### Session #07:

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

8:30 AM - 10:00 AM



### Slide 2

### **Poling Law**



Winds of Change

Brant Poling, Esq.
Pat Smith, Esq.
Andrew Good, Esq.
Poling Law
300 E. Broad Street
Suite 350
Columbus, Ohio 43215
Phone: 614-737-2900

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




### Slide 4 Who can be a Defendant? 1. Owners Shareholders Partners Corporations/LLCs Nursing Home Management Co. Operations Co. Physicians/Med Director 1. Nursing Home Staff NAMINISTRICTON NRN'S, LPN'S, Dietary NINA'S, Dietary Hospice Others 2. Others Winds of Change OHCA OCAL OCID Slide 5

Slide 6

### The Legal Process:

**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 rate reporting entities if necessary; and
6. Inform attorneys for nursing home.

WHY DO THIS? Winds of Change OHCA OCAL OCID

- 1. Incident/Negligence Occurs;
- Statute of Limitations;
   180-day letter;
- 4. Complaint;
- 5. Answer;6. Discovery- written and depositions;7. Motions;

  - Motions;8. Alternative Dispute Resolution; and9. Trial




### 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





_				
-				
-				
_			 	
-	 		 	
-	 	 	 	
_	 		 	
_	 	 		
_				
_				
-				
-				
_			 	
_	 	 	 	
_	 			
_	 		 	
_	 			
_	 			
_	 	 	 	

### 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.

Winds of Change OHCA OCAL OCID

### Slide 11



### Slide 12

### Answer

Defendants' response to Plaintiff's

- 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 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 Winds of Change OHCA OCAL OCED


### **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



### Slide 17

### **CASE STUDIES**

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



### Slide 18

### Case Study # 1

- Caption-John Smith Varsing Home

  Facts Wronglu Death

  John Smith presented to defendant rursing home for rehab after spinal surgers.

  He was noted to see self-ring from dementia and was assessed as a management of the self-ring from dementia and was assessed as a management of the self-ring from dementia and was assessed as a management of the self-ring from dementia of the self-ring from the self-ring from




## Case Study # 1 Plaintiff continuons - General regilgence, professional negligence, and violation of the Nursing Home Patients Bill of Rights by failing to: - provide the decedent with a safe living environment: - assess decedents 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; - a dequately train and monitor its staff; and - follow direct orders for two-person assist.

### Slide 20








### Slide 23



### 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 <u>order</u> requiring 2-person assist and; - standard of care was met; and - proximate causation could not be established.


# Testimony of DON "A. I don't believe so, but again, just high risk for fall does not indicate you need two people to transfer, necessarily. Q. Well, what equipment can you have that will help stabilize a person? Do you have are. A. It's all individualized, It just depends on what the person needs. I do know that he was made a two-person assist as a specific intervention to a fall." OHCA OCAL OCED WINDS OF Change OHCA OCAL OCED OCED OF CHANGE OF CHA

### Slide 26



### Slide 27

# Testimony from Treating Neurosurgeon One Day after the Fall "at the time that I saw him he did not have a man his CAT son to my veys. And it was certainly...backed up very nicely by the MRI does six weeks later. There was no subtarachnoid hemorrhage reported by the MRI." A I would depending on what it looked like, probably would have arranged for him to see us in our neuro trauma clinic. Q. But you did not do that? A. I did not. Q. Because it had resolved? A. To my eyes, yes' OHCA OCAL OCID

### Case Study # 1

Comments/Questions?



### Slide 29

### Case Study # 2

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

- herself. Her past medical history included hypertension, transient ischemic attacks, diabetes mellitus, arthritis, GERD, CHF, hyperlijidemia, renal failure, eerberla 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 days. Behydration was suspected.



### 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.



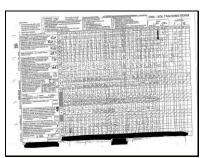
_			



### Slide 32

# Case Study # 2 Defense • The decedent had an extended history of renal failure, infection, and other co-morbidities; • The decedent was gaining weight during stay; • Intake of liquids were charted and managed; • Physician communication was well documented; • Comparison- Defense Experts vs. Plaintiff's Experts Winds of Change OHCA OCAL OCID





### Slide 35

### Plaintiff's Experts

- · Physician-
- Physician

  used by Plaintiff's
  counsel as an expert
  witness in over 25
  cases since 2008;

  Does not work in or
  for a nursing home;

  Works solely for
  plaintiff's firms

Winds of Change

- Nurse
- Nurse

  Used by Plaintiff's counsel as an expert witness in over 20+ cases since 2006.

  Works for and is retained through an expert consulting company.

  Works solely for plaintiff's firms

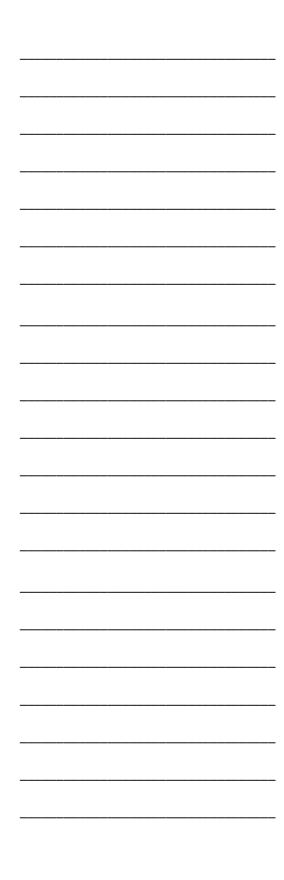
OHCA OCAL OCID

Slide 36

### **Defense Experts**

- Physician
   Medical director of 3 facilities
   Board Cert. in Geriatrics
   Has worked in nursing homes for 20+ years
  - Expert witnes total cases
- Nurse
  RN for 25 years
  DON for 17 years
  Has worked at 7
  History nursing

Geriatrics	different nursing
<ul> <li>Has worked in</li> </ul>	facilities
nursing homes for	<ul> <li>Certified Wound Care</li> </ul>
20+ years	Specialist
<ul> <li>Expert witness in 5</li> </ul>	<ul> <li>Expert witness in 10</li> </ul>
total cases	total cases for both sides
Vinds of Change	OHCA OCAL OCID



### Slide 37 **Avoiding Liability** Providing accurate and timely charting Maintaining good relationships with Resident/Family · Communications with Family/patient Maintaining a clean and tidy nursing home Providing individualized care plans and updates Maintaining Appropriate Staffing at all times Winds of Change OHCA OCAL OCID Slide 38 **Avoiding Liability** • Follow up on ordered tests timely · Provide adequate education on end-of-life care Maintain up-to-date policies and procedures Winds of Change OHCA OCAL OCID Slide 39 **Avoiding Lawsuits** Who do patients sue more often? Those who do not listen to them Those who are not nice Those who are arrogant Those who are arrogant Who don't patients usually sue? • People they like The Bottom Line: No one can promise immunity from lawsuits. No cone can promise immunity from lawsuits. Poeveloping excellent relationships with patients, promoting good communication, maintaining clinical competence, and producing accurate and legible charts can go a long way toward reducing liability risk. Winds of Change OHCA OCAL OCID

QUESTIONS						
POLING LAW RESULTS   SERVICE   RELATIONSHEES	Brant Poling, Esq. Pat Smith, Esq. Andrew Good, Esq. Bolling Law Soling Saw Suite 350 Columbus, Ohio 43215 Phone: 614-737-2900 bpoling-poling-law.com agood@poling-law.com					
Winds of Change	OHCA OCAL OCID					
