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# Not All Injuries That Occur In Hospitals Are Medical Claims – But How Can You Tell Which Is Which?

*by Brenda M. Johnson*

You've received a call from a potential client who was injured in a fall at your local hospital while she was a patient receiving rehabilitative care. The injuries are serious, but more than a year has passed since the fall occurred. Does she still have a potential cause of action? The answer may depend on something as seemingly inconsequential as whether she was on her way to physical therapy as opposed to the bathroom when the fall occurred.

Whether or not an action constitutes a "medical claim," as that term currently is defined in R.C. § 2305.113,[1] controls whether it is subject to the one-year statute of limitations set forth in that statute (as opposed to the two-year statute applicable to claims of ordinary negligence), and it also controls whether a Rule 10(D) affidavit of merit must be filed with the complaint. Not every injury that occurs in a hospital or medical care setting is a medical claim, but the factors by which Ohio courts distinguish between medical claims and claims of ordinary negligence are far from self-evident. Nonetheless, whether they are particularly rational or not, and whether or not they generate consistent results, there are guidelines that can be discerned from relevant statutory language and the case law.

## What Constitutes a "Medical Claim"?

As it is currently defined, the term "medical claim"

> means any claim that is asserted in any civil action against a physician, podiatrist, hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice registered nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care, or treatment of any person.

R.C. § 2305.113(E)(3). The current version of the statute expressly provides that the term "medical claim" includes derivative claims, claims of negligent training or retention, and claims brought under R.C. § 3721.17 (the nursing home patient bill of rights) that arise out of medical care, diagnosis or treatment.[2]

Two Ohio Supreme Court opinions – *Browning v. Burt*[3] and *Rome v. Flower Memorial Hospital*[4] – set forth the principles by which Ohio's lower courts interpret this language in determining what constitutes a "medical claim" for statute of limitations purposes and for purposes of Rule 10(D). In *Browning*, the Court held that the word "care," for purposes of the statute, refers to "the prevention or alleviation of a physical or mental defect or illness," and further held that the word should not be interpreted broadly.[5] In *Rome*, however, the Court arguably did just that, which in turn has led to complicated and contradictory results in subsequent cases.

*Rome* was a consolidated appeal involving two

cases in which each plaintiff had been injured as a result of the misuse of hospital equipment. In one, the plaintiff, Barbara Rome, was injured when she fell from a radiological table because a student intern failed to properly fasten a footboard before positioning the table for an x-ray.[6] In the other, plaintiff Harold Eager was injured when a component in his wheelchair collapsed while he was being transported from physical therapy while a hospital patient.[7] Both claims had been alleged as claims for ordinary negligence, and were brought after the one year statute of limitations for medical claims had elapsed.[8]

In determining that both claims were, in fact, medical claims subject to a one-year statute of limitations, the Court held that with respect to Barbara Rome "the process of securing [her] to [the] radiology table [was] ancillary to and an inherently necessary part of the administration of the X-ray procedure which was ordered to identify and alleviate her complaints."[9] The Court also observed that "at the time of her injury, Mrs. Rome was a patient at [the hospital] and was being assisted by a [hospital employee who] was required to exercise a certain amount of professional expertise in preparing the patient for X-ray."[10] With respect to Mr. Eager, the Court held that "the transport of Mr. Eager from physical therapy was ancillary to and an inherently necessary part of his physical therapy treatment."[11] Likewise, as with Mrs. Rome, the Court found that Mr. Eager was a patient at the defendant hospital at the time of his injury, and that he was "assisted by [a hospital employee] who was required to use a certain amount of professional skill in transporting the patient in the wheelchair."[12]

## *Rome* and Its Application

The principles cited in *Rome* as being relevant to determining whether a claim against a medical provider is a "medical claim," as opposed to a claim of ordinary negligence, have led to incongruous results as lower courts have attempted to fit specific facts to the factors in the *Rome* analysis.

