LNP 230
Assisted Living Facility Litigation
Brenda Pabellano

Kelly: Hi and welcome back to the Legal Nurse Podcast. This is your co-host Kelly Campbell. We have a special guest today, Brenda Pabellano. We're going to be talking about assisted living facilities.

Welcome, Brenda.

Brenda: Hi, Kelly, and good morning, good morning, everyone.

Kelly: Good morning. Okay let me tell you a little bit about our guest. She's a registered nurse for 38 years. She's worked in critical care, surgical intensive care for 15 years, skilled nursing facilities, home health and as a nurse administrator of an assisted living facility for 21 years. She's been a CLNC since 2014 and has worked as an expert witness for LTC ALF litigation.

Thanks so much for joining us.

Brenda: Thank you for having me. I'm excited.

Kelly: This is such a big industry nowadays, so what exactly for our listeners is ALF?

Brenda: ALF means "Assisted Living Facility". It ranges from a home to a big facility to like a retirement community that's consisting of independent living, assisted living, and skilled nursing. It can be incorporated in a big company or it can be a small house, and it's licensed and it's regulated. It might have different regulations from state to state, but there's always this similarity. They might be worded differently or maybe the regulating agency will be a different name, but they are all the same. We are operating under strict regulations and guidelines.

Kelly: When I think of an assisted living facility I automatically thought of a small maybe 20-bed place, but it's also considered a retirement community or an individual home. Okay, I'm learning something already.

Brenda: I'm working in the state of Florida, so let's talk more about Florida regulations. In the state of Florida, if you are offering or you are giving personal assistance to six or more residents that would be an assisted living facility. If it's below six, it will be adult family home care, which has different regulations.

Kelly: I'm in Pennsylvania, so where do our listeners or where do I find our regulations at?

Brenda: In the state of Florida for example, it's called AHCA. It's "Agency for Healthcare Administration." Let's just say in the state of Georgia the agency there is called I think the Department of Health or something like that. You can just Google regulations for the state of Pennsylvania and then it will come up. Usually it's the Department of Health. It's different names but it's usually the same regulations that they worded differently.

Kelly: Okay, so the take home point is it's different sizes and make sure you know your state regulations.

Brenda: Right.

Kelly: What are some of the types of services provided in assisted living facilities?

Brenda: It's really more on personal care. There are different kinds of licenses. In the state of Florida, we have three different kinds. We have the standard license, then we have the LNS, which is called "Limited Nursing Services", and the other one is ECC or "Extended Congregate Care".

With the standard license, there are a lot of restrictions. We cannot take care of wounds. A pressure sore will be only up to Stage 2, which is a superficial skin breakdown, or we cannot take tube feedings. If you have the other license, and let's just say you have the Extended Congregate Care license, then you are allowed to take care of tube feedings. You are allowed to take care of suprapubic catheters. You are allowed to suction orally or nasally. There are a lot of things that they can take of, colostomy bags, and ostomy bags, so it depends on the licenses.

Kelly: Okay so there are varying degrees of licenses, and I'm sure that's all the way across the states. Who regulates assisted living facilities, the states?

Brenda: The state, yes.

Kelly: In the assisted living facility there would be procedures and manuals also if you were having to review a case, is that correct?

Brenda: Yes.

Kelly: What exactly would we be looking for?

Brenda: First of all, there's a thing called 1823. This is really very vital for all assisted living facility resident. This is called the "Health Assessment Form". It's a five-page health assessment form that's given to the doctor, the primary care doctor. It has to be done face to face. Before the resident comes in, you have to have that. In the state of Florida, at least 60 days before admission or 30 days after admission you have to have that. The most important thing is the diagnosis; then you have the list of their medications, and you have the ADLs. The doctor has to certify whether she needs help with bathing or ambulation, if the resident is a fall risk or elopement risk.

That is where you're going to look first as a nurse consultant. That's very important. You're going to see and make sure that the facility has a plan of care according to what's in that form, the 1823. You better be able to tell the plaintiff if there's a litigation that if the patient is an elopement risk, what were you doing for that and what are your plans of care since this patient is an elopement risk or a fall risk.

