

Legal Perils In Sleep Medicine

“Protect Thy Patient To Protect Thyself”

Presented by:



www.TheHealthLawFirm.com

© Copyright 2017. George F. Indest III. All rights reserved.



George F. Indest III, J.D., M.P.A., LL.M.

**Board Certified by the Florida Bar in the Legal
Specialty of Health Law**

Website: www.TheHealthLawFirm.com



Main Office:

1101 Douglas Avenue
Altamonte Springs, Florida 32714

Phone: (407) 331-6620

Fax: (407) 331-3030

Website: www.TheHealthLawFirm.com

Objective

- Practice effective safety monitoring in sleep labs for proper monitoring of patients to avoid risk of injury or death.

Objective

- Know the elements of a negligence claim
- Know the applicable standard of care for sleep centers
- Understand application of res ipsa loquitur in healthcare settings
- Identify methods to reduce exposure to negligence claims
- Identify methods to mitigate damages

Negligence

- Elements of a negligence claim: duty, breach, causation, and damages.

Duty

- How does the duty arise? (statutes, regulations, common law)
- Who owes the duty?
- When can your duty be delegated to another?

Breach

- Failure to meet the applicable standard of care
- What is the applicable standard of care?
 - Industry Standard
- Special circumstances related to the standard of care(superior knowledge or expertise)

Causation

- Proximate cause - the tortfeasor's breach must be the proximate cause of the injury/damage
- Doctrine of *res ipsa loquitur* - it speaks for itself

Damages

- Must have bodily injury or property damage to maintain negligence claim
- Economic damages, noneconomic damages, punitive damages

Defenses to Negligence Claims

- Must consider defenses to each element of the claim

Duty

- No duty
- Delegation of duty
 - Agents and employees - vicarious liability
 - Independent contractors
 - Non delegable duty arises where a contract or statute imposes a duty - usually on a hospital (anesthesia)
- Assumption of risk

Breach – No Breach in the Standard of Care

- Proving the standard of care - expert witness
- Rebutting the standard of care - expert witness
- Applicable standard of care
- Contributory Negligence - absolute bar to recovery (abandoned 1973)

Causation

- The action of the provider was not the proximate cause of the injury/damage
- Intervening cause
 - Must be completely independent and not set in motion by tortfeasor
 - Intervening cause cannot be foreseeable

Damages

- Speculative damages not recoverable
- Limits on noneconomic damages

Case Studies

Case 1

- 25 year old mentally challenged male (mental capacity of 10-year old) with history of congestive heart failure, cardiomyopathy, diabetes, hypertension, and obesity. Patient lives with his parent. Physician orders a sleep study due to symptoms of sleep apnea.

Case 1

- Q: Is a free standing sleep center appropriate for this patient?
- Q: Should a parent or family member accompany patient?
- Q: Did patient's insurance carrier dictate the facility to perform study?

Case 1

- Patient scheduled for freestanding center and arrives for study at 11:00 p.m. At approximately 4:15 a.m. the patient waived at camera to get the attention of the staff. Patient waived at the camera several times over the course of 3 minutes to get the staff's attention. At approximately 4:18 a.m. the patient began coughing heavily and waived to the camera to get the staff's attention.

Case 1

- At approximately 4:23 a.m. a staff member asked over the intercom if patient needed assistance. A minute later a staff member entered the room and disconnected the monitor leads. The patient left the room presumably to go to the restroom.
- At around 4:29 a.m. the patient re-entered the room; a staff member reconnected the monitors. At 4:30 a.m. the patient stated he felt really sick; the staff member left the room.

Case 1

- At around 4:31 a.m. a staff member entered the room again and the patient stated he could not breathe while lying down. At approximately 4:32 a.m. the staff member left the room, the patient sat up and was told not to get up. The patient again said he could not breathe.
- At approximately 4:34 a.m. the patient sat on the side of the bed gasping and coughing.
- At approximately 4:34 a.m. three staff members entered the room and administered oxygen.

Case 1

- Q: Was the patient Oxygen Saturation low?
- Q: What did the other monitors show?

Case 1

- At approximately 4:36 a.m. a staff member said you are doing better; the patient continued to complain of severe pain.
- At approximately 4:37 a.m. a staff member administered an inhaler.
- At approximately 4:38 a.m. the patient asked the staff to call his parent.