In *Balascoe v. St. Elizabeth Hospital Medical Center*,[13] not long after *Rome* was decided, the Seventh District held that a claim arising from a slip and fall in a hospital setting was not a "medical claim." In that case, the plaintiff was an emergency room patient who was under the care of the hospital when she was assisted from a hospital bed to go to the bathroom, then slipped on a piece of plastic on the floor when she tried to return to her bed on her own after her calls for assistance went unheeded.[14] Invoking *Rome*, the hospital argued the fall constituted a medical claim as the injury arguably would not have occurred if the plaintiff had been helped back to bed, but the court disagreed, and held that it did not "arise directly from the 'medical diagnosis, care or treatment' of [the plaintiff] but rather arose from the alleged negligent maintenance of [the hospital's] premises."[15]

Shortly thereafter, however, on facts that seem difficult to distinguish, the Eleventh District reached a contrary result in *Long v. Warren General Hospital*.[16] In that case, the plaintiff was being prepared for a colonoscopy when he slipped while crossing the floor while wearing socks instead of hospital slippers.[17] Despite the close similarity to *Balascoe*, the court distinguished the case based on the fact that the plaintiff in *Long* was instructed to leave the gurney by an orderly, whereas the plaintiff in *Balascoe* was neither instructed to leave her bed nor assisted in any way by hospital personnel at the time she fell.[18]

In *Tayerle v. Hergenroeder*,[19] however, the Eleventh District further distinguished *Long*. The plaintiff in *Tayerle* was leaving a rehabilitation facility without assistance after receiving outpatient therapy when she was knocked over by a spring door. In an opinion authored by now-Justice William M. O'Neill, the court held the plaintiff's claim was one of ordinary negligence because (unlike the plaintiff in *Long*) the plaintiff in *Tayerle* was on her way out of the office after receiving treatment, and was not being assisted by facility employees in any way.[20]

In *Grubb v. Columbus Community Hospital*[21] the Tenth District held that another hospital fall case was a "medical claim." The patient, who was being transported from an MRI scan, had fallen backwards down a flight of steps when the orderly required the patient to dismount the gurney despite the fact that the plaintiff protested that he could not stand because of his medicated state.[22] The court held that *Rome* stood squarely for the proposition that the process of transporting a plaintiff from one diagnostic procedure to another was "ancillary to and an inherently necessary part" of medical diagnosis, and thus any resulting injury constitutes a medical claim.[23] In reaching its conclusion, the court rejected plaintiff's attempts to distinguish Rome by arguing that there was no evidence that the orderly in *Grubb* had any special training, or that medical equipment was a factor.[24] In so doing, the court observed that there was "no evidence" that the orderly who transported the plaintiff in *Rome* had any more training than the orderly whose conduct was at issue in *Grubb*, and that the use of medical equipment was immaterial to the analysis.[25]

Thus, a pattern began to develop in these earlier cases – namely, falls that occurred while a patient was in the course of being transported to treatment, or when the patient was under the direction of a hospital employee, would be treated as medical claims, whereas if the patient was unattended, the claim would be treated as one for ordinary negligence.

In more recent opinions, however, Ohio courts seem to have recognized that these rules, if applied rigidly, produce unfair and incongruous results.

In *Hill v. Wadsworth-Rittman Area Hospital*,[26] the Ninth District was asked to decide whether a claim arising from a fall sustained by a patient who was being transported by a nurse out of the hospital in a wheelchair was a "medical claim" for which a Rule 10(D) affidavit and expert testimony was needed. In that case, the plaintiff had undergone an outpatient procedure, and was being wheeled out of the building by a nurse who first left the patient unattended to deal with an apparent emergency, then took the patient to a pickup area, where the patient alleged she was again left unattended. The patient then tripped over the footrests on the wheelchair when she attempted to stand up.[27]

The trial court determined that the case involved a medical claim as that term is defined by statute, and thus required an affidavit of merit and expert testimony as to the standard of care.[28] The Ninth District held otherwise.[29] In so doing, the court held that *Rome* did not compel the conclusion that a claim arising from a patient's transportation by wheelchair was a medical claim, as it was not clear that such transportation necessarily required any particular level of professional skill and that any suggestion otherwise was *dictum:*

> . . . In examining the claim of the plaintiff transported in a faulty wheelchair, the *Rome* court stated that the plaintiff "was assisted by an employee of St. Vincent *who was required to use a certain amount of professional skill* in transporting the patient in the wheelchair." (Emphasis added.) *Rome*, 70 Ohio St.3d at 17. This language does not provide an indication as to any particular level of professional skill required. We believe this statement to be mere dictum rather than a statement of law.[30]

