Nursing Staff's Failure to Provide Proper Care Causes Patient's Death

written by Nancy Brent | June 15, 2018

Avoiding Liability Bulletin – June 15, 2018

The following case[1] reveals the unbelievable misconduct of the nursing staff while caring for a very ill patient.

Mr. Sosa was admitted to the nursing home on June 28th with diagnoses of hypertension, altered mental state, congestive heart failure, chronic kidney disease (stage IV), high cholesterol, respiratory failure, diabetes, dementia, encephalopathy, depression, COPD, and difficulty swallowing. He was fed by a gastrostomy tube. On admission he weighed 165 pounds.

A registered dietician did a nutritional assessment in order to increase his tube feedings. However, it was not an accurate one due to the fact that she did not have his weight. Even so, Mr. Sosa maintained his admission weight for about a month.

9 days later, though, Mr. Sosa's weight was 149, equaling a nine percent loss in body weight in less than two weeks. The nursing notes were "inaccurate in many ways making it impossible to determine how and when Mr. Sosa was being fed", but it was clear that the patient was not fed for 3 consecutive days during the month.

The dietician requested an increase in the patient's fluids and food due to his elevated Creatinine and Blood Urea Nitrogen (BUN) levels.

During this time, the nurses administered Lasix, a diuretic, despite a doctor's order to stop the medication.

On the morning of August 6, the nursing staff noticed the patient had poor posture, low blood pressure, and increased tiredness. Mr. Sosa's blood sugar was high but no insulin was given. Around 2:30 pm that afternoon, he was found unresponsive and immediately taken to a hospital, where the ED physician told Mr. Sosa's wife that he was brain dead.

Despite this diagnosis, Mr. Sosa was resuscitated and placed on a ventilator. His medical record indicated kidney failure, sepsis, bloody and cloudy urine, and aspiration pneumonia.

Mr. Sosa died the next day after being taken of life support.

Mrs. Sosa filed a negligence suit against the nursing home, alleging that the home, through its nursing

staff, failed to properly supervise Mr. Sosa; failed to properly monitor Mr. Sosa; left Mr. Sosa unattended; failed to reasonably ensure Mr. Sosa's safety; and failed to provide Mr. Sosa the care a reasonable and prudent nursing home provider should provide.

Expert opinions were filed by both a physician and a nurse expert that supported Mrs. Sosa's claims.

The nursing home filed a Motion to Dismiss Mrs. Sosa's complaint, alleging that neither expert was qualified to provide an expert opinion and that the doctor failed to provide one pivotal requirement of a negligence claim—that the nursing home's actions caused the death of Mr. Sosa.

The trial court denied the Motion and the nursing home appealed that decision.

The Appellate Court gave an opinion on the qualifications of both experts and the alleged failure of the doctor to meet the causal requirement for a negligence suit to continue. It determined that the doctor was qualified to testify as an expert and that he did meet the causal requirement.

The Appellate Court's opinion in regard to the nurse expert is interesting. In a medical negligence case, the court opined, the applicable statute in Texas requires a physician to be an expert witness. Although a nurse expert is not a physician, she is qualified to render an opinion about the nursing standard of care and whether it was breached. Because the physician expert reviewed the nurse expert's testimony, and her testimony in that regard was not challenged, the two reports can be utilized in determining whether the nursing standard of care was met or breached.

Based on his own opinion and that of the nurse expert's, the physician confirmed that there was "overwhelming evidence of neglect of Mr. Sosa's nursing and dietary needs". Lab values indicating "acute kidney failure" were ignored.

The most critical of his opinion was that "..Had the nursing staff properly managed Mr. Sosa's feeding tube and ensured that he received proper food and water, it is medically probable that his kidneys would not have failed and he would not have died on August 7, 2013".

The nurse expert attested to the fact that the nursing staff continued to give the patient Lasix (despite it being discontinued) which worsened Mr. Sosa's dehydration. She also testified that the nursing staff did not follow physician orders to monitor his intake and output which was of "critical importance due to his kidney disease…". It was her opinion that there was no evidence that the nursing staff developed a plan of care to address his kidney disease, "despite knowing upon his admission that he suffered stage IV chronic kidney disease".

The Appellate Court affirmed the trial court's denial of the nursing home's Motion to Dismiss and ordered the nursing home to pay Mrs. Sosa her costs of the appeal.

Whether this case will go to trial or will settle is yet to be determined. But, the Appellate Court's opinion provides clear support of the nurse expert's opinion in relation to its decision in the case.

The case also provides clear implications for you as you care for any patient, but certainly with a patient with the many health problems this patient experienced. They include:

1. Neglecting a patient's care requirements will result in a case against your employer and also you, should the plaintiff (patient) decide to name you as a defendant in the case;
2. Neglect of a patient is misconduct of the worst kind and especially so when the misconduct results in the death of the patient;
3. The misconduct of the nursing staff here included not providing *basic* nursing care to the patient;
4. Always check medication orders and follow them;
5. Constantly monitor and assess patients with multiple, complex diagnoses;
6. Review lab results as they are received and notify the physician and/or other health care providers when the values are too high or too low;
7. Never fail to give an insulin-dependent diabetic his or her insulin when indicated;
8. Document nursing notes and care plans and keep them current;
9. Never fail to feed a patient; and
10. Although you might not be named as a defendant in a court case, you can face a professional disciplinary proceeding by the state board of nursing for any misconduct in your nursing practice.

FOOTNOTES

1. Nexion Health Management, Inc. v. Maria Sosa, No. 05-15-01083-CV, On Appeal from the 14th Judicial District Court, Dallas County, Texas, April 12, 2016.

THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR ANY OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS ENCOURAGED TO SEEK SUCH ADVICE FROM A COMPETENT PROFESSIONAL.