

## FOCUS ON PERSONAL INJURY LAW

# Patient falls create liability issues for health care providers

By Chris Rokosh

Patient safety has moved to the forefront of the health care agenda. Patients who enter into an acute care hospital are often vulnerable because of their illnesses and disabilities and the provision of safe care becomes not only a fundamental patient right, but a moral and ethical imperative to all members of the health care team.

In Canada, the top two reported patient safety issues are related to medication errors and falls and/or injuries related to patient restraints. Most of the reported medication errors are dose related and do not have significantly adverse outcomes. On the other hand, falls result in injuries which range from minor injury to death 20 to 30 per cent of the time; making them a significant focus of prevention, reporting and risk management strategies.

This article will examine an

actual fall in an acute care hospital, factors contributing to a fall and recommended documentation of prevention and treatment strategies.

The patient, a 74 year old male was admitted to hospital for a left knee replacement due to pain and limited mobility caused by osteoarthritis. Past health history was significant for high blood pressure for which he took medication, limited vision and arthritic pain in his right knee and hip. The surgical procedure was uneventful. Postoperatively, he was prescribed intravenous narcotics and blood thinners to control the pain and prevent a deep vein thrombosis.

For the first 48 hours after surgery, he remained mostly in bed with the side rails up, was significantly confused from the effects of anesthesia and narcotics and instructed not to bear any weight. By the third postoperative day, his

pain had improved, narcotics were discontinued, one side rail was put down and he was encouraged to be out of bed. He was prescribed Tylenol #3 for pain and was getting around relatively well with the use of a walker.

On the evening of the third day, he was given a sleeping pill. At 2:00 a.m., confused and disoriented, he attempted to walk to the bathroom without his walker. He fell, fracturing his left wrist and hip and suffered significant internal bleeding and bruising. He required two further surgeries, multiple blood transfusions and 27 days additional hospitalization.

This fall may have been prevented by identifying risk factors and then putting the bed rails up. The most commonly identified risk factors for falling seem to have been written just for this patient. They include; advanced age, altered mental status, history



Chris Rokosh

of falls, medications, toileting needs and impaired mobility. Most falls in hospital are reported to occur at the patient bedside and the most common activity at the time of the fall is getting out of bed.

Review of the medical documentation related to this patient's fall, which resulted in litigation, begins with a look at the hospital fall prevention policies which should include;

1. A "Fall Risk Assessment" with a schedule for reassessment (on admission to hospital and following any changes in patient status, such as surgery)

2. Documentation requirements for assessments, plan of care and

interventions

3. Methods to communicate changes in the plan of care to all health care providers

A multidisciplinary approach to patient safety is essential and the following safety measures, proven effective for preventing falls, should be put into place and clearly documented by the hospital staff providing care:

- Side rails on the bed placed in the "up" position

- The patient call bell and bed controls placed within easy reach

- Clear communication to the patient to call for assistance before getting up

- Necessities such as water, eye-glasses, tissues, telephone and urinal placed at the bedside and within easy reach.

- The bed lowered to its lowest height

- The patient familiarized with their new environment

- The pathway to the bathroom free from obstacles and properly lit

- Clear communication among hospital personnel of the risk for falling and the safety measures in place

see DOCUMENTATION p. 13

## Cadets settle at \$8-million for alleged abuse

By Gary Oakes  
Victoria

A B.C. Supreme Court judge has approved an \$8-million settlement of a class action suit for systemic negligence by the federal government for an alleged failure to protect 35 men from sexual abuse by several of their officers when they were Royal Canadian Sea Cadets at HMCS Discovery in Vancouver over four decades ago.

Justice Austin Cullen pointed out that the agreement "represents an average of \$226,857 for each

individual plaintiff after deducting disbursements. Under the settlement anonymity is afforded the members and they are no longer obliged to give evidence in court or be cross examined on the issue[s]..."

The judge said at the time the deal was hammered out, "the issue of liability was still outstanding and very much a live issue and this action potentially involved a series of cases to be heard on the question of damages, in the event of a resolution of the common issue

relating to the presence or absence of systemic negligence favourable to the plaintiff class. Additionally, there are 35 identified plaintiffs whose cases could take years to litigate through the process and would engage substantial expense in terms of experts and time and effort."

Justice Cullen quoted from an affidavit of one of the people involved in the litigation who explained that the agreement provides "two levels of payout. The first level ... is a \$30,000 payout

with no testing. An Approved Class Member can simply take the money and walk away.

"The Level II payout mechanism involves psychological testing and assessments. The maximum Level II payout is \$500,000."

The judge noted that the settlement provides "a further \$1,800,000 for further approved class members that may come forward within 45 days of the approval of this order. ...

"In my view, this is an appropriate case in which to approve settlement," he concluded. "The settlement avoids protracted and numerous proceedings with no clear prospect of success. [It]

incorporates a reasoned approach to the assessment of the loss and damage experienced by each member of the class and provides for options for class members tailored to their individual circumstances. ...

"There have been no objections made to the settlement and there is no evidence of any bad faith or collusion. ...

"In all the circumstances, I am satisfied that the settlement is fair and reasonable and in the best interests of the class as a whole."

Justice Cullen also approved a 30 per cent contingency fee for counsel.

Reasons: *White v. Canada (Attorney General)*, [2006] B.C.J. No. 760.

"The way we create *Structured Settlements* is not a numbers game, it's life..."

**Baxter** STRUCTURES

BRINGS MEANING TO THE NUMBERS

SUITE 300-6 CHURCH STREET TORONTO, ONTARIO M5E 1M1 TEL:(416) 947 1266 FAX:(416) 947 0766 SETTLEMENTS@BAXTERSTRUCTURES.COM

2419 SANDHURST AVENUE SW CALGARY, ALBERTA T3C 2M5 TEL:(403) 263 0440 FAX:(403) 263 0442 DANIELLE@BAXTERSTRUCTURES.COM