The Ninth District further distinguished *Rome* on its facts by noting that in the case at bar there was evidence, in the form of the defendant nurse's testimony, that a hospital volunteer had originally been assigned to transport the plaintiff, and that "[w]hen a volunteer with no requisite medical training is capable of completing the transport out of the hospital, professional skill is not implicated."[31]

In subsequent decisions, other districts also declined to find medical claims in cases involving transport or assistance involving little to no specialized professional training and little, if any, relationship to medical care. In *Conkin v. CHS-Ohio Valley, Inc.*,[32] for instance, the First District held that a nursing home resident who was injured in the process of being transferred into a Hoyer lift in order to shower had not pleaded a medical claim subject to a one-year statute of limitations, since there was no indication that the use of the Hoyer lift "was an inherent part of a medical procedure or that it arose out of physician ordered treatment," and there was no clear indication that any particular professional skill or expertise was required to operate the lift.[33]

In *McDill v. Sunbridge Care Enterprises*,[34] the Fourth District rejected the argument that a fall sustained at a rehabilitation facility by a patient who needed assistance to the bathroom was a medical claim, since transport to the bathroom was not transport for a medical procedure.[35] In *Haskins v. 7112 Columbia, Inc.*,[36] the Seventh District rejected the argument that a claim arising from the death of a nursing home patient whose leg was broken in the course of changing her linens was a "medical claim," since there can be non-medical reasons to change bed linens and the persons changing the sheets had no particular medical skill.[37]

For similar reasons, in *Carte v. Manor*,[38] the Tenth District rejected the argument that a fall in a skilled nursing facility was a medical claim, even though the patient was being actively assisted at the time of his fall. And in *Eichenberger v. Woodlands Assisted Living Residence, LLC*,[39] handed down in the same month as *Carte*, the Tenth District rejected the argument that a claim arising from the transportation by wheelchair of a nursing home resident was a "medical claim" when she was injured while being transported to the facility's dining area for her lunch, as transportation to the dining area clearly was not ancillary to, or an inherently necessary part, of the patient's medical care.[40]

Notably, both *Carte* and *Eichenberger* were issued by the same district that decided *Grubb*, in which the Tenth District held that a patient's fall while being attended by an orderly was a "medical claim," apparently solely because the fall occurred while the patient was being transported from a diagnostic procedure, as opposed to some other destination. This distinction was not addressed by the Tenth District in *Carte* or *Eichenberger*, neither of which even cite *Grubb*. Both opinions, however, cite *McDill*, in which the Fourth District squarely addressed the incongruity.

In reaching the conclusion that the fall in *McDill* was not a medical claim, the Fourth District made the following observation regarding the disparate results that *Rome* has produced:

> Following the *Rome* logic, courts have allowed recovery for a hospital employee's negligent use of hospital equipment if the equipment was not being used to transport the patient to a medical procedure, but it may not be had if the same equipment, in the same manner, is

being used to transport the patient to a medical procedure. Certainly, a line exists between a medical claim and a general negligence claim that happens to occur at a medical facility. The line as presently drawn, however, does not appear entirely logical. Why is it reasonable to deny recovery to the patient who suffers a wheelchair injury due to employee negligence while being transported to a medical procedure or treatment, but the same patient may recover if the injury occurs while being discharged or transported to the bathroom? Perhaps the Ohio Supreme Court will clarify the seeming incongruity.[41]

## Conclusion

*Rome* was a 5-2 decision accompanied by a succinct dissent on the part of Justice Pfeiffer, who observed that

> the causes of the injuries in these two cases are at least one step removed from diagnosis, care, or treatment. While being placed on an X-ray table and being transported in a wheelchair are tangentially related to medical care, they do not constitute medical care themselves. A claim sounding in negligence does not become a medical claim simply because the injury arises in a hospital.[42]

It is also a decision that lower courts have wrestled with, as its application has led to distinctions between medical claims and negligence claims that, as the Fourth District recently observed in *McDill*, are not entirely reasonable. There are, nevertheless, relevant factors by which to determine whether a court, under the current rules, is likely to treat an injury claim that arises in a clinical or hospital setting as one for ordinary negligence. These include:

