

# Expert Witness Affidavits Must Contain Specific Facts Either Supporting or Not Supporting Standard of Care

written by Nancy Brent | August 1, 2016

## **Avoiding Liability Bulletin - August 1, 2016**

In *Griffin v. Methodist Hospital 1*, a patient's lengthy stay in the hospital for numerous fatal medical conditions resulted in the development of foot drop. The foot drop caused the Achilles tendon to contract involuntarily and pulled the toes of the foot downward, thus causing an inability to walk. The patient and her husband sued the hospital and the treating physicians, alleging their professional negligence caused Ms. Griffin's injury.

The trial court granted the Hospital's summary judgment motion and the Griffins' appealed that decision, and in support of its appeal, pled that there was a material issue of fact as to the causation of Ms. Griffin's injury and that the hospital's affidavits were defective.

The appellate court reversed the trial court's decision to grant the summary judgment and remanded the case back to the trial court. In doing so, the appellate court examined the affidavits of a nurse expert and a physical therapy expert that were offered as proof that the nurses and physical therapist who cared for Ms. Griffin's met their respective standard of care.

The nurse expert's affidavit was described by the court as conclusory regarding the standard of care and the hospital nursing staff's compliance with it. Treatments and care were not addressed specifically. Rather, the nurse expert stated: the nurses "properly assessed her (Griffin's) condition"; the nurses "followed the orders of the patients treating physicians"; the nurses "performed their nursing obligations in an organized manner"; and that the nurses "prioritized their care.....in a timely and appropriate manner".

The nurse expert verified that she had reviewed the patient's medication records but did not attach them as there were too "voluminous". She concluded that the hospital nurses complied with the standard of care.

The court opined that "it is not sufficient for an expert to simply state that he or she knew the standard of care and conclude it was met". An expert's opinion, the court continued, must "state what the standard of care is for the treatment of a patient's condition and specify each treatment and examination performed".

The case highlights several issues. First and foremost, documentation at the point of care must be

specific, factual and complete. This is true and very important generally, but it is also vital when a lawsuit is filed.

A nurse expert must rely on the nursing documentation in the record for his or her opinion, since the nurse expert did not provide care for the patient. If the documentation is vague, incomplete, or conclusory, the nurse expert's opinion is compromised at best and the affidavit and his or her testimony is "not competent" (as this court held) to support the standard of care.

A second topic in this case is why the nurse expert decided to provide her opinion on the nursing care given to Ms. Griffin with an affidavit that was so general. Did she really think she could establish the applicable standard of care with what appears to be unspecified documentation by the nursing staff? Or, was the documentation by the nursing staff acceptable but the nurse expert simply failed to do her job in detailing the care that was given?

The court held that the physical therapist expert's affidavit was also full of conclusions and also "not competent" to uphold the standard of care of the physical therapist. One wonders if documentation of patient care was valued at this facility when two expert witnesses' affidavits failed in their respective attempts to establish that the care provided to the patient was legally met.

Last, this case re-emphasizes the basic principle that there may be many defendants in a lawsuit alleging professional negligence. Each named party—here the nurses and the physical therapist—must be accountable and responsible for the care they provide. Whether each met their standard of care will be carefully evaluated by the court.

## **FOOTNOTES**

1. 948 S.W. 2d 72 (Tex. App.-Houston)(14th District), (1997).

THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR ANY OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS ENCOURAGED TO SEEK SUCH ADVICE FROM A COMPETENT PROFESSIONAL.