



LNP 317

3 Medical Malpractice Cases: Are They Valid?

I'm Pat Iyer with the newest edition of *Iyer's Insights*, one of the twice weekly shows of Legal Nurse Podcast. Before I start today's podcast, I want to share the exciting news that I am assembling a mastermind for experienced legal nurse consultants. This group is designed to elevate each member's business, to provide support, new ideas and a community for those who are building their businesses.

If you'd like to find out if you are qualified to be a member of this group, contact me at patiyer@legalnursebusiness.com.

Today I want to tell you about 3 cases. Is that OK with you? This is a chance for you to test your analytical abilities.

Let's start with Case #1

The fifty-three-year-old plaintiff went through cervical surgery. When she awoke, her left wrist was swollen and hurting. The staff told her it was nothing to worry about. She went home three days after the surgery.

Her wrist pain continued, and an x-ray was taken two days after discharge. It showed a comminuted fracture. The plaintiff continued to complain of wrist pain and claimed the fracture occurred during surgery.

At trial, the hospital denied the injury was sustained during surgery and contended that following surgery the medical record indicated that the plaintiff's grip strength was tested, and it was normal. The defendant presented an expert who theorized that the fracture likely occurred during a fall.

How do you think this trial turned out?

The jury returned a defense verdict.

The surprising verdict of the jury makes no sense to me. The patient went to surgery without a broken wrist. She woke up with a broken wrist. She was under the control of the surgical staff while anesthetized.

- ✚ What caused her fracture?
- ✚ Why didn't the physician order an x-ray when she complained of wrist pain?
- ✚ Can you have normal grip strength and still have a fracture?
- ✚ If the defense argued the patient fell, how and when did she fall?
- ✚ Did the fall take place in the operating room?

This case is an example of one in which we will never know what happened to cause that fracture. I am surprised the jury did not find negligence. Are you?



As a legal nurse consultant, you play a crucial role in helping attorneys identify medical malpractice cases that are meritorious. There is a lot at stake in a medical malpractice case – the costs, the potential recovery for the plaintiff and the reputations of the defendants.

Using your medical knowledge and analytical skills, you are in a prime position to help attorneys understand the merits of a medical malpractice claim. You can be the light that guides the attorney to the meritorious claims.

I have online training for call called **Medical Malpractice LNC Case Screening**. In this 90-minute webinar, you will discover:

- How to establish the standard of care
- How to identify theories of liability
- How to use key elements of effective case screening
- How to spot case winners and losers
- How to avoid pitfalls of medical record analysis

Join us for 90 minutes as two experienced legal nurse consultants and expert witnesses give you insider tips on the legal nurse consultant's role in the complex world of medical malpractice. Barbara Levin and I have combined 40 plus years reviewing cases as expert witnesses; we share our deep knowledge with you. You'll hear about our most memorable cases and what lessons you may learn from them.

Order this 90-minute online training at the show notes of podcast.legalnursebusiness.com and use the code Listened for a 25% discount off the program.

Now back to the show.

Here's Case #2

An attorney client asked me about the emergency medical services' liability in this case.

The mobile intensive care unit staffed by an EMT and nurse was called to the home of Loretta and her daughter, Erin. The daughter had a seizure at home. The ambulance driver encouraged Loretta to come along in the ambulance to the hospital. Loretta said, "I'm feeling faint. I don't really want to go," but the ambulance attendants said, "You need to come with us and be with your daughter."

Loretta got in the front of the ambulance in the seat next to the driver. They went to the hospital, unloaded Erin's stretcher and took Erin into the emergency department. When Loretta got into the hospital, she felt faint. She fell and fractured her hip in the emergency department.

Is there emergency medical services' liability?

Does this case meet the 4 elements of medical malpractice?

- Duty
- Breach of duty
- Proximate cause
- Damages

The case of Loretta raises an interesting question: Did the squad members have a duty to Loretta? Who was the patient?

The plaintiff attorney came to me before filing suit to ask me about the emergency medical services' liability. Did the mobile intensive care unit staff have a duty to prevent Loretta's fall? The attorney representing Loretta wondered if the ambulance attendants had a duty to help her get safely out of the rig and into the hospital.

