

“The Thing Speaks For Itself”

Avoiding Liability Bulletin - November 15, 2011

At one time or another, you have probably used this phrase in your everyday conversations with friends, family, and even with nurse colleagues. However it was used in those conversations, in the legal world of professional negligence, it has a very specific meaning.

Res Ipsa Loquitur, “the thing speaks for itself”, is a rule of evidence stating that in a particular circumstance or circumstances, the mere occurrence of an incident raises an inference of negligence that establishes a prima facie case of that negligence (1). A prima facie case means that the evidence presented by an injured party (the plaintiff) allows the fact finders (the jury) to infer that the fact at issue—the injury-- occurred and therefore can return a verdict for the injured plaintiff (2).

For res ipsa loquitur to apply, the evidence that must be introduced by the plaintiff must prove:

- That in the ordinary course of events, such an injury would not occur if the defendant was not negligent;
- The defendant had exclusive control over that which caused the injury; and
- The injury could not have occurred as a result of any voluntary action by the injured plaintiff.(3)

In most states, what this means practically is that when an injured plaintiff (patient) raises a res ipsa loquitur allegation against a defendant (a nurse), the plaintiff does not need to prove the standard of care was not met by an expert witness' testimony. Rather, presenting evidence of the circumstances surrounding the injury allows the jury to infer that negligence occurred, especially if the defendant cannot rebut (refute) the allegation by contrary proof, testimony or other evidence. If the judge allows the application of the res ipsa loquitur doctrine, the jury can then evaluate the circumstantial evidence and if strong enough, and without evidence to the contrary presented by the defendant, decide in favor of the plaintiff—negligence did take place under this doctrine-- and award damages to the plaintiff.

The principle of res ipsa loquitur can be alleged against one nurse defendant or several nurse or other health care defendants. The classic case that applied the doctrine to more than one defendant is *Ybarra v. Spangard* (4), in which the California Supreme Court applied the doctrine to an operating room team who refused to speak about how a surgical patient sustained a permanent arm injury after surgery for an appendectomy. The team apparently thought that if the second element of the doctrine—who had exclusive control over the patient during surgery—could not be proven, the case would fail. Instead, the California Court simply held that under the circumstances, the doctrine could be applied to multiple defendants (5).

There are many additional case decisions against nurses and other health care providers utilizing the principle of *res ipsa loquitur*. Examples that include nurses are:

- *Steinkamp v. Caremark* (6), where a nurse, while inserting a catheter into a patient's arm, the catheter disintegrated into the vein, requiring surgery to remove the catheter fragments;
- *Edgar County Bank and Trust v. Paris Hospital* (7), where footdrop occurred immediately after a nurse gave an injection to an infant;
- *Sanchez v. Bay General Hospital* (8), where nurses failed to properly intervene after a patient's cardiac arrest and death by not observing the patient, not monitoring the patient, and not initiating CPR; and
- *Zebarth v. Swedish Hospital Medical Center* (9), where paralysis due to injury to the patient's spinal cord occurred after a course of radiation therapy at the Medical Center for Hodgkins Disease.

These, and other cases, underscore again the importance of utilizing critical thinking when providing care and treatment to patients. Remember that with professional negligence, you don't intend to harm or injure the patient. Rather, your duty or duties in the situation are breached and you fail to conform to the standard of care. With *res ipsa loquitur*, the injury is evaluated by your control of the patient and/or patient equipment, by the fact that the injury usually does not occur in the absence of negligence, and the patient did not contribute to his or her injury in any way.

Non-negligent care is always the goal when caring for patients, but with this additional doctrine alive and well in the area of professional negligence, extra vigilance needs to be taken with unconscious patients, patients who are paralyzed, patients who are having surgery or long term treatments and need to be positioned correctly during surgery and those treatments, patients who are infants and children, and patients who are elderly and confused, as examples.

Don't let "the thing speaks for itself" ever describe your care and treatment of patients. Its application raises serious questions about the quality of your nursing care and treatment to patients to whom you owe a duty to provide non-negligent and safe care.

FOOTNOTES

(1) Robert Kane, Ross Silverman, Lawrence Singer, et al (2007), "Res Ipsa Loquitur", in *The Law Of Medical Practice In Illinois*. Egan, MI: Thompson West, 370-375 (with regular updates).

(2) *Id.*

(3) Dan Dobbs (2001), "Res Ipsa Loquitur", in *The Law Of Torts*. St. Paul, MN: West Group, 370-389 (with regular updates).

(4) 154 P. 2d 687 (Cal. 1945).

(5) Nancy J. Brent (2001), "Concepts of Negligence, Professional Negligence, and Liability", in *Nurses And The Law: A Guide To*

Principles and Applications. Philadelphia, PA: W.B. Saunders Company, 58-59.

(6) 3 S.W.3d 191 (Tex. App. 1999).

(7) 312 N.E.2d 259 (1974).

(8) 172 Cal. Repr. 342 (1981).

(9) 499 P. 2d 1 (1972).

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