Patient Falls

written by Nancy Brent | May 26, 2016

Avoiding Liability Bulletin – April 15, 2015

Patient falls are a fairly common occurrence. According to several authors, up to 50% of hospitalized patients are at risk for falls and nearly half of those who do fall suffer injury.[1] When there is an injury and a suit is filed, nursing staff and the facility in which they work, among others, can be named in the suit as the following case illustrates.

An 82 year-old patient was admitted to a nursing center and during her admission, a risk-assessment was done. The patient was determined not to be a high risk for falling. Despite this classification, the patient fell and the fall was reported to a nurse staff member by a nursing assistant. When the nurse arrived at the patient's room, she saw the patient on the floor, asked the patient how she fell but could not understand what the patient said, and assessed she suffered a fractured left arm. The nurse called an ambulance and the patient's daughters, who arrived shortly after the call. [2]

The patient was transferred to an acute care hospital where the fracture was repaired. However, the physicians at the hospital also diagnosed the patient with *c. difficile* (clostridium difficile) and recommended surgery. The daughters decided not to have the surgery done. Shortly thereafter, the patient developed sepsis from the infection and died at the hospital approximately 11 days after her fall and admission.[3]

One of the daughters, as her mother's personal representative, filed a lawsuit against the nursing center, the hospital, and all the nurses involved in her care, among others. The allegations were that the nursing center nursing staff breached the standard of care by failing to put in place necessary fall-risk prevention methods, failing to safely transfer the patient from her bed on the day of the fall, and failing to "provide a clean environment" and " follow standard sanitary protocol and/or infection control procedures to prevent" the *c. difficile* her mother experienced.[4]

The trial court dismissed the case on a summary judgment motion by the defendants, stating there was no material issue of fact that the allegations against the defendants proximately caused the death of the patient. The daughter appealed that decision.

The appellate court upheld the decision of the trial court's dismissal of the case. In doing so, it carefully reviewed the evidence presented in the trial court.

The daughter's nurse expert testified that the nurses breached their standard of care in one of two ways: either the patient fell because she was assisted by nursing staff in a negligent way or the patient independently fell due to the nursing center's inadequate precautions to prevent a fall. The nurse expert

did not provide any testimony concerning the *c. difficile*.

There was no testimony that was admissible as to the allegation that the nursing staff assisted the patient in a negligent manner. Although the daughters asked their mother how she fell when they arrived at the nursing center, her mother told them she would tell them later, which she apparently did at the hospital. However, that statement was not allowed into evidence because it was hearsay[5].

As to the allegations of the institution of adequate precautions to prevent a fall, there was admitted testimony by the nurses that the patient was observed regularly. The nurse expert testified that despite that claim, there was no documentation in the patient's chart as to the observations. Even so, because the nurse expert did not testify that the documentation was required, the appellate court opined that the allegation that there was not any monitoring was speculative and not factual.

There was also an allegation that there was not a bed alarm assigned to the patient which is designed to sound an alarm as soon as weight is lifted off of the mattress. The nursing staff testified that because she was not assessed to be a high risk for falls, no bed alarm was provided. The trial court's finding that the absence of the bed alarm was not controlling because no evidence at trial was introduced that "but for" the absence of the alarm the injury to the patient occurred.

The daughter also alleged that the fact that the fall occurred required the application of the *res ipsa loquitor* principle—that the fall and injury sustained "speaks for itself"—meaning that but for someone's negligence, the fall and injury would not have happened. The trial court dismissed this allegation and the appellate court upheld the dismissal, opining that a fall and injury can take place in many ways*without* someone's negligence.

This case is interesting in many ways and underscores many points:

1. Although in this case, the nurses were found not to be negligent, it is essential to adequately assess any patient for the risk of falling, document that assessment, and carefully monitor the patient on a regular basis;
2. Documentation pursuant to facility policy is essential because its contents or lack of content can be introduced into evidence;
3. Good nurse expert testimony is essential if either the plaintiff or defendants are to win their case;
4. Interestingly, there was no expert witness for the defendants (which is usually required in professional negligence suits; apparently two doctors who gave depositions in the case refused to testify as to the nurses standard of care);
5. Hearsay is an important principle in any lawsuit and may make or break a case;
6. *Res Ipsa Loquitor* is a principle that is limited to specific types of patient injuries or deaths; and
7. Always adhere to protocols for infection control for all patients.

FOOTNOTES

1. “Best Practices For Fall Reduction: A Practical Guide” (2011). 6(3) American Nurse Today. (CE Module). Available at: www.americannursetoday.com/special-supplement-to-american-nurse-today-best-practices-for-falls-reduction-a-practical-guide/ .

Accessed 4/11/15.

2. Estate of O’Donnellv. Shelby Nursing Center, Pinehearst East, Inc.,*et. al,* No. 311671, Court of Appeals of Michigan, January 2, 2014, 1.

3. Id .

4. Id .

5. Id ., at 2. Hearsay is defined as an out of court statement offered for the truth of the matter asserted. Hearsay is inadmissible unless the statement falls under one of the hearsay exceptions, such as a dying declaration or an excited utterance. In this case, the deceased’s comments to her daughters did not fall into any of the exceptions.