

Improper Transfer Technique: Court Finds Nursing Negligence.

A diabetic patient went to the hospital for amputation of her left leg necessitated by non-healing ulcers. After ten days in acute care post-surgery she was transferred to skilled rehab.

In a transfer from the toilet to a wheelchair on the skilled rehab unit her right leg was lacerated. The laceration was slow to heal but they were able to discharge her. Nevertheless her right leg also eventually had to be amputated.

She sued the hospital alleging that nursing negligence in the transfer on the skilled rehab unit was the underlying cause of her second amputation.

The Court of Appeals of Michigan supported the jury's finding of nursing negligence and had serious legal questions about the application of a new state statute in Michigan that puts a cap on pain and suffering awards in malpractice cases.

Proper Transfer Technique Defined

First the nurse must assess the patient's ability to assist in the transfer. How strong is the patient's remaining limb or the limb that will serve as the pivot for the transfer maneuver?

More importantly, how well does the patient understand the patient teaching that has been done concerning the patient's own participation in the maneuver?

Next, for the safety of a fragile recent amputee, two nurses or nursing personnel must be present and a transfer belt must be used, the court believed.

It is also of the utmost importance that the caregiver most directly assisting the patient position himself or herself properly directly in front of the patient so that the patient's knee or knees can be positioned between the caregiver's knees so that the sit-up, pivot and sit-down portions of the maneuver can be done safely.

Again the court stressed that a pivot cannot begin unless and until the nurse is sure that the patient teaching has been effective and the patient can and will effectively participate. Otherwise a straight two-person lift must be done. **Wiley v. Henry Ford Cottage Hospital**, __ N.W. 2d __, 2003 WL 21568688 (Mich. App., July 10, 2003).

The applicable standard of care is the skill and care ordinarily possessed and exercised by a practitioner of the profession in the same or a similar practice setting.

Expert testimony is necessary to establish the standard of care for a particular clinical scenario.

An ordinary lay person on the jury is not equipped by common knowledge and experience to judge the skill or competence of a nurse or determine whether it meets the standards of practice in the nurse's professional community.

A nurse testifying as an expert on nursing standards in a nursing malpractice case cannot testify what he or she would have done in the specific clinical scenario.

Even if the nurse is an expert on nursing care in general and in a specific nursing specialty area, what the expert would have done is completely irrelevant.

A nursing expert must testify what nurses in general would do in the specific situation in question and how the defendant nurse's failure to act as other nurses would do injured this particular patient.

COURT OF APPEALS OF MICHIGAN
July 10, 2003

Sexual Assault: Nurse Practitioner Accepted As Expert Witness.

The New York Supreme Court, Appellate Division, refused to overturn a conviction for child sexual assault on the grounds the prosecution's medical expert, a licensed nurse practitioner, was not competent to give a medical opinion in court.

The admissibility and limitations of expert testimony are controlled by the sound discretion of the trial judge.

The trial judge has the primary responsibility of determining whether an expert possesses adequate skill, training, education, knowledge or experience.

An expert's competency can be derived from formal training or from observation and actual experience.

Expert medical testimony need not come from a licensed doctor. A nurse practitioner can also render a medical opinion.

NEW YORK SUPREME COURT
APPELLATE DIVISION
July 24, 2003

Although the child, ten years old at the time of trial, testified herself as to what happened, the prosecutor also had the nurse practitioner testify there was medical evidence of a sexual assault.

The court noted she had considerable experience as a nurse practitioner in pediatric and adolescent gynecology. Her state nurse practitioner's license gave her authority to make medical diagnoses. **People v. Munroe**, __ N.Y.S.2d __, 2003 N.Y. Slip Op. 16136, 2003 WL 21709674 (N.Y. App., July 24, 2003).