

# Professional Malpractice or Simple Negligence?

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When a patient is injured or dies due to the conduct of health care providers, the question of whether the conduct was professional/medical malpractice or “simple negligence” is sometimes raised. The distinction is important because the proof required of medical malpractice cases is different than with “simple negligence” cases, since there is no need for expert testimony with the latter allegation. Simple negligence principles are applicable to conduct where the alleged negligent act may be readily determined by the jury based on common knowledge.<sup>1</sup>

In the following case,<sup>2</sup> the Appellate Division of the Supreme Court of New York denied a summary judgment motion by the nursing home where the patient resided until her death, opining that the trial court’s conclusion that the conduct at issue was negligent, as opposed to medical malpractice, was correct and that the issues of fact that remained required a denial of the motion for summary judgment.

The patient resided at the extended care facility for three years prior to her death. Her initial diagnoses were emphysema, chronic obstructive pulmonary disease, and depression. She was ventilator and steroid dependent. She was admitted to the facility in the hopes of weaning her from the ventilator so she could return home. The patient was also bedridden and her skin was fragile due to the steroid treatment. She had open wounds on her hip, shoulder and hand.<sup>3</sup>

One evening, the patient’s husband was visiting and was asked to leave the room so the nurse aides could assist with her personal hygiene before dinner. When the husband returned to her room, his wife told him the aides “were rough”, had hit her lower right leg on a bed rail, and it hurt.

The patient complained to a nurse in the facility that her leg was quite painful. The nurse noted a hematoma of three centimeters by three centimeters on the right leg. A physician’s assistant (PA) was called to see the patient and he noted the right leg was swollen.

The PA was calling the patient’s primary care physician when the patient’s leg spontaneously ruptured with about 300 cubic centimeters of blood loss. The husband left the facility for dinner but was called back by his wife and he found a pool of blood on the floor and the bedding soaked with blood.<sup>4</sup>

An ambulance arrived in about 15 minutes and the patient was alert when she was transferred to the hospital where she died later that evening. The death certificate listed the cause of death a blunt impact trauma to the right lower leg with contusional hematoma complicated by soft tissue disruption and

hemorrhage.<sup>5</sup>

The descendant's husband filed a case alleging negligence but shortly thereafter the husband decided that the case was more akin to medical/professional negligence than simple negligence. The court heard many arguments both for and against both of these causes of action, but held that the conduct of the nurse aides, and therefore their employer, sounded in simple negligence.

The case was returned to the trial court for trial and a resolution of the facts in the case, including the jury evaluating, without benefit of expert testimony, whether allegedly allowing the decedent's leg to strike the bed rail when being transferred by the nurses' aides was negligent and whether the delay, if any, in calling 911 was negligent.<sup>6</sup>

This case has many implications for you as a nurse, an APN or a nurse's aide. They include:

1. The requirement of expert witness testimony is clearly needed in a professional/medical malpractice case but is *not* needed in a case alleging "simple negligence";
2. Whether or not a case will sound in professional malpractice or "simple" negligence depends on a state's statutes and case law concerning both causes of action and therefore can vary from state to state;
3. The transfer of any patient is a potentially high-risk procedure and nurse aides must be properly in-serviced on the correct procedures to follow;
4. Apparently the nurse aides did not inform their nurse supervisor of the difficulty in transferring this patient; had they done so, the patient might have survived;
5. The RN who responded to the patient's complaints and observed the patient's leg took immediate steps to get her evaluated further and treated and therefore met her standards of practice and overall standard of care; and
6. Regardless of what theory of liability is plead by a plaintiff, potential liability can still exist if the plaintiff proves his or her case against health care workers and/or their employers.

#### **FOOTNOTES:**

1. Friedmann v. New York Hospital-Cornell Medical Center, 884 N.Y. 2d 733 (2009).

2. Id .

3. Id ., at 735.

4. Id .

5. Id .

6. Id ., at 733.

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