

Malpractice Cases in Wound Care

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Introduction

Malpractice in wound care is based on the standard of care. That standard of care includes what a prudent educated wound care specialist and physician would do in the same situation. What are the standards of care? Using dressings that are based on evidence-based research. A team of professionals reviews the patient and records to ensure that the interventions are patient-centered and not based on the average patient population. The most important of proper standards in wound care is based on healing or, if not healing, maintaining without infection. Since not all patients can be cured related to the body's physiological needs, the care needs to reflect doing what a prudent wound care specialist would do to prevent infection and maintain the patient's comfort. This article will present how to find the standard of care, keep educated on those standards, and cases that have entered the California court representing substandard care.

Explanation of Standard of Care

In the article What is the Standard of Care in Wound Care? (Wound Management Standard of Care, 2022) states that the standards are a product of "An intricate network of physicians, medical researchers, government regulators, and medical journal contributors help develop the standard of care." It is these sources that need to be used in a court of law to help to prove or disprove the case of malpractice. According to the Centers for Medicare/Medicaid (CMS): "Wound evaluations may require a comprehensive medical evaluation, vascular evaluation, orthopedic evaluation, functional evaluation, metabolic/nutritional evaluation, and a plan of care." (CMS, 2017). The standard of care calls for a team to work together to ensure all elements are evaluated on an ongoing basis.

"These strategies include the use of motivational

interviewing, a communication technique designed to elicit patients' perspectives regarding treatment goals, outcome expectations, anticipated barriers, and intentions to follow provider recommendations." (Callender LF, 2021). "Medicare coverage for professional wound care procedures requires that all applicable adjunctive measures are also employed as part of comprehensive wound management." (CMS, 2017). The wound care standards are formed through research, ongoing education, and qualified professionals. The standard of care has strong ties to the needs of using a team. The most important part of that team is the patient. The central part of the standard of care is that the patient understands what is happening and why.

Cases From the Court System

When looking at cases of malpractice, the rule is neglect. Each case needs to prove 1. A duty is owed 2. A breach of that duty 3. A cause for that breach 4. Damage has happened with a value. A commitment is set up every time a person enters the healthcare system. The task is to provide the standard of care to ensure that the person receives the best care. Though healthcare is not perfect and is a practice, the standard of care, if breached, should be verbalized to the patient with an explanation of why or how it will not happen again. When that breach is not acknowledged, and great harm happens, this creates the cause. The last is the damage which can be significant. A pressure injury causes a loss of a loved one. Losing a limb equals loss of earning potential and an increased cost of prosthetics or admittance in the nursing home.

In the case Aguayo v. St. Francis Med. Ctr., No. B232877, 2012 Cal. App. Unpub. LEXIS 6798 (Sep. 19, 2012) was an appeal based on the fact of Malpractice and the discount of the testimony of the plaintiff's expert. According to Cal. Evid. Code § 720, the qualification of an expert is related to knowledge, training, education, and experience. It does not state

that being an M.D. or nurse is required. Further, an expert does not need to be a Certified expert, just able to verbalize knowledge about the subject that he is speaking on. This case on appeal denied the removal of the testimony of the nurse.

According to, *Nurses: Their Expanding Role as Expert Witnesses*, the role of nurses being accepted as expert witnesses is becoming clearer and increasingly crucial to the legal system. The Supreme Court overturned the ruling in the case of *Flanagan v Labe* and opened the importance of nurses' role in being experts in the courtroom. The court stated that when assessing, the ability of an expert witness is based on knowledge and years of experience. Being in the direct care of a wound care patient and understanding the medical reasons a wound happen is what a trained wound care nurse does.

Barney v. Vibra Hosp. of Sacramento Llc, 2021 Cal. Super. LEXIS 108633, the patient, died from a UTI and sepsis at Mercy San Juan. She had a pressure ulcer and malnutrition, dehydration, and infection. However, on admission to Vibra, the patient's skin was intact. The patient developed a pressure injury, urinary tract infection, sepsis, and dehydration before access to the hospital. Ms. Tully passed away three days after admission, creating a case of wrongful death, neglect, and elder abuse.

As the notes from the Skilled Nursing Facility noted, the patient did have a Deep Tissue Injury on admission. This is considered a pressure injury and puts the skin at risk of breaking into stages 3 or 4. This was indicated in the admission records of the facility. The wound was noted as healing during the time at the facility, which is not correct for a deep-tissue injury. It can resolve and remain unopened like a stage 3 or 4 is healed. According to the N.P.A.I.P., no wound greater than stage two can completely heal. The tissue used for healing is not as muscular as before, increasing the chances of skin breakdown. If looking at the culture results of the urinary tract infection, there is a possibility of proving that the facility did not clean Ms. Tully very well and feces could have caused the urinary tract infection. The urinary tract infection caused sepsis, and the sepsis caused dehydration. Though Ms. Tully had a feeding tube, she was still found to have malnutrition. There was no monitoring of nutritional status.

In the case *Atkins v. Vip Nephrology*, 2022 Cal. Super. LEXIS 27062, the descendant's family, filed based on wrongful death, negligence, and elder abuse. The descendant was admitted. Mr. Atkins was a dialysis patient with a wound on his left foot

with dressing orders from his podiatrist. These instructions were given to the dialysis team, who proceeded to make the changes as prescribed. The foot became gangrenous and was not reported to the patient or the doctor by the staff. This led to an amputation of his toes. According to the defendant's expert witness: "Dr. McCampbell also opines that no alleged action or omission by Defendant played a substantial factor in causing Atkins to contract gangrene in his left foot or his subsequent amputation. (Id. at ¶ 39.) Atkins had a history of diabetes, and losing a toe, several toes, or an entire foot are known complications of diabetes." *Atkins v. Vip Nephrology*, 2022 Cal. Super. LEXIS 27062, *18. The wound care standard is limb salvage, and not assume all people with diabetes should accept that losing limbs is not standard care. (Mathioudakis, 2018) The standards require continued education and updating as the medical field changes.

As the legal system changes, this allows educated, experienced, and qualified nurses to help jurors, lawyers, and judges understand how cause, negligence, and damages happen daily in the medical world. Change in the system can occur when people realize we are each doing the best care, that physicians make mistakes and that with education, fewer mistakes happen.