Patient Fall: Nursing Expert Was Familiar With Standard Of Care.

The eighty-eight year-old resident broke her femur in a fall in the nursing facility where she had resided for five years. She was taken to a hospital E.R. where it was determined she was too frail for major surgery. She was given palliative care until she passed away.

Nursing Expert's Qualifications

The Supreme Court of Idaho ruled the family's nursing expert was qualified to testify and accepted her conclusions which pointed to negligence by the facility.

The Court declined to flag the family's lawyers for using a well-worn tactic to get around the traditional locality rule. That is, the lawyers' out-of-town nursing expert simply first had to speak with local professionals about the local standard of care and then could testify on the local standard of care without ever actually having practiced in the local community.

Federal Rules Set a National Standard

The Court further ruled that issues of negligence in nursing facilities are now sorted out by reference to statewide standards and Federal regulations, notwithstanding local practices.

A nursing facility can be held liable for negligence for failing to develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet the resident's medical, nursing and psychosocial needs identified in the comprehensive assessment.

Each resident must receive and the facility must provide necessary care and services to attain or maintain the highest practicable level of physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

This resident's care plan was designed to address a nursing diagnosis of potential for injury from falls, based on a history of frequent falls, through use of bed rails, bed set to its lowest position, hip protectors and a regular check and change schedule.

Review of the resident's chart by the expert revealed that these and other interventions specifically called for in the resident's care plan were not being provided ninety percent of the time before her fall. **Mattox v. Life Care, __ P. 3d __, 2014 WL 5463358 (Idaho, October 29, 2014).**

The family's nursing expert familiarized herself with the local standard of care for a nursing facility in the town where this occurred by speaking with individuals who practiced as professional nurses in that local community.

Nevertheless, the standard of care is defined by state and Federal standards that are by no means unique to a particular local community.

Every resident is entitled to a comprehensive initial assessment and periodic reassessments of the resident's needs.

Every resident is entitled to a care plan containing specific interventions calculated to address the needs identified in the comprehensive assessment, with measurable goals set out in the care plan.

Every resident is entitled to have the interventions set out in the care plan actually carried out.

This resident's chart, according to the family's nursing expert, disclosed more than ninety-percent non-compliance with the specific interventions set out in her care plan to address her potential for injury from falls.

SUPREME COURT OF IDAHO
October 29, 2014

Whistleblower: Nurses' Case Thrown Out.

Two LPNs sued their former employer claiming they both were fired for expressing their concerns about the quality of care of a trache patient who was found unresponsive.

The former employer responded claiming that each LPN was fired after a history of write-ups and progressive discipline that did not resolve the problems.

Neither of the fired LPNs has pointed to any law, rule, regulation or professional code of ethics applicable to their former employer that defines unacceptable conduct in patient care.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
September 9, 2014

The Superior Court of New Jersey, Appellate Division, ruled that the fired LPNs were not protected by the state's Conscientious Employee Protection Act.

Even if the patient was not checked for two hours, the LPNs were unable to identify any state or Federal law, rule or regulation which explicitly states how often a trache patient must be checked.

Difference of Opinion With Superiors

Absent that, it boiled down to a simple difference of opinion between the staff LPNs and their superiors about a patient-care issue, which does not confer whistleblower protection upon a staff employee.

Further, the absence of any charting for two hours did not mean the patient was not checked, the Court said, because often nothing was charted when nothing out of the ordinary was seen, and the nurse who found the patient unresponsive testified his trache tube was actually in place.

Without whistleblower protection, the only relevant issue was whether there were legitimate disciplinary grounds to terminate the LPNs. The Court ruled such grounds existed, without going into the details for the court record. **Kimera v. Wanaque, __ A. 3d __, 2014 WL 4649302 (N.J. App., September 9, 2014).**