Nursing & Assisted Living Facility *Professional*

"NEWS AND VIEWS YOU CAN REALLY USE"

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SENT EACH MONTH TO YOU AS A MEMBER OF THE HEALTHCARE HEROES

THE HAT ADVANTAGE by Rebecca Adelman

2015: A YEAR OF SIGNIFICANT OPINIONS AND STATUTORY AMENDMENTS

Last month's column, we discussed significant case opinions from Tennessee in 2015 and applicable HAT Advantages for your organization. In this month's column, we will discuss significant statutory updates from 2015. As 2016 unfolds, we will follow upcoming opinions by the Tennessee Supreme Court and the Court of Appeals. Of high interest will be the Court of Appeals decision on whether the Qualified Protective Order statute is preempted by HIPAA. With a continued awareness and understanding of what is on the horizon in the long-term care industry with laws and regulations, organizations can incorporate relevant changes into quality improvement and litigation risk management programs.

2015 Tennessee Statutory Amendments

"Sue the Right Defendant" – Amendments to TCA § 29-26-101, 102, 121(a)(5)

The Tennessee Legislature amended the Tennessee Health Care Liability Act so an action may be brought *only against the licensee, the licensee's management company, the licensee's managing employees, or an individual caregiver who provided direct healthcare services, whether an employee or independent contractor*. A passive investor will not be liable. A healthcare liability action against any other individual or entity may be brought only pursuant to the procedures now outlined in the statute. The legislature amended TCA §29-26-101 to include definitions for licensee, management company, and passive investor. The act applies to causes of action arising on or after April 24, 2015. Therefore, only the licensee and the management company can be sued in an action that arises on or after that unless the circumstances exist as described in sub- section (b).

HAT ADVANTAGE: Through these statutory revisions, a plaintiff can no longer sue every entity associated with a facility. The lawsuit will be limited to the licensee and the management company rather than including any and all passive investors in the company including administrators, percentage stakeholder, parent companies etc….

Identifying Co-Defendants From the Start

The Tennessee Legislature also amended T.C.A. § 29-26-121(a)(5) and relates to the comparative fault of other providers. The amendment provides that if a person, entity, or health care provider receives notice of a potential claim for health care liability, the person, entity, or health care provider shall, within thirty (30) days of receiving the notice, based upon any reasonable knowledge and information available, *provide written notice to the potential claimant of any other person, entity, or health care provider who may be a properly named defendant*. This section was enacted to resolve situations in which a defendant does not advise Plaintiff of another at fault party of potential liability until well into the action and then the Plaintiff must amend the complaint to add the comparatively at fault party to the action.

HAT ADVANTAGE: The statute applies to causes of action accruing on or after April 24, 2015. In light of the thirty (3) day limit, it is essential that the claim forming the basis for the Notice of Intent be assessed immediately to identify other potential at fault parties.

Discussion of Relevant Causation/Standard of Care Opinions in Ex Parte Interviews

In April 2015, the Tennessee legislature replaced T.C.A § 29-26-121(f)(2) regarding Qualified Protective Orders to include language to clarify that a defendant may speak with the health care provider regarding relevant information including opinions concerning compliance with or breach of standard of care. The prior statutory language did not make this issue clear.

The statute now includes the following language, which was effective upon enactment April 24, 2015, *"Any healthcare provider's disclosure of relevant information in response to a court order under this section, including, but not limited to, protected health information, opinions as to the standard of care of any defendant, compliance with or breach of the standard, and causation of the alleged injury, shall be deemed a permissible disclosure under Tennessee law."* The amended statute goes into effect immediately.

HAT ADVANTAGE: Qualified Protective Orders are essential to equal the playing field for healthcare providers and the development of the case. In most states, counsel for the facility, hospital or nursing home cannot speak with the medical director or any other health care provider, who is not employed by the facility, outside the presence of Plaintiff's counsel due to HIPAA privacy concerns. Through this statute, counsel can speak to a patient/resident's health care providers outside the presence of plaintiff's counsel without violating HIPAA if the Qualified Protective Order complies with the statute. The April 2015 Amendments clarify the scope of information which may discussed during the *ex parte* interviews with third party medical providers. The ability to speak to third party medical providers can have significant impact on a case because the third party medical provider may have the perspective and information needed to show that the facility followed the standard of care. The statutory revisions allow for defense counsel to discuss standard of care and causation within the *ex parte* interviews, which were not clearly defined previously.