Who was the patient of the rescue squad? Loretta or Erin?

Were the squad members responsible for what happened to Loretta? Who was the patient in that ambulance? *Erin was the patient.*

Erin's seizure was the reason the squad came to the house. Loretta was not the patient and was in the ambulance because of her relationship with her daughter and the need to provide information about her when they arrived at the hospital.

Loretta got out of the ambulance uninjured. She became a patient when she fell on the hospital property. She was no longer under the supervision of the EMT and nurse at the time she fell. Therefore, I concluded, the emergency medical services' liability was non-existent. They were not responsible for the injury.

Did the attendants have a duty to Loretta? You might say common courtesy would mean that the squad members would help Loretta get out of the rig, but she was able to get out of the rig on her own. She fell in the Emergency Department. There was no duty between the attendant and the mother in that situation.

Did the emergency department environment contribute to the fall?

What caused Loretta to fall in the Emergency Department? Was the ED staff negligent in causing her injuries? Loretta told the plaintiff attorney she suddenly felt faint as she walked into the ED. This type of reaction could not be anticipated and occurred without warning. However, if the emergency department was cluttered, had wet floors, or in some way contributed to creating a dangerous environment, they could have been liable for her injuries.

In one case in which I was involved as an expert witness, a woman in an advanced stage of pregnancy tripped over a wheelchair that was positioned in the path of people walking through a hallway.

Someone positioned the wheelchair at right angles to the wall and left it with the foot pedals sticking out into the hallway. The pregnant woman did not see the pedals and tripped over the wheelchair. She landed on her knee and had to have surgery for her injuries.

The jury concluded the emergency department staff had a duty to her, as a visitor in the emergency department, to maintain a safe environment. They breached their duty, and their actions were the proximate cause of her injuries. They were negligent for creating a hazardous condition.

In Loretta's situation, she fell because she felt faint. There was no evidence that she tripped over a hazard or slipped on water. There was no duty of the rescue squad because there was no patient relationship with her. She was not the patient. There was no liability on the part of the emergency department.

The outcome of this case was that the plaintiff's attorney decided to not file the claim against the rescue squad even though there were a lot of injuries to Loretta.

Remember, just because there are injuries does not mean there is emergency medical services liability.

Case #3

Would you believe a patient who said a nurse or physician's assistant told him to remove his own staples after he lacerated his leg?

In this interesting case, a 68-year-old man went to the ED with a chainsaw laceration of his left knee. He developed a severe infection in the knee, which required surgery, intravenous antibiotics and physical therapy. The plaintiff claimed that antibiotics should have been given at the time of the ED visit and that a partial cut to the quadriceps tendon was not diagnosed.

At trial, the defense asserted that there was no indication for prescribing antibiotics, and that if the plaintiff had an infection at the time of the ED visit, it would have been evident at that time, rather than when it was diagnosed a month later. The defendant claimed the wound was cleaned and examined before being closed.

The defendant claimed that the plaintiff was given a special staple remover *to take to his primary care physician* to minimize tissue damage during staple removal. The defendant also claimed the plaintiff was instructed to follow-up with his physician in 12-14 days for reevaluation and staple removal. The plaintiff removed his own staples after three days and never followed up with his primary care physician.

The plaintiff claimed that when he was handed the staple remover by a nurse or physician's assistant who told him *he could remove the staples himself*.

Who do you think won this case? A defense verdict was returned.

This case is a good example of a defense of contributory negligence. The actions of the plaintiff contributed to the injury. This defense may be particularly effective if the plaintiff acted in a reckless way and caused his injuries.

The jury tends to harshly judge people who make poor decisions. The above case is a good illustration of a patient whose actions (removing his staples and not following up with his physician) may have contributed to his poor result.

I find it very hard to believe that an ED staff member would tell a patient to remove his own staples. Do you agree?

If you enjoyed testing your analytical skills, you'll appreciate the value of my online training, Medical Malpractice LNC Case Screening. Get the details at the show notes for this podcast on podcast.legalnursebusiness.com.

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