

Slide 1

Session #07:

**Nursing Home Negligence Case Studies:
Verdicts, Settlements, and Defenses**


8:30 AM – 10:00 AM




OHCA OCAL OCID

Slide 2

Poling Law



**Brant Poling, Esq.
Pat Smith, Esq.
Andrew Good, Esq.
Poling Law
300 E. Broad Street
Suite 350
Columbus, Ohio 43215
Phone: 614-737-2900
bpoling@poling-law.com
psmith@poling-law.com
agood@poling-law.com**



OHCA OCAL OCID

Slide 3

Objectives:

1. Familiarize you with the legal process;
2. Provide general information to defend against negligence claims;
3. Review and analyze real cases; and
4. Provide insight into preventing negligence claims



OHCA OCAL OCID

Slide 4

Who can be a Defendant?

1. Owners	4. Nursing Home Staff
• Shareholders	• Administrator
• Partners	• DON/ADON
2. Corporations/LLC's	• RN's, LPN's,
• Nursing Home	• STNA's, Dietary
• Management Co.	5. Hospice
• Operations Co.	6. Others
3. Physicians/Med Director	



OHCA OCAL OCID


Slide 5

Incidents Happen

Incidents frequently occur in nursing homes, but what can you do to help yourselves should it turn into a lawsuit?

1. Document the incident in nursing notes;
2. Interview witnesses and obtain statements via incident reports;
3. Provide incident report to director of nursing/administrator;
4. Label/file/save incident report for quality assurance purposes only;
5. Notify appropriate reporting entities if necessary; and
6. Inform attorneys for nursing home.

WHY DO THIS?



OHCA OCAL OCID

Slide 6

The Legal Process:

1. Incident/Negligence Occurs;
2. Statute of Limitations;
3. 180-day letter;
4. Complaint;
5. Answer;
6. Discovery- written and depositions;
7. Motions;
8. Alternative Dispute Resolution; and
9. Trial



OHCA OCAL OCID



Slide 7

Statute of Limitations

What is it- time frame to bring a claim against the nursing home.

Why is it Important- it allows a plaintiff to bring a lawsuit within either one or two years after the alleged negligence, depending on certain factors.

Thus, you need to maintain proper medical records and documentation in regards to any all patients.





Slide 8

180-Day Letters


Allows for a 180-day extension to bring an action from the date the letter is received.

R.C. 2305.113(B)(1)



Slide 9

What does a 180-day letter look like?





The image shows a sample letter on Slater & Zurz letterhead. The letter is dated December 16, 2013, and is addressed to a recipient whose name and address are redacted. The letter discusses a complaint regarding a resident's care at a nursing home, specifically mentioning a fall. It references Ohio Revised Code 2305.113(B)(1) and states that the letter is being sent to the recipient to provide them with the opportunity to respond to the complaint. The letter concludes with a signature line and a date.

Slide 10

**Complaint &
Affidavit of Merit**

Complaint - The filing of the lawsuit that provides the Plaintiff's allegations against the nursing home.

Affidavit of Merit- a statement by a qualified medical professional opining that the standard of care was breached by the nursing home and that such breach was a proximate cause of injuries suffered by the plaintiff or plaintiff's decedent.



Slide 11

**Causes
of Action**



General Negligence

Professional Negligence

Negligence Per Se

Wrongful Death





Slide 12

Answer

Defendants' response to Plaintiff's Complaint:

- Must respond *within 28 days* after the Complaint has been served upon the nursing home. **** very important****;
- Deny all allegations; and
- Raise affirmative defenses.



Slide 13



Slide 14



Slide 15

- Common Liability Issues**
- Bedsores/ Wound care/ Infections;
 - Dehydration / Malnutrition;
 - Falls/Fall risk prevention;
 - Medication errors;
 - Personal hygiene;
 - Restraining injuries;
 - Inappropriate plans of care/ assessments;
 - Communications with Physicians;
 - Understaffing; and
 - Needy/Disruptive Family Members
- At the bottom left is the 'Winds of Change' logo, and at the bottom right are the logos for 'OHCA', 'OCAL', and 'OCID'.

Slide 16

Should a Lawsuit Arise

- Contact Insurance carrier and/or an attorney immediately;
- Work with attorney in obtaining complete medical records;
- Help obtain the names of current and former staff involved;
- Roundtable the lawsuit; and
- *Stay involved and interested*




Winds of Change OHCA OCAL OCID

Slide 17

CASE STUDIES

Feel free to ask questions or provide input along the way!




