

Nursing Expert: No Opinion Linking Death To Nursing Negligence.

The patient died in the hospital the morning after endoscopic removal of a stone in the common bile duct. The cause of death was acute calculous cholecystitis. The surviving spouse sued the physician, the hospital and the staff nurse.

A nursing expert can review a patient's chart and can identify instances where the patient's nursing care did not meet the nursing standard of care.

A nursing expert is qualified to testify on the nursing standard of care in a malpractice case.

However, malpractice requires proof that a failure by the nurses to meet the nursing standard of care was a proximate cause of the injury to the patient.

Causation is a medical issue and requires a physician's expert testimony.

COURT OF APPEALS OF WASHINGTON
UNPUBLISHED OPINION
June 27, 2002

In an unpublished opinion, the Court of Appeals of Washington ruled that a nurse's testimony about deficits in the patient's nursing care was not sufficient to hold the hospital and the staff nurse liable.

The nursing expert herself testified she could not find a link between the deficits in nursing care and the cause of death noted in the autopsy report. ***Stewart v. Newbold***, 2002 WL 1389415 (Wash. App., June 27, 2002).

Off-Duty Drug Use By CNA: Court Ruling Reversed, No Evidence Work Was Affected.

A case from the Commonwealth Court of Pennsylvania we reported in our December, 2001 issue has been reversed by the Supreme Court of Pennsylvania.

See *Willful Misconduct: Court Rules Off-Duty Illicit Drug Use Is Grounds To Fire CNA*. Legal Eagle Eye Newsletter for the Nursing Profession (9)12, Dec 01, p.1.

An attempt was made to justify the CNA's termination for cause from her position at a nursing home with statements that her off-duty drug use could have harmed patients and that she might have attempted to work in an impaired condition.

There must be direct evidence that her job performance was affected, not just vague speculation about safety problems, to justify termination for cause.

SUPREME COURT OF PENNSYLVANIA
July 16, 2002

The Supreme Court of Pennsylvania squarely disagreed with the Commonwealth Court of Pennsylvania which had upheld her termination for cause.

Even for healthcare workers, the Supreme Court said, there must be evidence showing that the employee's on-duty performance has been affected by off-duty drug use, to justify termination. ***Burger v. Unemployment Compensation Board of Review***, __ A. 2d __, 2002 WL 1558347 (Pa., July 16, 2002).

Morphine Toxicity: Ruling Against Hospital Reversed.

A case from the Court of Appeals of Minnesota that we reported in our August, 2001 issue has been reversed by the Supreme Court of Minnesota.

See *Morphine Toxicity: Nurses And Physicians Ignored The Signs, Did Not Treat Appropriately, Court Holds Them Negligent*. Legal Eagle Eye Newsletter for the Nursing Profession (9)8, Aug 01, p.6.

An expert witness in a medical malpractice case must specify the acts or omissions by the defendants that fell below the standard of care, and indicate specifically how those acts or omissions caused harm to the patient.

SUPREME COURT OF MINNESOTA
June 13, 2002

First, the Supreme Court was not satisfied that the physician whose expert witness affidavit was relied upon by the patient's attorneys had the proper qualifications to render an opinion in this case.

That is, a physician with extensive experience in general pediatrics is not an expert in pediatric oncology. When the nurses did note respiratory depression and did report it to the physicians the physicians elected to go with a Nubain test rather than Narcan reversal, fearing the side effects of Narcan reversal in a critically ill pediatric oncology patient. The plaintiff's expert was not qualified to second-guess that medical judgment.

Secondly, the plaintiff's expert failed to establish a cause-and-effect link between the patient's death from morphine toxicity and the time it took for the nurses to notice the signs and for the physicians finally to order Narcan. ***Teffeteller v. University of Minnesota***, 645 N.W. 2d 420 (Minn., 2002).