

Nurse As Expert Witness: Opinions Found Inadequate, Patient's Case Dismissed.

A patient filed suit against her outpatient cancer chemotherapy clinic over a chemical burn to her arm allegedly suffered as a result of extravasation of doxorubicin. In addition to the injury to her arm the patient also claimed damages for delay in her cancer therapy as a result of the extravasation incident.

Nursing Negligence Was the Issue

The lawsuit alleged nursing negligence in the IV administration of the chemotherapeutic agent. To support her claim the nurse's attorney submitted an expert witness report written by a registered nurse. The clinic's lawyers argued the expert's report was fundamentally inadequate to support a malpractice suit. The Court of Appeals of Texas agreed with the clinic's lawyers and ordered the case dismissed.

Nurse's Expert Report Inadequate

The nurse's report contained a lengthy laundry list of generic safety-oriented nursing considerations for administering chemotherapeutic agents.

The list of generic nursing responsibilities was followed with a generalized assertion that the standard of care was not followed and that that caused the extravasation incident.

Absent, in the court's judgment, was any direct statement of what specific nursing responsibility or responsibilities were ignored, a factual basis for such a statement and a reasoned explanation how any specific nursing responsibility being ignored in fact caused the extravasation.

It would be completely improper, the court pointed out, for a court to allow an expert witness to reason backward from the fact that harm did occur to the conclusion that the harm must have been caused by a departure from the standard of care.

A bad outcome, even one which genuinely does cause serious harm to the patient, in and of itself, does not prove that the patient's caregivers were at fault. Hillman v. Diagnostic Clinic of Houston, P.A., 2005 WL 995453 (Tex. App., April 28, 2005).

A nurse is considered competent as an expert witness in a malpractice case involving allegations of nursing negligence.

However, the opinions of a nursing expert, like any other expert used in court, must comply with the fundamental legal rules for expert-witness testimony.

An expert's testimony must point out the applicable standard of care, must detail the manner in which the care rendered by the physician or other health care provider failed to meet the standard of care and must show the cause-and-effect relationship between that failure and the injury, harm or damages to the patient claimed in the lawsuit.

An expert witness must be able to point out all of the factual information relied upon in reaching his or her conclusions.

That generally means the expert must have reviewed all of the medical records pertinent to the case and must be able to point to specific facts documented in the records which support the expert's opinions and conclusions.

COURT OF APPEALS OF TEXAS
April 28, 2005

Post-Op Care: Nurses Followed The Standard Of Care, Not Liable For Patient's Death.

The patient was transferred from acute care to the skilled nursing unit three days after gastric-bypass surgery.

She was found dead in her bed in her room the next day at 3:00 p.m., one hour after a nurse had last checked on her.

Her next of kin sued for medical and nursing negligence. The Court of Appeal of Louisiana upheld the jury's verdict of no negligence.

The elderly obese patient died of cardiac arrhythmia on the skilled nursing unit four days after gastric bypass surgery.

There is no proof of any error or omission in the post-op nursing care.

COURT OF APPEAL OF LOUISIANA
April 26, 2005

The family's lawyer's theory was that fluid overload was the root cause of the arrhythmia which killed the patient.

However, there was no error or omission in how the nurses monitored and recorded fluid intake and output per the physician's orders. In fact, based on the nurses' I/O charting there was no solid proof that fluid overload was occurring.

The nurse did not take vital signs when she checked on the patient one hour before she died. However, vital signs were ordered to be taken and were taken consistently q four hours. It would only be speculation to say that if vitals had been taken one hour before she died an arrhythmia would have shown up. Dutton v. O'Connell, __ So. 2d __, 2005 WL 954987 (La. App., April 26, 2005).