

# Expert Witnesses: Courts Are Seeing A Wider Role For Nurses In Medical Litigation.

The patient, 6' 4," 380 lbs., had a lengthy hospitalization for three open abdominal surgeries to repair a gunshot wound.

When finally transferred to a rehab facility he had decubitus ulcers on his sacral area, feet, heels and head.

He sued his physician, the hospital and the agency which provided med/surg nurse staffing at the hospital.

The physician was dismissed from the case. Before being dismissed the physician testified in his deposition that he was not an expert and could not and would not offer a medical opinion on the subject of skin care and decubitus ulcers.

## Patient's Case Based Only

### On Nursing Expert's Testimony

In this case the patient's nursing expert had eighteen years nursing experience and was familiar with standards for the care of elderly and critically ill patients. She was certified in wound care.

Her expert opinion was that the care given the patient by the hospital's (agency) nurses did not meet accepted standards. They failed to reposition the patient and failed to place protectors on his heels and feet, directly leading to development of avoidable decubitus ulcers.

The judge proceeded to dismiss the patient's case on the grounds a nurse's expert testimony is not sufficient to support a medical negligence case.

The Supreme Court of Oklahoma, however, disagreed with the judge and overturned the dismissal. In its opinion the Oklahoma court reviewed the current widespread acceptance by other state courts of nurses' expertise in healthcare negligence litigation.

Nurses generally are accepted as experts on skin care for hospital, rehab and nursing-home patients, on the issue of appropriate care and whether the lack of appropriate care can or did lead to development of avoidable lesions. The Court cited precedents directly on point from Texas, Hawaii, Kentucky, Florida, Indiana, Missouri, Georgia and Kansas.

***According to the patient's nursing expert, the standard of care for a critically ill patient was not followed by the hospital's nurses.***

***The chart did not show that he was being turned every two hours as a standard practice to avoid bedsores.***

***There was a 48-hour period where his physician ordered him not to be moved, but there was no nursing documentation of turning before that order was written or after it expired.***

***Failure to reposition the patient at regular intervals was a direct contributor to development of severe decubitus ulcers on his coccyx, heels and head.***

***The nurses also failed to place heel protectors on his feet.***

***That was negligent and it led directly to the decubitus ulcers on his heels and feet.***

***The patient was tall and heavy.***

***He was immobile and suffered nutritional deficits due to trauma and multiple surgical complications.***

***However, the development of decubitus ulcers was nonetheless avoidable if nursing standards of care had been followed.***

SUPREME COURT OF OKLAHOMA  
June 13, 2006

The Court went on to cite other US legal case precedents accepting nurses as expert witnesses:

A nurse cannot testify on the standard of care for a physician, only the standard of care for nurses. However, a nurse is an expert on wound care for a post-op patient in a screw-pin head restraint (Minnesota).

A nurse can testify as an expert on standards for assisting a post-operative patient with ambulation (Delaware).

A nurse can testify as an expert on standards for properly supervising a nursing-home resident in a wheelchair to prevent injury (Texas).

A hospital director of nursing can testify that nurses must independently evaluate the appropriateness of a physician's hospital discharge order, and, if necessary, contact the physician to advocate for the patient. That is, a post-op patient who the nurses know still has an elevated temperature should not automatically be discharged just because the physician has ordered it (South Dakota).

A nurse can testify – against a physician – on standards for maintaining the sterility of needles used to draw blood (Georgia).

Pediatric nurse practitioners are widely accepted as experts in child-abuse cases to link physical and behavioral data to abuse by an adult (Georgia).

Nurses are experts on the issue of a parent's parenting skills, or lack thereof, in child-custody disputes (Colorado).

Nurses can testify in personal-injury lawsuits about the personal care that an accident victim will need following an accident due to the injuries from the accident (District of Columbia).

A nurse can testify on medical and nursing standards for assessing a patient for signs of preeclampsia and for monitoring the patient for seizure (Ohio).

A nurse can testify on the cause of a hospital patient's staph infection, if the nurse has a background in infection control (Kentucky). **Gaines v. Comanche Co. Medical Hosp.**, \_\_ P. 3d \_\_, 2006 WL 1628094 (Okla., June 13, 2006).