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Pathway to Rehabilitation Excellence

By Kaleb Roudabush, NSCA-CPT
Wellness Coordinator

FEELING SAD?

THE WINTER BLUES ARE A REAL THING AND WE CAN HELP

When was the last time you heard someone say, "I can't wait until winter gets here!"? Or perhaps the common variation on that: "I can't wait until it snows!"

If hearing those statements makes you feel like the person saying them to you is a little crazy, you aren't alone; every year, many people are affected by the winter blues, and if you're one them, it makes sense you wouldn't feel excited about the prospect of shorter, darker days and cold temperatures. But did you know that the winter blues are actually a real thing? Also known as Seasonal Affective Disorder (SAD), it affects more than half a million people between September and April every year, peaking in December, January and February. The cause of this is related to the lack of sunlight during those months, which in turn affects the body's circadian rhythm. When the circadian rhythm is out of turn, it changes the way the body produces sleep hormones, and has been linked to increased sadness and depression. With us already through December, many are feeling the effects of the winter blues.

The good news is that there are some things you can do to combat the gloomy affects of Seasonal Affective Disorder:

1. Start by improving your quality of sleep.
Go to bed in a routine manner every night, and make sure to avoid "screen time" type activities (such as cell phone, computer / internet browsing and watching TV) -- the artificial light disrupts your body's clock and ability to achieve quality sleep during the night.

2. While you can't control the chilling temperatures outside, you can do things to warm your heart.
Volunteering is a great way to combat sadness because it gets you around people and not so isolated, all while giving back to people who are probably quite literally experiencing the cold.

3. Get your blood pumping.
Exercise is also a great way to improve your mood since it releases hormones in the body that help you to feel good. And it doesn't have to be the kind of exercise you dread, either! Dancing classes, cycling, and yoga are all forms of exercise that can you get around other people, trying new things, de-stressing your body and mind during this gloomy time of year.

4. Lighting.
Lighting is scientifically proven to make a huge difference in your mood. During this time of year, being mindful of the power of light can be a huge tool to help yourself through the darker, colder days of winter. There are several ways you can use light to your advantage. Firstly, think about that warm, fuzzy feeling you get when you turn the corner as you're driving to see a house decked out in strings of pretty holiday lights. Hold that feeling in your mind. You can recreate that same cozy effect in your own home. Even one string of lights, placed either on the outside of your home to greet you as you pull in, or on the inside of your home, can lend a lot of warmth to your environment.

Second, fitting the light sources in your home with brighter light bulbs can enhance color and make your home feel brighter and more open, which will contribute to a healthier feeling environment for you.

Lastly, if you want to enhance the above tips even further -- for example, if you are really really struggling with Seasonal Affective Disorder, there is something called light therapy that can help combat SAD's negative effects. You can consider this light therapy lamp a gift to yourself that will help you through this holiday season and many more.

I want to take a moment and wish everyone a healthy and blessed 2016. May the year bring good fortune!

Kaleb Roudabush is Wellness Coordinator for Functional Pathways. For more information, please contact him at kroudabush@fprehab.com or call 888-531-2204. You can also discover more at www.FunctionalPathways.com

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On the Horizon: Looking Ahead to 2016

In 2016, the Tennessee Court of Appeals will hear and decide whether the Qualified Protective Order (QPO) statute is preempted by HIPAA. *Caldwell v. Baptist Memorial Hospital, et. al*., No. W2015-01076-COA-R10-CV (Tenn. Ct. App. Appeal Filed June 11, 2015). If the Court of Appeals finds that the QPO statute is contrary to HIPAA or becomes an obstruction to complying with HIPAA, the court will find that the QPO is not permitted and counsel can no longer conduct *ex parte* interviews with third party providers, which are instrumental to the defense of long-term care lawsuits. This case will be closely monitored and the case is set for oral argument on February 16, 2016 and we expect an opinion in the coming months. We are hopeful the court will hold that the QPO does not violate HIPAA and continue to permit this essential part of the litigation process. The important thing to remember is to produce all clinical and other relevant information to your counsel immediately, which allows counsel to obtain a QPO that much more quickly.

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Getting on the Same Page

by Paige Hector, LMSW

A Critical Missing Link in the Transition of Care

In the battle against unnecessary readmissions, transitions of care are incredibly important. There is much research and literature on issues like hand-offs, patient education breakdowns, and medication reconciliation. Communication is also a hot topic, especially between providers and patients, and providers and providers. But, there is a missing link.

