



vital signs

DIAGNOSING THE CHANGING

STATE OF MEDICAL MALPRACTICE & NURSING HOME LIABILITY

Res Ipsa Loquitur May Apply in Medical Malpractice Cases When a Patient is Unconscious, Even with Multiple Defendants

By: Lisa Sabon Anstess and Alexander L. Waldman

June 12, 2017

In a recent unpublished decision, the Court of Appeals reviewed the trial court's granting of defendant South Oakland Anesthesia Associates' motion for summary disposition, which effectively dismissed plaintiff's medical malpractice claims against multiple defendants for nerve damage he sustained during a lumbar laminectomy procedure performed at William Beaumont Hospital. Ultimately, the Court of Appeals overturned the trial court's holding. In *Steven Burns v William Beaumont Hospital & South Oakland Anesthesia Associates, et al* (docket no. 331347), a patient had presented to Beaumont Hospital for a lumbar laminectomy, which was performed without any reported issue. The patient was discharged from the hospital the following day.

However, the day after being discharged, the patient began to experience increased pain, weakness, and immobility; he returned to the hospital and was found to have a cold left upper extremity and passive range of motion. The patient was admitted to the hospital, treated with pain medication and injections, and was again discharged. Five days after the initial discharge from Beaumont Hospital's care, the patient began treating with another doctor. MRI images revealed tears in the patient's left shoulder, and neurological testing also revealed nerve damage to that area as well.

There was no dispute amongst the parties that the surgery itself was not the cause of the nerve injury sustained by the patient. It was the patient's theory that his injury occurred during a period of time in which he was under anesthesia. The patient's expert testified and opined that the injury occurred at some point

SECRET WARDLE NOTES

The Court of Appeals was unwilling to consider the defendants' contention that the dismissal of William Beaumont Hospital would have res judicata effect because it was the principal health provider in this cause of action. Additionally, whether the anesthesiologist, who was responsible for monitoring and positioning the patient, was an agent of Beaumont Hospital was a factual matter that was not explored and, thus, not an issue raised at the lower court level. Due to these issues not being raised at the trial court level, the Court of Appeals was unwilling to consider it on appeal.

during the surgical process, either when the patient was turned and positioned for surgery, from pressure or positional abnormalities that were present during the actual procedure, or when the patient was turned at the conclusion of the surgery – the expert, however, admitted that he could not identify the specific instance in which the patient may have sustained his injuries during the surgical process. However, the expert did testify that *the patient's left shoulder injury was of the kind that would not ordinarily occur without someone's negligence*. During the anesthesiologist's deposition, he admitted that he was responsible for positioning and monitoring the patient during the course of the surgery.

In response to the defendants' motion for summary disposition, the plaintiff contended that under a theory of *res ipsa loquitur*, the defendants committed medical malpractice in treating the patient. The four elements of a medical malpractice claim are: (1) the applicable standard of care, (2) breach of that standard, (3) injury, and (4) proximate causation between the breach and the injury. Under the doctrine of *res ipsa loquitur*, it is permissible for the plaintiff to present an "inference of negligence" based on circumstantial evidence to the jury; under such a theory, the plaintiff would need to show that: (1) the event was of a kind that ordinarily does not occur absent of someone's negligence, (2) it was caused by an agency or instrumentality that was within exclusive control of the defendants, (3) it was not caused by any voluntary act and/or contributed to by the plaintiff, and (4) the evidence of the true explanation of the event was more accessible to the defendant than it would be to the plaintiff. In sum, *res ipsa loquitur* cases rest on the theory that, but for the negligence, the disputed result would not have ordinarily occurred.

The Court of Appeals determined that it was a question of fact for the jury to determine whether, under the doctrine of *res ipsa loquitur*, the defendants committed medical malpractice. In its opinion, the Court of Appeals determined that although plaintiff's expert could not specifically identify the exact mechanism that caused the injury, he did testify that the patient's injury was of the kind that would not ordinarily occur without someone's negligent act – this testimony satisfied the first element under a theory of *res ipsa loquitur*, which the defendants argued plaintiff could not prove in its motion for summary disposition.

Lastly, the Court of Appeals determined that the defendants' contention that a theory of *res ipsa loquitur* may not be used in medical malpractice cases was unfounded as the Supreme Court has not overruled or modified caselaw to reflect such a finding. Therefore, the Court of Appeals held that the doctrine of *res ipsa loquitur* *may* apply in a medical malpractice case wherein the patient is unconscious and is under the care of a surgical team.

PLEASE CLICK HERE TO SIGN UP FOR SECREST WARDLE NEWSLETTERS PERTINENT TO OTHER AREAS OF THE LAW



Lisa Sabon Anstess
Executive Partner
Troy



Alexander L. Waldman
Associate
Troy

We welcome your questions -

Please contact

Lisa Sabon Anstess at

lantess@secrestwardle.com or (248) 539-2820

Alexander L. Waldman at

awaldman@secrestwardle.com or (248) 539-2856



Secret Wardle



Email



YouTube



LinkedIn



Twitter



Troy 248-851-9500
Lansing 517-886-1224
Grand Rapids 616-285-0143
www.secretwardle.com

CONTRIBUTORS

Mark E. Morley
Malpractice/Professional Liability Practice Group Chair

John G. Mitchell
Drug and Medical Device Practice Group Chair
Malpractice/Professional Liability, Medical Malpractice,
and Nursing Home/Assisted Living Practice Groups Co-Chair

Lisa Sabon Anstess
Malpractice/Professional Liability, Medical Malpractice,
and Nursing Home/Assisted Living Practice Groups Co-Chair

Editors
Linda Willemsen
Sandie Vertel

This newsletter is for the purpose of providing information and does not constitute legal advice and should not be construed as such. This newsletter or any portion of the newsletter is not to be distributed or copied without the express written consent of Secret Wardle.

Copyright © 2017 Secret Wardle. All rights reserved.