

A patient received anesthesia while giving birth. Upon awakening from the anesthesia, she discovered a severe burn on the inner portion of her right knee.

The patient has brought a medical malpractice action in which she has joined all of the physicians and nurses who exercised control over her person, the delivery room, the medical procedures, and the equipment used during the period in which she was unconscious.

The defendants have jointly moved for summary judgment. The patient has produced affidavits that establish that the applicable professional standard of care was violated.

What would be the patient's best argument against the motion?

- A. At least one of the defendants had control over whatever agency or instrumentality caused the patient's injury.
- B. The defendants were acting in concert.
- C. The patient has produced affidavits that establish that the applicable professional standard of care was violated.
- D. The patient was in no way responsible for her injury.

Explanation:

Res ipsa loquitur

(medical malpractice claims)

Applicability Plaintiff suffered unusual injury while unconscious during medical treatment

At least one member of medical team had control over patient's body or instrumentality that caused injury

Effect Creates inference that every member of medical team was negligent
Places burden on each member to establish that he/she was not negligent

Medical malpractice claims are based on negligence and generally require proof that the defendant violated a professional standard of care. But this can be difficult to prove when a complex procedure (eg, surgery) was performed by a team of medical professionals. In that case, the doctrine of **res ipsa loquitur** lets the fact finder **infer** that *every* member of the medical team was **negligent** when:

the patient suffered an **unusual injury** (ie, one that is usually caused by negligence) while **unconscious** and in the **course of medical treatment** *and*

at least one member of the medical team had **control over** the **patient's body or instrumentalities** that might have caused the patient's injury.

Here, the patient sued her medical team for a severe burn that she discovered upon awakening from anesthesia. And though the patient has affidavits showing that the professional standard of care was violated, she cannot identify which defendant was negligent (**Choice C**). But since at least one of the defendants had control over whatever instrumentality caused her unusual injury, the negligence of *every* defendant can be inferred. Therefore, this is the patient's best argument against the defendants' motion for summary judgment.

(Choice B) Tortfeasors who act in concert (ie, by agreement) and injure the plaintiff are jointly and severally liable for the entire injury. But here, there is no evidence that the defendants were acting in concert, and it is possible that a single defendant caused the patient's burn.

(Choice D) The patient was not responsible for her injury since she was anesthetized when it occurred. But her lack of responsibility does not prove that someone on her medical team was negligent.

Educational objective:

Under the doctrine of *res ipsa loquitur*, it can be inferred that every member of a medical team was negligent when (1) the patient suffered an unusual injury while unconscious during medical treatment and (2) at least one member of the team had control over the patient's body or instrumentalities that might have caused the injury.

References

Restatement (Second) of Torts § 328D (Am. Law Inst. 1965) (explaining when a defendant's negligence can be inferred based on the type of accident that injured the plaintiff).

Ybarra v. Spangard, 25 Cal. 2d 486, 494 (1944) (holding that all defendants who control an unconscious patient's body while the patient suffers unusual injuries are subject to an inference of negligence).

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