LNP 275
Defending the Pressure Sore Case

This is Pat Iyer with *Iyer's Insights*, one of the twice weekly shows of Legal Nurse Podcast. In Legal Nurse Podcast 274, Heidi Cross commented on the unavoidable pressure sore. In this podcast, I go a bit deeper into the concepts of how pressure sores cases are defended. I spent 20 years testifying as a medical surgical nursing expert. Some of those cases involved pressure sores.

Pressure sore cases are often easy for a jury to understand. Most jurors have heard of bedsores and may believe that pressure sores are easily prevented by diligent medical care.

Pressure sore cases, therefore, are potentially large verdict cases. The plaintiff may have graphic photos of large infected pressure sores. In making the argument that pressure sore development is a deviation from the standard of care, the plaintiff attorney may focus on the Centers for Medicare and Medicaid Services' position that Stage III and IV pressure sores are never events that should not happen in health care.

The National Pressure Ulcer Advisory Panel hosted 2 consensus conferences, one in 2010 and one in 2013. Here are some of their key conclusions:

1. Most but not all pressure injuries are avoidable.
2. Pressure redistribution surfaces cannot replace turning and repositioning.
3. If enough pressure was removed from the external body, the skin cannot *always* survive.
4. Skin failure is not the same as a pressure injury.

Pressure sore cases can be challenging for the defense team. The damages are obvious, and the liability may be easy to establish. The defense team has some potential avenues for its defense of the claim.

This is a common defense: The Pressure Sore was Unavoidable

Whether a pressure sore was unavoidable is a potent battleground between expert witnesses. The definitions stated in the CMS Guidance Document for Surveyors apply to long term care facilities:

Avoidable – the nursing home resident developed a pressure sore and the facility did not do one or more of the following:

- Evaluate the resident's clinical condition and pressure sore risk factors
- Define and implement interventions that are consistent with resident needs, resident goals and recognized standards of practice
- Monitor and evaluate the impact of the interventions
- Revise the interventions as appropriate

The definition of an unavoidable pressure sore is closely patterned on the factors that CMS defined as within the control of the nursing home.

Unavoidable – the nursing home resident developed a pressure sore *even though* the facility had

- Evaluated the resident's clinical condition and pressure sore risk factors
- Defined and implemented interventions that were consistent with resident needs, goals and recognized standards of practice
- Monitored and evaluated the impact of the interventions
- Revised the approaches as appropriate

The National Pressure Ulcer Advisory Panel concluded certain things about the unavoidable pressure injury. (Listen for the steps of the nursing process in this definition.) This will also sound familiar.

They said an unavoidable pressure injury is one that develops even though the provider has evaluated the patient's clinical condition and pressure injury risk factors. The provider has defined and implemented interventions that are consistent with the patient's needs and goals and formulated with recognized standards of practice. The provider has monitored and evaluated the impact of interventions and revised these approaches as appropriate.

The patient who develops pressure sores is often sick with multiple medical problems. These conditions may exist, which make it difficult to prevent or heal pressure sores:

- Extremely thin body
- Widespread cancer
- Several failing organs
- Severe blood vessel disease
- Terminal illness

No studies have found that prevention of all pressure sores is possible. And no studies can define *which* pressure injuries are unavoidable. To make matters worse, there are no validated and reliable decision algorithms to determine unavoidability. The determination of unavoidability then rests on expert opinion, and that is where legal nurse consultants come in.

The defense team may have to argue that maybe the care wasn't perfect, but would it have made a difference in the end? In so many of these cases the patient may have been on the best support surface. He could have had all the nutrition pumped into him by tube feeding, but none of that would have been absorbed. He would have ended up with tube feeding diarrhea. He was at the end of his life and going to break down no matter what anybody knew how to do. There is limited understanding of how to intervene to prevent pressures sores in terminally ill patients.