You have to have a plan of care; otherwise you can’t defend yourself if somebody falls, you get sued, and you don't have any documentation of what you were doing. Instead, you need to be able to say, "We know that she has a risk of falling but these are the plans of care that we did. We made sure that we have to monitor closely, or we have to escort the resident to the dining room all the time, or we have to be with her when she's taking a shower." At least you can show the plaintiff attorney or the jury that you are doing something to prevent her from falling. If they still fall, at least you did something.

Kelly: Right, and after the assessment list what's the next thing that you look for or look at?

Take us through a case. Do you mind?

Brenda: Not at all.

Okay, so you really have to assess the patient. Let's just say you get a call from a hospital discharge planner, "I have a patient here that needs an assisted living facility." They will give you a verbal report and you as an administrator have to see this patient. You have to go there and take a look at what medications they're taking, if they have any behavior problems, if they have an infection, if they have MRSA or if they are in isolation there. You have to know this patient.

Based on my experience before, I was like "Okay" when the family calls me.

> Family: "I need a bed for my mom."
>
> Me: "How's your mom doing?"
>
> Family: "She can shower by herself. She can dress herself."

But when I got the patient, it's a different story. "Oh, she has a bed sore, and you never told me about this." It's really a big lesson learned over the years that you really have to assess the patient.

Kelly: What are some of the most common citations made by the licensing agencies?

Brenda: They look at the 1823. The surveyors look at the 1823 and then the ADLs. Let's just say they look at the ADLs, and the doctor marked independent with ambulation. Here comes the surveyor, and she saw the caregivers pushing her in a wheelchair. That's contradicting to what the doctor certified, that she's ambulatory, and when the inspector saw the patient, she is in a wheelchair. That's one thing. That's one violation.

Another violation usually is medications. They are very strict with medications. In the state of Florida, the caregivers are allowed to assist with medication, not administer but to assist with medications. The resident has to be able to take the pill, and maybe they need help

opening the bottles. Maybe they need help, and you put the pill in their hand, make sure that they are able to put it in their mouth, and then you have to watch her swallow. That is what we call assistance with self-administered medications. You watch her swallow, and then you document that she took the medication, that you assisted her with medications.

When the inspector comes, in some facilities they see a resident sitting in the dining room, and there are pills next to them on the table. Nobody is watching them, and they just put the pills on the table. That's a big violation. You never leave medication.

Also, they have to be trained, four hours of training and they have to have yearly medication update training. They have to look at the employee file and make sure that they went through that. There are a lot of things to watch for.

Kelly: And that goes back to the manual on policy and procedures, looking at the training records and that stuff.

Brenda: Yes, it goes to the regs also, what the regulations are for assistance with medications.

Kelly: Would you say the most common cases for litigation are related to assessments and medications?

Brenda: That's not the number one litigation. The number one is falls, and then pressure sores, and then elopements are another one.

Kelly: Okay, so say we're looking in the records for this, reviewing this as an LNC, what do we look for regarding falls?

Brenda: First of all, you have to see if they were a high risk for falling according to the 1823, and then you look up the nurse's notes. If they have a plan of care, that's good, but that's not a requirement for an assisted living facility. There is really no regulation in the state of Florida that I have to have a nursing care plan or a plan of care for every patient, but it's best practice to have those. It's best practice.

Kelly: Best practice.

Brenda: Yes, you have to have it in place, so you can show to the plaintiff attorney or to the jury that you did something with that fall risk. Just like with a pressure sore. "What were you doing?" "This patient is incontinent, what were you doing to prevent this pressure sore?" You have to document that you changed the diaper, kept her dry all the time, you do skin care, and you put skin protectant on all the time. It's just you're doing something.