- Whether the patient was in transit to or from a diagnostic procedure or treatment when the injury occurred. If so, the claim is likely to be treated as a medical claim, even though a similar injury incurred while en route to or from a bathroom or lunchroom might be treated as ordinary negligence;
- Whether the activity causing the injury could be considered non-therapeutic in nature. If the injury occurs in the course of what might be considered normal housekeeping or personal care duties (such as changing the patient's linens or transporting her for a shower), it is likely to be treated as a claim for ordinary negligence, even if similar activities undertaken while transferring a patient from a bed or gurney following medical treatment would not; and
- Though it seems to be decreasingly dispositive, whether or not the patient was being actively assisted by a caregiver at the time of the fall can affect a court's analysis as well.■

### End Notes

1. The definition of "medical claim" discussed in this article originally appeared in R.C. § 2305.11, but was recodified in R.C. § 2305.113 in 2003.
2. *See* R.C. § 2305.113(E)(3)(a)-(d).
3. 66 Ohio St.3d 544, 1993-Ohio-178, 613 N.E.2d 993.
4. 70 Ohio St.3d, 14, 1994-Ohio-574, 635 N.E.2d 1239.
5. 66 Ohio St.3d at 557. The Court found that the terms "medical diagnosis" and "treatment" were terms of art with specific meanings "relating to the identification and alleviation of a physical or mental illness, disease, or defect." *Id.* Based on this, the Court held that a negligent credentialing claim was not a "medical claim." *See id.*, syllabus at 2. The General Assembly subsequently amended the definition of "medical claim" to include negligent credentialing claims; however, the Court's interpretation of the word "care" in the context of the statute remains otherwise undisturbed and continues to be followed by lower courts. *See, e.g., Cooke v. Sisters of Mercy*, 12th Dist. Butler No. CA97-09-181, 1998 Ohio App. LEXIS 2009, *7, n. 1, 1998 WL 221320 (May 4, 1998) (noting that the subsequent amendment to the statute was directed only to the issue of negligent credentialing, and did not otherwise affect the validity of *Browning's* interpretation of the definition of "medical claim").
6. *Rome*, 70 Ohio St.3d at 14.
7. *Id.* at 14.
8. *Id.*
9. *Id.* at 16.
10. *Id.* at 16.
11. *Id.* at 16.
12. *Id.* at 16-17.
13. 110 Ohio App.3d 83, 673 N.E.2d 651 (7th Dist. 1996).
14. *Balascoe* at 84.
15. *Balascoe* at 85-86.
16. 121 Ohio App.3d 489, 700 N.E.2d 364 (11th Dist. 1997).
17. *Long* at 490-491.
18. *Long* at 493.
19. 11th Dist. Geauga No. 98-G-2195, 1999 Ohio App. LEXIS 5931, 1999 WL 1313625.
20. *Tayerle* at *7.
21. 117 Ohio App.3d 670, 691 N.E.2d 333 (10th Dist. 1997).
22. *Grubb* at 672.
23. *Grubb* at 674 (quoting Rome, supra).
24. *Grubb* at 674-75.
25. *Grubb* at 674-75.
26. 185 Ohio App.3d 788, 2009-Ohio-5421, 925 N.E.2d 1012 (9th Dist.).
27. *Hill* at ¶3-4.
28. *Hill* at ¶ 12.
29. *Hill* at ¶ 12.
30. *Hill* at ¶ 16.
31. *Hill* at ¶ 16.
32. 1st Dist. Hamilton No. C-110660, 2012-Ohio-2816.
33. *Conkin* at ¶ 11.
34. 4th Dist. Pickaway No. 12CA8, 2013-Ohio-1618.
35. *McDill* at ¶¶ 23-24.
36. 7th Dist. Mahoning No. 13 MA 100, 2014-Ohio-4154.
37. *Haskins* at ¶ 15 (distinguishing *Rome*).
38. 10th Dist. Franklin No. 14AP-568, 2014-Ohio-5670.
39. 10th Dist. Franklin No. 14AP-272, 2014-Ohio-5354, 25 N.E.3d 355.
40. *Eichenberger* at ¶ 15.
41. *McDill v. Sunbridge Care Enters.*, 4th Dist. Pickaway No. 12CA8, 2013-Ohio-1618, at ¶ 24, n. 3.
42. *Id.* at 17 (Pfeiffer, J., dissenting).