



Timothy J. Leer and Jenna Madden Powers Obtain Dismissal in Medical Malpractice Nursing Home Liability Case

Defense team Timothy J. Leer, Jenna Madden Powers and paralegal Christy Remington recently obtained the dismissal of a medical malpractice claim against a St. Paul long-term care facility based on Minn. Stat. § 145.682, governing medical malpractice claims in Minnesota.

In September 2010, the patient called for assistance with transfer to the restroom. The patient's care plan did not require use of a transfer belt and the patient was free to ambulate in her room. The staff on call chose to assist the patient to the restroom without using a transfer belt due to a number of complicating factors such as placement of the patient's feeding tube and the confined space in the restroom. The patient suffered a fall and struck her head, passing away a few days after the incident.

Plaintiffs claimed the nursing home's actions constituted negligence and therefore did not require expert testimony. Defendant argued Plaintiffs claims alleged a deviation from a standard of care and was therefore a medical malpractice claim governed by Minn. Stat. § 145.682. Defendant subsequently brought a Motion to Dismiss Plaintiffs claims when they failed to provide the required expert affidavit under Minn. Stat. § 145.682.

On January 4, 2013, the Honorable John H. Guthmann of the Ramsey County District Court dismissed Plaintiffs' claims. The court concluded a transfer belt is a medical device and information in the record also indicated Defendant's nursing assistant did not deviate from a standard of care. Consequently, determining whether a transfer belt is needed, how it is to be used, and what information must be considered before arriving at a conclusion regarding such questions required expert testimony. Thus this case did not present one of the rare instances when a medical negligence case may reach a jury in the absence of expert testimony. Plaintiffs failed to provide the required expert testimony under Minn. Stat. § 145.682 and the court granted summary judgment in Defendant's favor.