

# You be the Jury #4

written by Nancy Brent | February 15, 2012

## **Avoiding Liability Bulletin - February 15, 2012**

It is time to discover what happened in the real case upon which the adopted case in the bulletin was based. The actual ending is quite interesting.

As you recall, the plaintiff, Mr. Galvez in the real case, sued Loma Linda University Medical Center (LLUMC) after suffering permanent and disabling damage to his right hand because of, he alleged, an infiltration of IV fluid into this hand. The trial court granted LLUMC's motion for a nonsuit (dismissal of the case without a decision on the merits) (1) because Mr. Galvez failed to establish causation of the damage to his right hand, which, if you recall, is one of the essential elements of (professional) negligence.

On appeal, the Court of Appeals of California, 4th District, affirmed the motion for nonsuit as well as other procedural issues that were decided by the trial court judge.

Mr. Galvez's nursing care by CCU nurse Martha Ortiz was discussed at length in the opinion (2). According to the opinion, nurse Ortiz was assigned to Mr. Galvez, who was in a chemically induced coma and required constant monitoring. Mr. Galvez had six to seven IVs simultaneously running but the Propofol IV line was a separate one. The nurse-patient ratio on the shift was 1:1 or 1:2.

At the beginning of her shift at 7:00 p.m., nurse Ortiz assessed Mr. Galvez's IVs, one of which was on his right hand and contained Propofol. This assessment was not documented until nine hours later, at 4:30 a.m.

At trial, nurse Ortiz testified that simply because the assessments after her initial one were not documented did not mean that she did not do more assessments, including the IV site for the Propofol. According to the flow sheet for Mr. Galvez, she testified she did blood sugar checks on Mr. Galvez every two (2) hours from a "right radial A line" in Mr. Galvez's right hand. While doing the blood sugar checks, she was also assessing the IV site for the Propofol.

Nurse Ortiz also testified that she did not discover the infiltration until 4:30 a.m., when Mr. Galvez's right hand "was swollen and had blisters". She noted this on the flow chart because, pursuant to policy, it was a change in his condition and needed to be documented. She did not call the patient's doctor but did elevate Mr. Galvez's right hand and applied warm compresses. The IV was removed and the physician saw Mr. Gomez at 8:00 a.m., after Nurse Ortiz's shift had ended.

The CCU nurse manager testified at trial that the policy for the CCU, based on standards of practice, required patient assessment every four (4) hours. After this initial assessment was done and placed into

the electronic medical record, subsequent assessments were placed on a flow sheet. Protocol in the CCU required documentation of any assessment only every twelve (12) hours.

Mr. Galvez's expert witness, an R.N. who previously worked primarily in a hospital ER and was currently a nursing instructor, testified that the standard of care applicable to a patient in the CCU was to assess the patient every four (4) hours unless the patient's condition was more critical. If critical, the patient should be assessed more frequently. She also testified that since nurse Ortiz's documented assessments occurred only at 4:30 a.m., if no other assessments were done, Nurse Ortiz's care fell below the standard of care for a CCU patient like Mr. Galvez, who was sedated and was unable to control his movements or to communicate.

Moreover, Mr. Galvez's expert witness testified that upon discovering the IV infiltration, elevating the hand and applying warm compresses did not meet the hospital's policy for treating an infiltrated IV. Furthermore, the physician should have been called immediately.

Despite this testimony as to the nursing care Mr. Galvez received, the appeals court upheld the nonsuit entered by the trial court because there was no expert testimony as to the cause of Mr. Galvez's injury to his right hand. Despite the plaintiff's expert witness testimony, she was not an expert in causation. In addition, during her sworn deposition prior to the trial, she testified she would not be giving any opinions related to the medical causation of Mr. Ortiz's injury. As a result, that portion of her testimony was excluded.

With no expert testimony as to causation, an essential element of the four elements of negligence that must be proven, this element was not met and the entire case then failed.

The appeals court upheld the introduction of nurse Ortiz's flow sheet during the trial reflecting the assessments done by her when caring for Mr. Galvez. However, since there was no testimony as to the cause of the injury to Mr. Galvez's hand (that is, that nurse Ortiz's failure to monitor and assess the IV Propofol site as required by hospital policy and standards of care and standards of practice), the flow sheet was of little value in sustaining the allegations against LLUMC.

Other issues raised by Mr. Galvez concerning LLUMC's failure to provide physical therapy after his injury were also dismissed by the trial court and that decision was upheld by the appellate court.

What initially seemed like a fairly good case against LLUMC based on the alleged negligent care of nurse Ortiz turned out not to be a "good case" after all. Unfortunately for Mr. Galvez, the case was unsuccessful due to the failure to provide expert testimony essential to proving that the lack of monitoring and assessing his condition during his initial ten (10) or so hours in the CCU was the legal or proximate cause of injury to his hand.

This case is a good example of how difficult it is to predict the outcome of a particular case. It is also a good example of how the non-existence of required evidence can be extremely helpful to, in this case, LLUMC and nurse Ortiz.

So, the answer to a constant question often asked remains unanswered when hearing about litigation outcomes and hearing about the law in general: Justice gained or justice denied?

**FOOTNOTES**

(1) Bryan A. Garner, Editor in Chief (2001). Black's Law Dictionary. 2nd Pocket Edition. West Group: MN, 481.

(2) Galvez v. Loma Linda University Medical Center, No. EO47803, May 6, 2010, 1-4.

***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.***