident's medical history.

A nursing home caregiver should not be intimidated into ignoring common sense for fear of incurring the wrath of state survey inspectors.

The law looks for substantial compliance with the overall plan of care, not perfect compliance with each and every minute detail of a care plan, assuming there is no more than minimal discomfort and no harm to the resident.

DISTRICT COURT OF
APPEAL OF FLORIDA
January 30, 2004

Substantial Compliance With Plan of Care

The court agreed with the nursing home that there was substantial compliance with the resident's plan of care for the pressure sores on his heels. Thus the court ruled that the state Agency for Health Care Administration could not downgrade the facility's license over this issue.

The court accepted the nursing home's argument that perfect compliance with every aspect of a patient's care plan, without regard to the circumstances and in the absence of any potential for harm, is an unreasonable and unattainable standard of perfection.

A state survey agency is required to factor in the potential for harm to the resident from a deviation from a care plan before writing up the facility for a patient-care deficiency, the court said.

The court stated it was not right to deprive nursing home staff members of the use of their common sense and professional judgment in caring for their patients, notwithstanding how a particular patient's care plan has been phrased.

Care plans may at first be drafted hastily without full appreciation of a resident's history and present needs and thus must be allowed to evolve as the resident's needs and the professional staff's assessment of those needs change over time, the court pointed out. **Beverly Healthcare Kissimmee v. Agency for Health Care Administration**, ___ So. 2d ___, 2004 WL 177018 (Fla. App., January 30, 2004).

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