

## Was the Nurse Professionally Negligent When Ambulating This Patient?

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In accordance with a physician's order, it is necessary that a patient get out of bed and walk as soon as possible after surgery. In the following case<sup>1</sup>, the patient's ambulation did not go as well as expected.

Mrs. McBee was admitted to a nearby medical center for a hysterectomy. Leslie Glaser was one of her post-operative RNs.

Two days after surgery, an order was written to ambulate the patient. Ms. Glaser tried to walk the patient at about 10:00 a.m. but she became dizzy and felt ill, so the patient was placed back in bed. Mr. McBee, the patient's husband, was with his wife during this attempt.

Ms. Glaser tried to ambulate the patient again at around 1:30 p.m. As soon as Mrs. McBee got out of bed, she again became dizzy and fell, fracturing her ankle. Mr. McBee was not present when his wife fell.

The McBees filed a lawsuit against the medical center and its owner, alleging that Ms. Glaser "negligently permitted her to ambulate without adequate assistance and support".<sup>1</sup>

The medical center filed a Motion for Summary Judgment along with the affidavit nurse Glaser. Her affidavit stated that she had complied with the applicable standard of care for the post-operative ambulation of surgical patients.

Because the McBees did not file any expert affidavits to counter Ms. Glaser's affidavit, the trial court granted the Motion in favor of the medical center.

The McBees filed an appeal of the decision, pleading that they should not have been required to file any expert affidavits either because their complaint was based on simple negligence (not professional negligence) or that the RN's negligence was "so plain" that no expert testimony was necessary.

The appeals court carefully reviewed the evidence in the trial court and the applicable law. Ambulating a patient after surgery, the court opined, requires assessment of the patient and the proper choice of the method of ambulation. These responsibilities require "specialized skill and training not ordinarily possessed by lay persons".

Therefore, the court continued, the complaint against the medical center was one of professional

negligence (“medical malpractice”) and not one of “simple negligence”. As such expert testimony is required.

As to the McBees allegation that the RN’s conduct was so plain that no expert testimony was needed, the court struck down that position. Ms. Glaser’s affidavit attested to her compliance with the standard of care, detailing that she “had her right arm under the patient’s left armpit “and her left was on the patient’s left forearm.

In contrast, Mrs. McBee’s version of the situation was that the nurse was “more than an arm’s length away from her and that Glaser offered no assistance when she got out of bed”.

The court decreed that the McBees’ version of the fall simply did not support a plain violation of the RN’s standard of care.

The Summary Judgment granted to the medical center was upheld and the case was remanded back to the trial court for whatever further proceedings might be required.

The McBee case illustrates several important procedural aspects of a professional negligence case. As I have pointed out in several Bulletins, a professional negligence case requires expert testimony in order for a jury to determine whether the standard of care was met or breached.

The experts for each side “educate” the jury as to what the standard of care is in the case before them and then state their opinion about the conduct of the health professional named in the suit. He or she is an independent health professional who has no involvement in the suit and whose knowledge is needed to determine whether or not the standard of care was met.

In this case, the “expert” was the nurse who attempted to ambulate Mrs. McBee. This is unusual. Even so, through her affidavit, she raised facts surrounding the ambulation that the McBees were required to counter.

What is also unusual is the fact that the McBees believed their version of the RN’s conduct alone—without expert testimony about the standard of care-- would be enough to win their case on both the trial and appellate level.

The case also emphasizes that when a patient injury or death occurs due to a health professional’s conduct, the case is one of professional negligence, not “simple” or “ordinary” negligence.<sup>2</sup>

Undeniably, at one time, a nurse’s negligence was not seen as professional negligence. The law overlooked nurses and the care they provided for many years, seeing them only as physician “handmaidens”.

However, as nursing developed into a respected discipline, with specialized knowledge and skill, the law saw nurses as health care professionals and required them to be accountable under a professional negligence theory when patient care went array.

The McBee case also highlights the important professional responsibilities you have when ambulating patients after surgery, including:

1. Obtaining and following a physician's order or protocol for a patient's ambulation;
2. Assessing the patient carefully before initiating walking after surgery
3. Utilizing appropriate techniques when helping a patient get out of bed;
4. Employing adequate patient support procedures when ambulating the patient; and
5. Documenting factually in the patient's medical record the success or failure of the patient's ambulation.

## **FOOTNOTES**

1. McBee v. HCA Health Services of Tennessee, M2000-00271-COA-R3-CV (Tenn. Ct. App. 2000).
2. The standard of care in "ordinary" negligence is what an ordinary person would do in the same or similar circumstances.

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**Author:**

Nancy Brent