Is a Nursing Home an Insurer of Resident Safety?

written by Nancy Brent | September 15, 2016

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Mr. K., a 59-year-old retired Air Force officer, was diagnosed with Alzheimer's Disease. The family decided they could no longer care for him at home and he was placed in a nursing home. Mr. K. was ambulatory but displayed hostile behavior and wandered frequently, attempting to leave the facility. Physical and chemical restraints were ordered by his doctor as needed.1

The Director of Nurses of the facility did not use the restraints often because they caused Mr. K. to become more agitated and hostile. In place of the restraints, the DON assigned an aide to watch him on the day shift, from 7:00 a.m. to 3:00 p.m., due to his wandering and walking on the facility grounds. On the evening shift, when he was less active, getting ready for meals, and getting ready for bed, no aide was assigned to watch him. The resident-to-aide ratio during the 3:00 p.m. to 11:00 p.m. shift was 1-12 to 16 patients. The aide was instructed to check Mr. K. every 30 minutes while in his room.2

One evening, when Mr. K. was in his room, he fell and fractured his hip. The aide found him on the floor and immediately called her nurse supervisor, the mobile X-ray unit, his doctor, the patient's wife, and the ambulance.

Mr. K. was taken to a nearby hospital, then transferred to a VA facility. As a result of the fall, he was unable to walk without assistance.

Mrs. K filed a suit on her husband's behalf against the nursing home, its director, and its insurance company requesting general damages of $600,000 and $100,000, alleging professional negligence and also stating the doctrine of res ipsa loquitor ("the thing speaks for itself") should apply.

The trial court found that Mr. K. was ambulatory, did not have a history of falls, and walked about the facility on his own. The judge opined that none of the defendants were negligence in the care provided Mr. K. The only way the injury could have been avoided would be to "confine him to a bed or to a wheelchair", which would be "tantamount to making them insurers of his safety".3 Mrs. K. appealed the decision.

The appellate court carefully scrutinized the law, stating that a nursing home's standard of care is that of reasonable care taking into consideration the resident's known mental and physical condition. And, the court continued, a nursing home is required to take steps to prevent injury to ambulatory, but mentally confused patients.

In this instance, the nursing home did not breach this duty of care to Mr. K. The evidence presented to the trial court indicated Mr. K. was in fair physical condition, was able to walk about his room, the home itself and its grounds. Although he was confused, there was no evidence that his confusion made him unable to walk. The home's only concern, which they dealt with non-negligently, was his potential to leave the facility.

The court also opined that even if there had been a duty to constantly be with Mr. K., the aide's instructions were to watch him so he would not leave the facility, not to assist him in walking. The fall was not caused by a lack of constant attendance by the aide.

The appellate court rejected applying the doctrine of res ipsa loquitor to this case. When the doctrine is applied, there is a presumption of negligence. No such presumption can be made here, the court held. Therefore, the verdict of the trial court was affirmed.

As a nurse's aide, you bear the duty of carrying out a delegated task in a non-negligent manner. When instructed by the person who delegates a task to you, you must follow those instructions without fail. There were no allegations against the aide that she failed to follow those instructions.

And, as in this case, when the aide discovered Mr. K. in his room, she immediately notified everyone she had a duty to notify. Mr. K.'s post fall care was immediate and non-negligent. The duty to notify others of a resident's change in condition, including a fall, is essential.

The case also stressed the fact that health care facilities and health care personnel are not insurers of a patient or resident's safety. This would be an impossible duty to fulfill. Rather, health care providers are required to take reasonable measures to ensure that patient/resident safety measures exist and are enforced, insofar as is humanly possible.

FOOTNOTES

1. Kildron v. Shady Oaks Nursing Home, 549 So. 2d 395 (La. App., 2 Cir., 1989), 396.
2. Id.
3. Id.

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