Skin Care: Nurse Disqualified As Expert In Critical Cardiac Care.

Several days after cardiac-bypass surgery the nurses in the cardiac critical-care unit discovered a pressure blister on the back of the patient's neck and a Stage I decubitus ulcer on his coccyx.

After being released from the hospital the patient went to another hospital for plastic surgery for the sacral pressure ulcer.

He sued the hospital where he had his bypass for negligence allegedly committed by the critical care nurses and obtained a $300,000 jury verdict in his favor.

The patient's nursing expert was allowed to testify about routine skin assessment and care for hospital patients in general.

However, her professional nursing background did not include the care of critically ill patients.

Her testimony as to the standard of care for critical care nurses was not a sound basis for a legal case against the hospital.

SUPREME COURT OF ALABAMA
November 18, 2011

The Supreme Court of Alabama threw out the jury's verdict.

The critically ill patient was at times at risk of death. His critical-care caregivers were struggling with post-operative bleeding and he was on a ventilator much of the time. In deciding how and when to reposition him the nurses had to prioritize potentially life-threatening considerations.

The generic hospital-nursing mandate to turn every patient every two hours advocated by the patient's nursing expert incorrectly oversimplified the complexities involved in his care, the Court said. **Springhill Hosp. v. Critopoulos, __ So. 3d __, 2011 WL 5607816 (Ala., November 18, 2011).**

Worker's Comp: Aide's Claim Will Go Forward.

The first time the CNA injured her hip she was in the process of making a two-person transfer of a bed-bound resident to the bathroom commode.

When her hip popped out of place a physical therapy aide on duty was able to pop the hip back in place. The CNA continued working, transferring seven or eight more residents that morning with help from a co-worker.

That afternoon she injured the same hip again, this time trying to move a patient by herself from a wheelchair to bed. The patient's care plan identified her as a high fall risk and called for two-person transfers or use of a Hoyer lift. This second injury kept the CNA off work several days.

An employee injured on the job due to the employee's own culpable negligence cannot be awarded worker's comp benefits.

Thoughtless, heedless or inadvertent acts, mere errors in judgment or simple inattention do not constitute culpable negligence.

SUPREME COURT OF WYOMING
February 2, 2012

The Supreme Court of Wyoming ruled the CNA was not guilty of culpable negligence and was entitled to worker's compensation.

Staff Not Educated About Own Risk From Incorrect Transfer Technique

There was no evidence the CNA had ever been educated as to the risk to herself of injury from failure to use proper technique in transferring a patient. The facility's policy for two-person transfers of high-fall-risk patients, as the CNA apparently understood the policy, was solely intended to promote patient safety. There was no evidence the facility took steps to educate care-giving staff that the policy was there for their own protection as well. **Shepherd of the Valley v. Fulmer, __ P. 3d __, 2012 WL 309532 (Wyo., February 2, 2012).**

Long-Term Care: Facility Cannot Require Payment Guarantee.

The elderly couple signed a complicated financial agreement when they entered the facility. At first they would live in an assisted living apartment. Later the entrance agreement contemplated they would be transferred to skilled nursing care or custodial nursing care as their needs progressed.

After moving into the facility the couple realized their existing assets were rapidly being depleted and inquired how they could draw into the sizeable sum denominated in the contract as the "unearned portion of the entrance fee" as a means to continue making their monthly payment.

Facility management at that point informed them by letter that they had to come up with a signature from a third-party guarantor of payment or leave the facility. They had to move out.

Federal law strictly prohibits a nursing facility or a skilled nursing facility from requiring a third-party guarantee of payment as a condition for entering or remaining in the facility.

UNITED STATES DISTRICT COURT
FLORIDA
February 8, 2012

The US District Court for the Southern District of Florida ruled that the facility violated Federal law by insisting on a third-party guarantee of payment as a condition for remaining in the facility.

By violating Federal law the facility also violated Florida state law which gives nursing facility residents the right to sue a facility for violation of their rights protected by Federal law.

It was not relevant whether the facility was a skilled nursing facility or a nursing facility as defined by Federal law. Either way there is a prohibition from insisting on a third-party guarantee, the Court said. **Altman v. Lifespace, 2012 WL 414826 (S.D. Fla., February 8, 2012).**

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