

Was This LPN's Negligence Professional Negligence or Ordinary Negligence?

written by Nancy Brent | October 1, 2024

Professional negligence is a legal principle you are probably familiar with. Nurses are considered professionals in the eyes of the law. As a result, any allegation of patient injury by you when providing patient care is based on a professional negligence claim.

As a result, a nurse expert witness is required to establish the standard of care in the particular situation that gives rise to the lawsuit. The nurse expert witness establishes the standard of care in the circumstances of the specific case and whether the nurse met or breached the applicable [standard of care](#).

That standard is defined as what other ordinary, reasonable, and prudent nurses would have done in the same or similar circumstances in the same or similar community.

Such a standard requires that a health care professional, including a nurse, possesses knowledge and expertise that a layperson does not have. As a result, in a trial alleging professional negligence against a nurse, a court and jury must depend upon an expert opinion to establish conformity or a deviation from that standard.

In contrast, when a lawsuit involves allegations of ordinary negligence, the standard of care is defined as the defendant did not act like most other ordinary, reasonable, and prudent *persons* would act in the same or similar circumstances.

This standard does not require an expert witness to establish the standard of care because it is based on knowledge that a layperson would possess, and a court and jury can understand without difficulty.

In the following 2020 case (*Saddler v. Vermilion Par. Hospital Service District #2*, Louisiana Court of Appeal, Third Circuit, December 16, 2020), whether an LPN's conduct when her patient got out of bed to use the bedside commode was professionally negligent or ordinarily negligent was the focus of the patient's case.

Facts Leading Up To the Legal Case

The female patient was admitted to a local hospital with several diagnoses. They included:

- Congestive heart failure
- Obesity

- Severe peripheral arterial heart disease
- Diabetes with diabetic peripheral neuropathy
- Extreme difficulty ambulating

She was in the hospital for several days. Her physician ordered “multiple diagnostic testing, movement as tolerated, and for fall precautions.”

An LPN was assigned to the patient’s care. On one morning, the LPN directed the patient to get out of bed and use the bedside commode. The patient warned the LPN that she could not stand alone and had fallen when walking back to the bed without assistance.

The LPN reportedly told the patient she would not fall and did not assist her back to her bed after using the commode.

Upon returning to the hospital bed, the patient fell “directly on the hospital room floor.” A nurse’s aide was also in the room when the patient was returning to her bed and did not offer any help.

Prior to the patient’s fall, her physical therapist met with the patient who refused to do her chair to bed exercises. The physical therapist’s report indicated that the patient was “lethargic” and reluctant to work with physical therapy. In addition, the report indicated that the patient had “decreased ability to stand and ambulate due to her physical problems.”

After the alleged fall, the physical therapist attempted to initiate physical therapy, but the patient was in “significant pain”.

An examination by the patient’s doctor showed she had a nondisplaced fracture of the right tibia; her records never indicated any fracture of her tibia. A posterior leg splint was ordered by the physician.

There was no entry in the patient’s chart by the LPN of her version of the fall until later the afternoon the physician ordered the splint.

According to the LPN’s documentation in the patient’s record, the patient was escorted to the commode by herself and the nurse’s aide. The patient was then assisted off the commode and back to the bed, with a walker obtained by the LPN.

The patient then let go of the walker, as the LPN’s note indicated. The LPN then moved behind the patient and slowly slid the patient to the floor.

The patient was seen by consulting orthopedic physician, who diagnosed the patient with a tibial shaft fracture that extended up to her right knee. His orders included PT, the removal of the splint for daily bathing, and a repeat of the X-ray of the right leg in one week. It was his belief that if she were unable

to ambulate with the walker, she would need a wheelchair.

He also was under the impression that the patient would be transferred to another facility “for control” of the diagnosis.

The patient was not transferred to another facility and was discharged from the hospital several days later. She was given “little to no care” of her injuries due to the fall. She did not receive any care for those injuries until she arrived home and then transferred to hospice care.

As a result of her fall, the patient states she is unable to walk, is “low functioning”, the healing of her leg was delayed due to her early discharge from the hospital and suffered from “severe bed sores” requiring extensive treatment.

Patient Files A Lawsuit Alleging Professional Negligence

The patient filed a professional negligence claim against the hospital, her physician, and the two LPN’s who were involved in her fall. Her allegations were that they failed to provide proper treatment, failed to provide emergency services, and failed to properly transfer her.

In support of her case, the patient submitted an affidavit from a nurse, but the document did not include the nurse’s qualifications or what records of the case she reviewed.

The defendants filed a [Motion for Summary Judgment](#), alleging that there was no expert witness identified by the plaintiff to support her professional negligence case. The patient responded that there was no need for an expert, as the defendants’ conduct involved ordinary negligence.

The trial court granted the Motion, holding that the case required an expert opinion. The patient appealed that decision to the Louisiana Court of Appeal.

Court of Appeal Decision

The Court examined all of the testimony at the trial level and held that there were factual issues that required a trial surrounding the conduct of the defendants, and specifically, if they were professionally negligent or ordinarily negligent. The Summary Judgment Motion was granted in error.

Some of the factual issues identified by the Court in dispute included:

- The patient’s repeated warnings that she would fall if required to ambulate
- The incident took place after it was reported by the physical therapist that she was lethargic and was not able to participate in her PT session
- The fracture of the tibia was not present prior to the incident in the case
- No care was provided the patient after the alleged fall
- The patient’s physician was not notified of the incident for at least four hours after it occurred

The case was reversed and remanded back to the trial court for trial.

Considerations From This Case for Your Practice as an LPN or RN

This case does not stand for the proposition that the conduct of the defendants were either professionally negligent or ordinarily negligent.

Rather, it stands for the conclusion that a trial must determine the legal nature of their conduct.

Aspects of this case applicable to your practice include:

- Always carefully consider a patient's comments or concerns about care you are about to provide
- Always provide nursing care consistent with applicable and current standards of nursing practice
- Establish and follow an evidence-based fall prevention protocol with all patients
- Timely notify others on the health care team of a fall or other injury to your patients
- Provide required care to any patient who is injured while you are providing care
- Completely, accurately, and timely document any care provided to your patient after a fall or other injury and notifications to others on the health care team
- Whether professionally or ordinarily negligent, a jury may find you liable for a patient's injury
- Contact your professional liability insurance carrier as soon as you are named in any lawsuit
- If you do not have a professional liability insurance policy, retain a nurse attorney or attorney as soon as possible to represent you

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If legal or other advice is needed, the reader is encouraged to seek such information from a nurse attorney, attorney or other professional.