Winds of Change OHCA OCAL OCID

Slide 18

Case Study # 1

- **Caption-** John Smith v. Nursing Home
- **Facts -** Wrongful Death
 - John Smith presented to defendant nursing home for rehab after spinal surgery.
 - He was noted to be suffering from dementia and was assessed as a high fall risk. He was determined by nursing to be a 1-person or 2-person assist for certain functions.
 - A STNA helped him to the restroom. Upon return, he fell and hit his head, causing a laceration to his right forehead and what was claimed to be a subarachnoid hemorrhage.
 - Upon arrival at the local ER, a CT scan was obtained and read by a second year surgery resident, indicating minimal subarachnoid hemorrhage.
 - He was transferred to the trauma center and a repeat CT was conducted within 24-hours, showing no hemorrhage. He was discharged back to the nursing home within 2 days.





Winds of Change OHCA OCAL OCID

Slide 19

Case Study # 1

Plaintiff's contentions- General negligence, professional negligence, and violation of the Nursing Home Patients Bill of Rights by failing to:

- provide the decedent with a safe living environment;
- assess decedent's physical condition and assure his safety;
- provide decedent with protection from clear and present dangers;
- provide an adequate environment and/or restraints for the decedent;
- adequately train and monitor its staff; and
- follow direct orders for two-person assist.



Slide 20

FALL RISK EVALUATION

NO.	ITEM	YES	NO
1	ADULT WEIGHT	<input type="checkbox"/>	<input type="checkbox"/>
2	ADULT HEIGHT	<input type="checkbox"/>	<input type="checkbox"/>
3	ADULT MASS INDEX (BMI)	<input type="checkbox"/>	<input type="checkbox"/>
4	ADULT HEAD CIRCUMFERENCE	<input type="checkbox"/>	<input type="checkbox"/>
5	ADULT VITALS	<input type="checkbox"/>	<input type="checkbox"/>
6	ADULT VISION	<input type="checkbox"/>	<input type="checkbox"/>
7	ADULT HEARING	<input type="checkbox"/>	<input type="checkbox"/>
8	ADULT SPEECH	<input type="checkbox"/>	<input type="checkbox"/>
9	ADULT COGNITION	<input type="checkbox"/>	<input type="checkbox"/>
10	ADULT MOBILITY	<input type="checkbox"/>	<input type="checkbox"/>
11	ADULT TRANSFER	<input type="checkbox"/>	<input type="checkbox"/>
12	ADULT CONTINENCE	<input type="checkbox"/>	<input type="checkbox"/>
13	ADULT SKIN	<input type="checkbox"/>	<input type="checkbox"/>
14	ADULT MEDICATIONS	<input type="checkbox"/>	<input type="checkbox"/>
15	ADULT HISTORY	<input type="checkbox"/>	<input type="checkbox"/>
16	ADULT SOCIAL HISTORY	<input type="checkbox"/>	<input type="checkbox"/>
17	ADULT PSYCHOSOCIAL HISTORY	<input type="checkbox"/>	<input type="checkbox"/>
18	ADULT COMPLAINTS	<input type="checkbox"/>	<input type="checkbox"/>
19	ADULT PHYSICAL EXAMINATION	<input type="checkbox"/>	<input type="checkbox"/>
20	ADULT LABORATORY TESTS	<input type="checkbox"/>	<input type="checkbox"/>
21	ADULT IMAGING	<input type="checkbox"/>	<input type="checkbox"/>
22	ADULT TREATMENT	<input type="checkbox"/>	<input type="checkbox"/>
23	ADULT MONITORING	<input type="checkbox"/>	<input type="checkbox"/>
24	ADULT EDUCATION	<input type="checkbox"/>	<input type="checkbox"/>
25	ADULT FOLLOW-UP	<input type="checkbox"/>	<input type="checkbox"/>