Also, you have to make sure that the patient's nutrition and hydration is adequate so that they won't have skin breakdown. If they are losing weight, make sure you tell the doctor that they are losing weight. The doctor might order a nutritional supplement like Ensure or Boost. You have to have a record that you're doing skin monitoring, especially with those incontinent patients and those who are not ambulatory at all. They're always sitting there, and you got to show to them that you're doing something.

This is Pat Iyer. Before I continue, listen to this: assisted living facility cases are specialized. This area of litigation has its own rules, regulations and language. Who better to learn from than an attorney who spends his time litigating assisted living and nursing home cases?

Attorney Sean Doolan has developed expertise in representing the victims of nursing home and assisted living malpractice. He shares his lessons learned and provides specific information you can use to review a case involving a nursing home. Sean will enable you to understand:

- How care is improved by lawsuits
- How nursing homes try to prevent falls
- Which cases are difficult to win
- The role of the Ombudsman
- The types of medical malpractice claims that occur from care in assisted living facilities versus nursing homes
- How to look for signs of quality care in a nursing home
- Where to look on the Internet for a rating of a nursing home

This program is called Reducing the Risks of Nursing Home Care. Purchase this program's transcript at this link: http://LNC.tips/NHC and use the code Listened to get a 25% discount on the price.

Kelly: Okay, it's so valuable. What about elopement, patients who are at risk for wandering?

Brenda: Elopement, that's when the assessment really is very helpful. The first day that you get a call that there's a patient who needs an assisted living facility, that's the number one question. "Do they have dementia?"

- "Are they exit seeking at home?"
- "Do they always go out to the door?"
- "How many times a day do they try to get out of the door?"
- "How are they doing at night?"
- "Do they sleep well at night or are they wandering around at night?"

Those are very important questions. The family will say, "The police found her one day walking out in the street." That's a big red flag and if the doctor documents that she's an elopement risk, then you better be careful. If you are not a locked unit, you should always refuse that potential resident. Sometimes these dementia patients, you never know what they are going to do. They were fine, and they don't have any history of wandering at home, but once they are in your facility they start wandering off. So that moment, you've got to transfer and move them out to a locked unit, a facility that can handle wanderers because that's not a good fit for your facility. That's a big liability for you. **Kelly:** Yeah, that's a huge risk. You certainly have provided us with a lot of information whether plaintiff or defense regarding assisted living facilities. What other tips do you have for us?

Brenda: Like for the LNCs or like as an administrator?

Kelly: For the LNCs, but as an administrator I'm certainly you have some tips for the LNC.

Brenda: Okay, as an administrator of the facility there is really no way of making your facility free from litigation. No matter what you do, there is still a big chance of litigations. Even if you're following all the

regulations, you're following all the requirements of the licensing agency, you're very careful and you watch your residents, accidents can still happen. There's really no way of avoiding a lawsuit I would say. They will always fall. Even the strongest resident in the facility, they can still fall anytime. They're walking and they're very strong, and all of a sudden, their legs give way. They fell, and they broke their hip, or they have a head injury. There's really nothing to prevent those things. This is what we call non-preventable falls. Not all falls are preventable, but it's very difficult to prove that to the plaintiff attorneys.

Kelly: Thank you so much for your time today. Tell our listeners how we can reach out to you. You know so much about assisted living facilities.

Brenda: I have a website, which is www.pacificlegalnurse.com and also, I'm on LinkedIn. You can also email me at pacificlegalnurse@gmail.com. I just want to let you know that I'm doing expert work for ALF litigation. It doesn't mean that it's only ALF cases. I have cases that I was like hired because the lawsuit was against a CNA, so I can be involved as an expert witness for CNAs since I am supervising CNAs every day. That will still be in my expertise.

Kelly: Thank you. Today was so very informative. We really appreciate it. Okay, listeners, don't forget you can get this podcast transcript. It may be very beneficial for a case that you have coming down your way soon. Tune in next week, bye-bye.

Brenda: Bye and thank you for having me.

Be sure to order your copy of the transcript for the program **Reducing the Risks of Nursing Home Care**. The link for this product is http://LNC.tips/NHC. Use the code Listened to get a 25% discount.

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