

MDS Alert

Risk Management: Protect Your Facility From Potential Pressure Ulcer Lawsuits

Follow these simple tips to ward off liability.

It can be extremely difficult to defend yourself in a malpractice lawsuit involving a resident with pressure ulcers, but there are a number of simple things that providers can do to protect themselves, advise **Randall Huss, MD, CMD**, medical director for **Rolla Manor Care Center** in Rolla, Missouri, and **David Smith, MD, CMD**, president of **Geriatric Consultants of Central Texas**, in Brownwood, Texas.

No pictures, please!

"Pressure ulcer cases are really easy for plaintiffs to present to a jury," Huss noted at the "Nursing Facility Litigation and Liability: A Case-based Tutorial" session at the AMDA conference earlier this year. All the plaintiffs really need to do is display an enlarged photograph of a shaggy Stage III or IV pressure ulcer to the jury, and the jury will instantly be prejudiced against the facility, he explains. Because photographs of pressure ulcers can be so harmful to the facility, Huss recommends that providers document their residents' pressure ulcers in other manners such as drawings and careful measurements.

Watch out: The plaintiff's attorney is going to take the point of view that pressure ulcers are prima facie evidence of neglect, and that the very fact that they have occurred is evidence of negligence, Huss warns. This is particular true in cases involving pressure ulcers that evolve to sepsis, osteomyelitis or require flap closures. Although these cases are not necessarily evidence of negligence, they are just tough to defend, Huss says.

Perfection is a goal but not the standard

A common strategy employed by plaintiffs attorneys and expert witnesses in pressure ulcer cases is try to use the survey definition of "unavoidable" pressure ulcers and turn it around to make it the standard of care, Huss warns (see the definition on pg. xx). Instead of recognizing that some pressure ulcers are inevitable, the plaintiffs will claim that unless the provider did all possible care, processes and documentation, then the pressure ulcer was avoidable, he explains.

In instances where plaintiffs are using survey definitions to prove liability, it is important to explain to the jury that the survey is a form of quality improvement, Smith adds. "You are aiming for the stars and avoid all pressure ulcers, but everybody knows you are never going to get perfect care," notes. Plaintiffs have to do more than merely demonstrate that a facility did not provide perfect care to prove liability, they've got to meet the test of causation and breach, Smith explains.

It didn't happen on our watch

One of the most important things providers can do to protect themselves from potential liability when a resident develops a pressure ulcer is to conduct and document a thorough initial nursing assessment. "A well-documented skin assessment will save the day many times," Huss advises.

Key defense: Providers should make certain that they are using the "suspected deep tissue injury" diagnostic category for pressure ulcers, advises Smith. "It behooves us all for risk management to get out there and teach our nurses to do that good initial skill assessment when our residents come from the hospital," he says.

"If there is anything that looks like it might blossom later, you need to put it down as being suspected deep tissue injury. If it doesn't blossom out, no harm, no foul. But if it does, you've got the documentation that this happened at the hospital

and you're just seeing it now in the nursing home," Smith explains.

Huss recalls a case in which a resident was admitted to a skilled nursing facility from a local hospital following treatment for a spinal cord injury. The admission nursing assessment documented a large oval dark purple area approximately 12 cm over the sacrum, but skin intact. "This clearly happened on the watch of the hospital, and the facility inherited it," Huss says. The nursing facility implemented a care plan including appropriate low air loss mattress and turning regimen but by 10 days after admission to the SNF, the resident developed a large necrotic Stage IV pressure ulcer.

Clear cut: "The facility could have suspended this resident in mid-air and it still would have broken open in 5-7 days. They had all the appropriate intervention in place, but the resident still developed a large necrotic unpreventable pressure ulcer," Huss says.

Never alter the medical record

So when the resident's family sued the nursing home, he told them their case was fully defensible and no settlement was warranted. "I was sure that we were going to win this case. However, the plaintiffs ultimately discovered that a nurse at the facility had altered the resident's medical record in an attempt to cover up a perceived deficiency in her care. Even though the event involved was not germane to the development or outcome of the pressure ulcer, the case became indefensible at that point with an altered medical record," he recounts. So, Huss emphasizes, the biggest lesson in this case is never alter the medical record.