Slide 21

FALL RISK EVALUATION

NO.	ITEM	YES	NO
1	ADULT WEIGHT	<input type="checkbox"/>	<input type="checkbox"/>
2	ADULT HEIGHT	<input type="checkbox"/>	<input type="checkbox"/>
3	ADULT MASS INDEX (BMI)	<input type="checkbox"/>	<input type="checkbox"/>
4	ADULT HEAD CIRCUMFERENCE	<input type="checkbox"/>	<input type="checkbox"/>
5	ADULT VITALS	<input type="checkbox"/>	<input type="checkbox"/>
6	ADULT VISION	<input type="checkbox"/>	<input type="checkbox"/>
7	ADULT HEARING	<input type="checkbox"/>	<input type="checkbox"/>
8	ADULT SPEECH	<input type="checkbox"/>	<input type="checkbox"/>
9	ADULT COGNITION	<input type="checkbox"/>	<input type="checkbox"/>
10	ADULT MOBILITY	<input type="checkbox"/>	<input type="checkbox"/>
11	ADULT TRANSFER	<input type="checkbox"/>	<input type="checkbox"/>
12	ADULT CONTINENCE	<input type="checkbox"/>	<input type="checkbox"/>
13	ADULT SKIN	<input type="checkbox"/>	<input type="checkbox"/>
14	ADULT MEDICATIONS	<input type="checkbox"/>	<input type="checkbox"/>
15	ADULT HISTORY	<input type="checkbox"/>	<input type="checkbox"/>
16	ADULT SOCIAL HISTORY	<input type="checkbox"/>	<input type="checkbox"/>
17	ADULT PSYCHOSOCIAL HISTORY	<input type="checkbox"/>	<input type="checkbox"/>
18	ADULT COMPLAINTS	<input type="checkbox"/>	<input type="checkbox"/>
19	ADULT PHYSICAL EXAMINATION	<input type="checkbox"/>	<input type="checkbox"/>
20	ADULT LABORATORY TESTS	<input type="checkbox"/>	<input type="checkbox"/>
21	ADULT IMAGING	<input type="checkbox"/>	<input type="checkbox"/>
22	ADULT TREATMENT	<input type="checkbox"/>	<input type="checkbox"/>
23	ADULT MONITORING	<input type="checkbox"/>	<input type="checkbox"/>
24	ADULT EDUCATION	<input type="checkbox"/>	<input type="checkbox"/>
25	ADULT FOLLOW-UP	<input type="checkbox"/>	<input type="checkbox"/>

Slide 22

The image shows a medical form with several sections. The top section is titled 'PATIENT HISTORY' and includes fields for 'Name', 'Age', 'Sex', 'Race', 'Religion', 'Marital Status', 'Occupation', 'Education', 'Social History', and 'Family History'. Below this is the 'PHYSICAL EXAMINATION' section, which is divided into 'General', 'Vital Signs', 'HEENT', 'Chest', 'Abdomen', 'Genitourinary', and 'Neurological'. Each section contains checkboxes for various findings. The bottom section is titled 'LABORATORY TESTS' and includes fields for 'Hemoglobin', 'Hematocrit', 'White Blood Cell Count', 'Differential White Blood Cell Count', 'Platelet Count', 'Urea Nitrogen', 'Creatinine', 'Blood Glucose', 'Liver Enzymes', and 'Other'. The form is filled with handwritten text and has several redacted areas.

Slide 23


The image shows a medical form with a large 'VOID' watermark repeated multiple times across the page. The form contains various fields and checkboxes, but the text is mostly obscured by the watermark. The watermark is in a bold, sans-serif font and is oriented vertically. The form itself is a standard medical form with multiple sections and checkboxes.

Slide 24

Case Study # 1

Defense - denial of liability by review of documentation and depositions of medical providers, which allowed for Defendant to contend that:

- there was no evidence of an order requiring 2-person assist and;
- standard of care was met; and
- proximate causation could not be established.


 Winds of Change

OHCA OCAL OCID

Slide 28

Case Study # 1

Comments/Questions?



OHCA OCAL OCID


Slide 29

Case Study # 2

Caption: Jane Doe v. Nursing Home and Owners

Fact:

- This involved a 86 year old African-American female with no pertinent family medical history, 7th grade education, and one son who served as DPOA. She was brought to the nursing home due to inability to care for herself.
- Her past medical history included hypertension, transient ischemic attacks, diabetes mellitus, arthritis, GERD, CHF, hyperlipidemia, renal failure, cerebral artery occlusion with infarction, pneumonia, joint replacement, hysterectomy, abdominal surgery, and multiple hernia repairs.
- She was a patient for six weeks and then sent to the hospital due to increased lethargy and loose stools for the previous 3-4 days. Dehydration was suspected.




OHCA OCAL OCID

Slide 30

Case Study #2

Plaintiff's Contentions

- Defendants violated the patient's bill of rights;
- Defendants were negligent in their care and treatment of the decedent's dehydration, diarrhea, and infections;
- Defendants failed to follow physician's order;
- As a result of the above negligence, the decedent suffered injuries and ultimately died.



OHCA OCAL OCID

Slide 40

QUESTIONS



POLING LAW
RESULTS | SERVICE | RELATIONSHIPS

Brant Poling, Esq.
Pat Smith, Esq.
Andrew Good, Esq.
Poling Law
300 E. Broad Street
Suite 350
Columbus, Ohio 43215
Phone: 614-737-2900
bpoling@poling-law.com
psmith@poling-law.com
agood@poling-law.com



Winds of Change

OHCA OCAL OCID
