

Nurse As Expert Witness: Court Widens Nurses' Role In The Courtroom.

The patient was paraplegic from spinal injuries in a motor vehicle accident.

Pressure sores developed on his buttocks and sacrum while he was in physical rehabilitation and progressed to the point that he had to be transferred back to the hospital for surgical debridement.

The surgery was successful and the lesions healed. He was returned to the rehab facility to complete his course of therapy and then discharged home.

Nurse Was Not Allowed to Testify

A major stumbling block came up in the patient's lawsuit against the rehab facility when the judge sustained an objection to his nursing expert's testimony on the issue of causation.

By way of background, in malpractice cases the patient needs proof of negligence, that is, a departure by his or her caregivers from the standard of care, proof of damages and proof of causation linking the caregivers' negligence to the damages.

The judge did allow the patient's nursing expert to testify that the patient's nurses' conduct fell below the standard of care. The damages were obvious.

However, because the patient's nursing expert was a nurse and not a physician, the judge did not allow her to testify that the treating nurses' substandard practices caused the patient's pressure sores. That stranded the patient high and dry without a crucial element needed for his case.

The judge cited the state's nurse practice statute. It permits nurses to make nursing diagnoses but expressly bars nurses from making medical diagnoses as beyond the scope of nursing practice.

Traditionally the courts have not allowed nurses to testify on the issue of medical causation in malpractice cases, even in malpractice cases only involving other nurses. The Supreme Court of Pennsylvania threw out the traditional rule. If a nurse is qualified through education and experience, the nurse is not barred from recognition as an expert in the legal arena just for being a nurse and not a physician.

Freed v. Geisinger Medical Center, ___ A. 2d ___, 2009 WL 1652856 (Pa., June 15, 2009).

The Professional Nursing Law permits nurses to make nursing diagnoses but prohibits nurses from making medical diagnoses.

Nursing diagnosis is defined as the identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen.

There is no reason, however, why the principles governing nursing clinical practice should apply to malpractice and negligence cases in the legal arena.

Testimony in the legal arena is governed by the Rules of Evidence.

The Rules of Evidence state in very broad terms that a witness who is qualified by specialized knowledge, skill, experience, training or education is qualified and may testify in court as an expert.

There is no reason why a nurse should categorically be denied the opportunity to testify as an expert on the issue of medical causation, if the court is satisfied the nurse has sufficient knowledge, skill, experience, training or education.

SUPREME COURT OF PENNSYLVANIA
June 15, 2009
