Patient Falls: Private-Duty Sitter Does Not Lessen Nursing Home's Duty.

The patient was admitted to a nursing home from the hospital following elbow surgery. He had had a stroke and had been diagnosed with Alzheimer's, Parkinson's and diabetes.

He fell out of bed only an hour after settling in at the nursing home. When the family phoned a few hours later to check on him and were informed he had fallen out of bed, the family got a private-duty sitter from an agency at their own expense to go to the nursing home and watch him.

The sitter arrived at 8:30 p.m. that same evening. He stayed with the patient until 10:30 p.m. when he decided to take a meal break. The sitter later said he did tell one of the nursing home's aides he was taking a break before he left the patient's bedside.

Private-Duty Sitter Left the Patient's Beside Patient Fell Out of Bed

At 10:55 p.m. the patient was found on the floor with a broken hip.

The jury in the Circuit Court, St. Lucie County, Florida returned a verdict of $654,541.52 against the nursing home and found the sitter and his agency not at fault.

The rationale for the jury's verdict was that a nursing home has the basic responsibility for the patient's care and cannot delegate that responsibility away.

It was legally irrelevant whether the sitter did or did not inform a nursing home employee he was going on break, as was disputed in the lawsuit, because the nursing home retained full responsibility for the patient whether the sitter was present at his job, away from the bedside with good cause or absent without good cause.

The nursing home apparently did not have liability insurance to pay the verdict, while the sitter and his employer were fully covered, but that was likewise irrelevant. **Jilton v. Family Private Care, 2007 WL 2684978 (Cir. Ct. St. Lucie Co. Florida, June 14, 2007).**

Insurance: Nurse's Own Policy Will Pay First $100,000, Court Says

The parents filed a lawsuit against the hospital where their baby was born with cerebral palsy allegedly caused by the negligence of the physician and two labor and delivery nurses who were present for the mother's labor.

One of the two nurses relieved the other at 3:00 p.m. at the end of her shift. The evidence the jury would have heard, if the case had gone to trial, was that significant abnormalities were there to be seen on the fetal monitor read-outs at 2:50 p.m. and again at 5:56 p.m. That is, it appeared each nurse was separately exposed to liability in the parents' lawsuit.

The nurse was covered by the hospital's liability insurance which had a $100,000 self-insured retention.

The nurse's own errors and omissions policy is required to cover her for the first $100,000 of the $900,000 settlement.

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NEW JERSEY
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The insurance companies for the hospital and for one of the nurses agreed to pay the parents a settlement of $900,000, then went back to court to argue how exactly that sum would be paid out.

The US District Court for the District of New Jersey ruled the hospital's insurance had a valid $100,000 self-insured retention, and the nurse's own insurance policy was intended to pay and would contribute that amount on her behalf. **General Hosp. of Passaic v. American Casualty Company, 2007 WL 2814655 (D.N.J., September 24, 2007).**

Sponge Count: Nurses Liable Along With The Physician.

At the conclusion of the patient's cesarean section the nurses informed the obstetrician that the sponge count was correct. The physician relied on what the nurses told her and closed the incision.

A surgical sponge was left inside the patient's body.

The patient returned to the E.R. several times for abdominal pain before a CT scan revealed the presence of the sponge, which had to be removed surgically.

Although the physician performing a surgical procedure is responsible to the patient as "captain of the ship" for any surgical paraphernalia left inside the patient's body, nurses and scrub techs can also be liable for their own errors and omissions in negligently counting and accounting for sponges, needles, instruments, etc.

The Superior Court, Lake County, Indiana ruled the obstetrician was entitled to a set-off against the $375,000 jury verdict for $159,000 paid as a pre-trial settlement on behalf of the hospital and the nurses. **Ruiz v. Adlaka, 2007 WL 2640633 (Sup. Ct. Lake Co. Indiana, June 8, 2007).**

Understaffing: Court Lets In The Evidence.

The courts consider the issue of facility-wide understaffing irrelevant in a patient's negligence lawsuit.

However, the Supreme Court of Mississippi ruled understaffing was relevant and should be brought to the jury's attention because CNA's testified they did not have time to turn and change the specific patient whose family was suing over skin-integrity issues. **Mariner Health Care v. Edwards, __ So. 2d __, 2007 WL 2670308 (Miss., September 13, 2007).**

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