Case 1

- At approximately 4:40 a.m. the patient complained he was coughing up blood.
- At approximately 4:46 a.m. a staff member entered the room, turned on the lights and began gathering the patient's belongings.

Case 1

- Q: Was the test complete?
- Q: Were the staff members getting the patient ready for discharge?
- Q: Were the staff members getting the patient ready for transport to another facility or for discharge?
- Q: Did the staff remove the monitors?

Case 1

- At approximately 4:48 a.m. a staff member offered to let the patient call his parent himself. The patient collapsed on the bed; a staff member assisted him to sit up; the patient collapsed again. At this point there were three staff members in the room.
- At around 4:50 a.m. a staff member asked the patient if he was awake, could he talk and could he open his eyes.
- The staff member asked what to do and another staff member said to put the patient on the floor.

Case 1

- EMS arrived shortly thereafter and began CPR at 4:54 a.m.
- Q: When was EMS initiated?
- Q: Did facility have resuscitation equipment and training?

Case 1

- The patient was transported to the hospital at approximately 5:20 a.m.
- The patient was pronounced dead at approximately 5:55 a.m.
- Cause of death listed as respiratory arrest, with underlying causes of obstructive sleep apnea and congestive heart failure

Case 2

- 9-month-old infant with Prader-Wili Syndrome was scheduled for sleep study. During the study, the mother complained the infant was having trouble breathing. The staff member advised the mother the infant was fine.
- Q: Appropriate facility?

Case 2

- Later (unspecified time) the mother noticed the infant was turning white and was cold to the touch.
- Q: What did the monitors record?
- Q: Did the staff check on the patient periodically?

Case 2

- The infant was rushed to the PICU where resuscitation began.
- Q: Did the sleep center have the proper resuscitation equipment?
- Q: Was the staff trained to resuscitate an infant?

Case 2

- Infant was removed from life support two days later on April 12, 2014.
- April 14, 2014, petition filed to preserve video from sleep study. May 5, 2015, case voluntarily dismissed (settlement).

Case 3

- Adult female patient scheduled for sleep study. Staff initiated study. At one point during the study a lead became dislodged and a staff member reattached the lead. Later, at the patient's request, the monitors were removed so the patient could use the restroom. The staff member reattached the monitors when the patient returned from the restroom.

Case 3

- Approximately 6:00 a.m. the staff member removed the monitors because the sleep study was complete. The patient complained about the loud noises she heard throughout the night.
- On the drive home from the sleep study the patient began to experience vaginal discomfort. Shortly thereafter, the patient claimed she was sexually assaulted during the sleep study.

Case 3

- Three years after the patient filed suit, the court dismissed the case because there was no evidence to substantiate the patients allegations.
- The six hour sleep study video simultaneously recorded the patients vital signs and the sleep study. The video did not show any sexual assault.

Case 3

- Q: Did the record exonerate the sleep center staff?
- Q: What would have been the outcome if the record and video was incomplete?



Main Office:

1101 Douglas Avenue
Altamonte Springs, FL 32714

Phone: (407) 331-6620

Fax: (407) 331-3030

Website: www.TheHealthLawFirm.com



Orlando Office (By Appointment):

37 North Orange Avenue, Suite 500
Orlando, Florida 32801

Phone: (407) 331-6620

Fax: (407) 331-3030

Website: www.TheHealthLawFirm.com



Pensacola Office (By Appointment):

201 East Government Street
Pensacola, Florida 32502

Phone: (850) 439-1001

Fax: (407) 331-3030

Website: www.TheHealthLawFirm.com



Denver, Colorado Office (By Appointment):

155 East Boardwalk Drive, Suite 424
Fort Collins, Colorado 80525

Phone: (970) 416-7454

Fax: (866) 203-1464

Website: www.TheHealthLawFirm.com



SM The Health Law Firm is a registered service mark of The Health Law Firm, P.A., Altamonte Springs, Fla.

**© Copyright 2017. George F. Indest III. All rights reserved.
(No rights claimed for any property or images of others.)**

The bottom of the page features decorative blue wavy lines. A thin, dark blue line curves across the width of the page. Below it is a larger, solid blue area that also curves, creating a layered, wave-like effect.