This defense argues the pressure ulcer is associated with terminal tissue injury or skin failure. Skin failure is an event in which the skin and underlying tissue die due to hypoperfusion that occurs along with severe dysfunction or failure of other organ systems.

We know that patients who are critically ill are particularly susceptible to skin breakdown and failure.

The Kennedy Terminal Ulcer is a specific kind of skin injury seen in dying patients and is viewed as a sign of impending death. It occurs most commonly on the buttocks, is shaped like a pear, butterfly or horseshoe, and progresses from red to back. It has a sudden onset and progresses rapidly.

I am going to move onto other ways to defend skin injuries.

Pressure Sore Case Analysis and Reports Multimedia Course

Consider these questions

Since Centers for Medicare and Medicare declared stage III and IV pressure ulcers as avoidable outcomes of care, the spotlight is shining on pressure sore cases.

- Are you using current standards of care to evaluate pressure sore cases?
- Can you spot the unavoidable pressure sore cases?
- Are you aware of all of the critical issues that affect the analysis of pressure ulcer cases?
- Are you comfortable in being able to analyze the liability and damages of these cases?

Learn from an international expert in pressure ulcer care and prevention: Dr. Diane Krasner and a national expert in legal nurse consulting: Pat Iyer MSN RN LNCC.

Who should invest in this online course: Nursing expert witnesses, legal nurse consultants, wound care specialists

- Discover a systematic process for evaluating a pressure sore case based on current standards of care and medical literature

- Recognize the top pressure sore standard of care issues so you know how to evaluate liability and damages
- Gain skill in critiquing or writing an expert report
- Use the Skin Changes at Life's End Consensus Statement to identify or refute crucial defenses in pressure ulcer cases

During this interactive multimedia course, you will review records of a pressure ulcer medical malpractice case and be guided through the process of case analysis to develop your own detailed expert report.

You will discover how to avoid common mistakes and hone your analytical skills to produce a report that your client will depend on throughout the litigation process. Even if you are not an expert witness, you need to know how these reports are constructed.

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The Defense May Argue the Sore had an Arterial or Vascular Origin

Foot sores cases are often easier to defend than sacral pressure sore cases. A foot sore, as previously described, may be due to an underlying diagnosis of arterial or venous insufficiency. What are the other comorbidities? Is the patient diabetic? How long has the patient had diabetes? Is there micro-vasculature and macro-vasculature compromise and neuropathy? There is usually more than just one diagnosis. Were wound workups done? Were options given?

The Sore was Present on Admission; it Developed Elsewhere

Careful analysis of the medical record may show that the patient entered the facility with a pressure sore that developed elsewhere. Documentation of the skin condition may be found in the hospital emergency department records, the nursing admission assessment and the physician history and physical. Documentation
of the skin condition of a nursing home resident may be found in the facility's admission assessment, the minimum data set, and the physician history and physical. The defense strategy may be to shift the blame to the facility that sent the patient into the facility with a pressure sore.

The Patient Was Uncooperative

An alert, oriented patient has the right to refuse preventive care. A mentally competent person who does not want to turn or reposition or be cooperative with the care needed to prevent pressure sores poses a challenge for the medical team. It is difficult to perform positioning on a patient who is resistant. A person with enough mobility who is placed on her side may easily flip onto her back. A patient may refuse clearly needed care to pressure points and sores. The healthcare team, when confronted with such a situation, needs to investigate the causes of the patient's behavior and work towards a plan that addresses the underlying reasons for the refusal. If all efforts fail, ultimately a competent person may refuse to cooperate and develop pressure sores.

These are commons defenses for pressure sore cases. The key, as always, is in the documentation. The skills of a legal nurse consultant in analyzing the sequences of events that led up to the development of the pressure sore, and how it was treated, are key in helping attorneys litigate these cases.

Be sure to take advantage of our special offer of an online course designed to help you confidently analyze the liability of a pressure sore case. Get instant access by ordering it through our show notes on podcast.legalnursebusiness.com.

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