Let me tell you a story. I got a call from a social services director (let's call her Janet) to discuss and to seek advice on a complex patient that I'll name Betty. Betty is a 70 year old woman admitted status post frequent falls with lumbar and sacral pain. Co-morbidities include dementia for which she requires significant assistance with most activities of daily living. Her son was involved and insisted on care being provided in a particular way, to which the staff made every attempt to accommodate. Her limited cognitive capacity coupled with the not-so-limited fall risk is not atypical of this patient population but certainly complicates an already difficult situation.

Early on in the course of her stay, Betty had several aggressive outbursts towards staff which required the son to come in and assist with care and to persuade Mom to take her medications. Of course the requisite labs were drawn, assessments conducted and treatment started for a UTI. She was seen by a mental health provider yet despite the antibiotic treatment, the behaviors worsened significantly and it was becoming increasing difficult to provide care for her. Staff tried various approaches, just as they were trained to do when working with someone with dementia. The son finally agreed for the social service director to facilitate a behavioral health placement. While options were being investigated (and all facilities declining the transfer given Betty's need for ADL assistance), she became extremely combative which necessitated a more urgent transfer to the emergency department.

This particular social services director always welcomes input and frequently seeks it out. Her question to me was, "Is there something more I could have done?" We talked about her biopsychosocial assessment, her interactions with Betty and her son, the interventions staff had tried, the provider's orders and lab results with subsequent treatment, the resources available and referrals made. And of course, me peppering her with two questions over and over. Did you document that? And, is it on the care plan? After we did a thorough dissection of the course of events and found nothing lacking, I said to Janet, "There is one more thing you need to do now." As I knew she would, she simply said, "What is it and I'll do it." I replied, "Call the hospital and give report to the emergency department social worker."

When a patient or resident is transferred to the hospital from a skilled nursing facility, there is usually crucial biopsychosocial information that affects the plan of care. Unfortunately, that type of information may not be conveyed in the nurse's report or transferred with the individual in the packet of medical records. Janet made that phone call, the first time she had ever called an ED to give report. We always think of nurses giving report, and that the so-called warm hand-offs only happen between medical providers. What symptoms does the patient have? What makes them worse? Better? What tests have been ordered and what are the results? Vitals? New medications? Different doses? Treatments? Is pain controlled? Any pending appointments? Specialists?

Social workers need to call social workers (sometimes nurses and medical providers) and give report. That is the missing link. With the call to the ED, Janet shared everything that had occurred (the behaviors, interventions, response), a summary of the mental health provider's report, what staff had tried, the son's perspective, Betty's prior level of functioning and the tentative discharge plan, the resources available, the status of the Medicaid application, and the referrals that would need to be made eventually. This is all important information! And, not just to the social worker but the entire team in the ED. That call took just a few minutes, but would save time, resources and effort, not to mention demonstrate professionalism between the two facilities.

Janet called me a few days later and told me that the social worker never had anyone call to give her report and she expressed appreciation for the "warm hand-off." Not only did it save her time and give her a head start, it was better for Betty and her son as well as the medical staff at the hospital.

Now, if the hospital social worker would make a similar phone call to the facility that ultimately receives Betty to their care…

Paige Hector is a clinical educator, who gives workshops and seminars across the country on diverse topics including clinical operations for the inter-professional team, meaningful use of data, advance care planning, refusal of care, documentation and care plans. She is skilled at inspiring staff to critically evaluate their own organizations and then gives them the resources and guidance to make necessary changes. Contact Paige at ***520-955-3387 or at*** *paigehector@gmail.com plus you more discover more about her at www.paigeahead.com*

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We welcome you, the HEALTHCARE HEROES, to join us in New York City, April 1, 2016, for the fourth annual Litigation Risk and Defense Strategies for Long-Term Care & Assisted Living Providers, Insurers, and Brokers Conference. The fourth annual conference will begin with a Conference Reception, followed by a Networking Dinner, Thursday, March 31. The educational session portion of the conference will begin Friday, April 1. The annual event provides engaging educational sessions and peer group discussions focused on identifying and minimizing risk in the long-term care arena and covering the continuum of provider services. The robust platform provides industry professionals, including administrators, clinical professionals, facility owners and operators, risk managers, and insurance agents and brokers, with the resources and tools necessary to simultaneously reduce risk and ensure legal and regulatory compliance within their organization. Attendees will gain knowledge of risk exposure and the importance of effective risk management strategies in today's long-term care environment. For more information, please visit http://www.hatlawfirm.com/news/tag/event.

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