

## Substandard Care: Court Upholds Verdict For Patient's Family For Wrongful Death.

The \$1.5 million verdict for the family against the nursing home was based on the jury's acceptance of the patient's family's experts' slant on the highly disputed medical evidence.

The family's experts testified the elderly patient died from sepsis with a fracture of the right humerus and fluid accumulation in the lungs both caused by a fall in the nursing home as contributing factors.

The nursing home's experts countered with testimony of their own that the humerus fracture could have happened after transfer to the hospital and that congestive heart failure caused the fluid in the lungs.

### Jury's Verdict Upheld

#### Widespread Substandard Practices

The Supreme Court of Mississippi resolved the conflict in the experts' opinions and upheld the jury's decision by pointing to testimony from the nursing home's care-giving personnel about widespread substandard nursing practices as ample evidence that could relate the patient's medical status to a fall and other lapses in his care at the nursing home.

Turning and repositioning were not documented every two hours and likely were not done. One pressure sore was not spotted until Stage II and another was at Stage III or IV before it was noticed.

The patient's nourishment through his PEG tube was not adequate to meet his needs. His mentally-challenged roommate apparently often pulled out the tube and the liquid nourishment spilled into the bed, while nothing was done to prevent that from recurring on a regular basis.

He continued to lose weight even though he was supposed to be getting tube feedings and actually showed signs of dehydration even though it was documented he was getting more fluid through the tube than ordered.

Weight loss and problematic fluid disappearance were abnormal assessment data which required nursing follow-up, in the family's experts' opinion. Failure to follow up was a negligent breach of the standard of care, the Court said. Gibson v. Magnolia Healthcare, \_\_ So. 3d \_\_, 2012 WL 1216216 (Miss., April 12, 2012).

***There were orders for the bed rails to be raised but a CNA testified they were left down on many occasions. There were two documented falls with the bed rails found down afterward.***

***The right hand and wrist were noted to be swollen at one point, but no fall was actually documented by the nurses.***

***A CNA also testified the nursing home was short-staffed much of the time she cared for the patient.***

***Short-staffing meant she was not able to make her rounds to turn the patient every two hours as required and did not even have time to keep him clean.***

***There was no turn clock in the room.***

***The facility was often short on supplies such as the ointment she was supposed to apply to the skin to prevent skin breakdown.***

***The CNA also testified she found his bed soaked in a fluid she described as milk, with his PEG tube disconnected. The patient's mentally-challenged roommate was in the habit of going over and pulling out his PEG tube. The patient was not getting sufficient nutrition to meet his needs.***

SUPREME COURT OF MISSISSIPPI  
April 12, 2012

## Expert Witnesses: Court Disqualifies Nurse As Expert In Her Own Case.

A registered nurse filed a lawsuit alleging that her physician committed malpractice during her hysterectomy by cutting one of her ureters during the procedure and by failing to order a sonogram before the procedure.

The first allegation was based on the argument that it should be plain to any lay person sitting on a jury that a surgeon is not supposed to sever a patient's ureter during surgery.

The second allegation was based on the nurse's own experience as a surgical nurse involved in more than one-hundred hysterectomies during which time she never saw a surgeon not order a sonogram beforehand.

***In a lawsuit involving a health care liability claim against a physician for injury to a patient, an expert witness on the issue of the physician's alleged departure from the accepted standard of care must be a physician with sufficient qualifications.***

UNITED STATES DISTRICT COURT  
TEXAS  
April 11, 2012

The US District Court for the Northern District of Texas dismissed the lawsuit.

The Court ruled the answers to questions of professional malpractice are not as a rule obvious to lay persons.

A nurse is not considered an expert on the question of a physician's negligence in a medical malpractice lawsuit, that is, state law in Texas as in most US jurisdictions requires expert testimony by a practitioner in the same field as the defendant in the lawsuit and necessitates dismissal of the lawsuit if proper expert testimony is not forthcoming from the patient. Lewis v. US, 2012 WL 1216234 (N.D. Tex., April 11, 2012).