

Nurse As Expert Witness: Court Discounts Nurses' Expertise On Issue Of Medical Causation.

A forty-four year-old woman suffered a subarachnoid hemorrhage and had to be admitted to a nursing home in a semi-comatose condition.

Two months after admission to the nursing home she had to be hospitalized for pneumonia and respiratory distress. She was discharged from the hospital and transferred to another nursing home where she died, nine months after leaving the first nursing home to go to the hospital.

Inadequate Oxygenation

Inadequate Blood Glucose Monitoring

The family filed a civil lawsuit against the first nursing home alleging negligence and gross negligence.

Specifically, the lawsuit claimed the nursing home staff did not administer the level of oxygen ordered by her physician, gave her unhumidified rather than humidified oxygen and did not adequately monitor her blood glucose levels.

Further, it was alleged, these specific errors and omission caused her death some nine months later.

Nurses As Expert Witnesses

The court acknowledged the two nurse/witnesses who were retained to testify for the deceased's family's lawsuit did have a certain level of expertise. One was a licensed vocational nurse who had formerly worked at the same nursing home and the other was a registered nurse.

Either of the nurses could testify in general terms it would be a gross departure from the legal standard of care for nursing-home nurses to neglect to follow physician's orders for oxygenating a patient or for monitoring a patient's blood glucose levels. But that was not the point.

There must be acceptable medical proof linking specific departures from the legal standard of care and the specific harm suffered by the patient. Neither nurse offered such an opinion or had the credentials to back it up if she had, the court ruled. **Crocker v. Paulyne's Nursing Home, Inc.**, __ S.W. 3d __, 2002 WL 31489514 (Tex. App., November 8, 2002).

The nursing home is entitled to have the allegations dismissed by the judge on summary judgment without a jury trial.

In ruling on a defendant's request for a summary judgment of dismissal the judge only considers evidence that is properly before the court.

There needs to be legally acceptable evidence that errors or omissions by the nursing home staff caused severe respiratory distress and hypoglycemia and that those conditions caused this patient's death.

The nursing home properly objected to the testimony of two nurses as not qualified to give expert opinions on the issue of proximate cause.

With the nurses' testimony excluded, there is basically no evidence for the lawsuit.

There is no acceptable evidence that any act or omission by any defendant proximately caused any injury to the deceased patient or any evidence that any failure of any defendant to provide proper care to the patient proximately caused any injury to her.

COURT OF APPEALS OF TEXAS
November 8, 2002

Nurse As Expert Witness: Court Discounts Nurse As Expert On Medical Causation.

In a recent opinion that has not been selected for publication in the Federal Reporter, the US Circuit Court of Appeals for the Sixth Circuit approved dismissal of a medical and nursing negligence lawsuit filed by a patient against a hospital.

Simply stated, when a hospital patient suffers a staph infection following surgery, even if the judge or jury could reasonably find the hospital to have been negligent in the care of that patient, such a finding of negligence does not equate with proof that the negligence was a proximate cause of the staph infection and the ensuing suffering.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
October 24, 2002

The patient's knee became infected with staph following surgery to repair damage from a motor vehicle accident.

The court could not sustain the patient's lawsuit based on the testimony of two nurses and a physician who were offered as expert witnesses by the patient's attorneys.

One nurse stated she was not a physician/specialist in infectious disease. The physician also testified he had no such specialized expertise. The other nurse, a state hospital inspector, was an expert in infection control but still would not state how this particular patient's infection developed. **Elswick v. Pikeville United Methodist Hospital of Kentucky, Inc.**, 2002 WL 31412400 (6th. Cir., October 24, 2002).