

# Causation an Essential Element of Professional Negligence Suit

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You may recall from previous Bulletins that there are four essential elements of professional negligence that must be proven by the injured patient (plaintiff) in order to obtain a judgment against the person causing the injury (e.g., nurse). The elements are:

1. A duty exists between the patient and the nurse;
2. The duty is breached (not met);
3. The breach of duty is the proximate cause of injury to the patient; and
4. The patient suffers injury or other damages.

In the following case, the United States District Court for the Western District of Kentucky illustrates how these elements are applied to the specific facts of this case.<sup>1</sup>

Ms. Haugabook was admitted to a nursing home with several medical problems, including acute respiratory failure, diabetes mellitus, and breast cancer. Ms. Haugabook needed total assistance from the nurses at the facility due to being bed-ridden and unable to talk due to a tracheal tube.

The patient's daughter visited her mother regularly at the nursing home. She clearly believed that her mother was receiving "substandard care". Specifically, the tracheal tube was often dirty and clogged (causing it to overflow onto Ms. Haugabook's chest) and the odor of urine and feces was constantly present due to the nurses not changing her mother's diaper.<sup>1</sup>

The daughter notified the nurses each and every time she discovered the above situations. The nurses repeatedly responded that they were "short staffed" and would "get to it when [they] could."

After numerous months at the nursing home, Mrs. Haugabook died. Her death certificate listed metastatic breast cancer and chronic respiratory failure as the causes of death.

The daughter, as the Executrix of her mother's estate, filed a law suit against the nursing home. All of the allegations involved the nurses' care of her mother. Specifically, the daughter alleged the nurses:

1. Failed to perform specific care tasks, including adequate skin and "incontinent care";
2. Violated Kentucky law that protects elderly and incompetent people from abuse, resulting in dehydration, skin breakdown, and infections;
3. Were "mentally and physically" abusive to her mother; and,

4. Conduct was “Grossly negligent” which caused her mother’s death.<sup>1</sup>

Because the nurses were employees of the nursing home, the daughter alleged that the home was liable under the *respondeat theory* of liability. In addition, the daughter alleged that because the nurses’ conduct was committed with “oppression, fraud, [or] malice”, the estate was entitled to punitive damages.

The nursing home filed five motions, but the Court ruled only one of the five was dispositive of the daughter’s case, its Motion for Summary Judgment.

The daughter responded to all five motions, including the Motion for Summary Judgment, but did not attach or cite evidence in any of the responses supporting her allegation that her mother’s death was caused by the alleged misconduct of the nurses.

The Court reviewed the expert witness’ testimony of both the plaintiff and the defendant, applicable Kentucky laws, and other applicable evidence. It opined that when an alleged breach of a duty is raised, *causation* is a necessary element of proof when a supposed breach of a duty occurs.

Although the daughter declared in her case that her mother’s injuries were the result of the nurses’ misconduct, she did not present any evidence to support a finding that these injuries were caused by the nurses’ substandard care. “Absent such proof, the plaintiff’s [daughter’s] case fails as a matter of law”.

The Court also pointed out that the daughter’s expert witness, who was a nurse, testified that she was not qualified to provide an opinion regarding causation. In contrast, the nursing home’s expert testimony was that the nurses’ conduct did not cause the mother’s death.

The Court granted the nursing home’s Motion for Summary Judgment and denied the remaining motions as moot.

This case illustrates many points. First, the nurses’ care, as described in the opinion, was inferior.

Moreover, the excuse given for not providing care—being short staffed—apparently was never raised to their nursing or administrative superiors. And, the response that they would get to the care of Ms. Haugabook “when they could” creates genuine legal and ethical concerns.

Whether these factors caused the patient’s death remains unanswered. Had the daughter been able to utilize a nurse expert that was qualified to truthfully testify that the inferior care, and no care in many instances, caused the patient’s death, the case might have had a different verdict.

Second, this decision underscores the importance of meeting all of the essential elements of a cause of action alleging professional negligence. In my opinion, three of the elements of the cause of action were met.

A duty existed between the nurses and Ms. Haugabook. The nurses were obligated to provide nursing care consistent with standards of practice. Reviewing the description of the care and non-care included in the opinion, the nurses breached their obligations. Last, the patient suffered injuries, including death. Even so, without proof of causation, the case could not be won.

A third legal issue that is highlighted by this case is the critical importance of nurse expert witness testimony. Not only must an expert witness be qualified to testify concerning nursing care provided or not provided, he or she must also be able to testify to the factual matters that are essential to the allegations of the case.

Fourth, this decision underlines the reality of the law. Despite the poor care Ms. Haugabook received and the emotional difficulties the daughter experienced due to her mother's care and death, the justice she sought was not obtained. The "formula" required for a professional negligence case simply was not met.

Despite this verdict, it is necessary that the law be applied correctly and consistently so that all who seek its protections are treated equally. It would not be the right approach to advocate for a judgment that is not supported by evidence and that makes exceptions in any case on an ad hoc basis.

In short, the integrity of the judicial system is essential and must be preserved.

## **FOOTNOTES**

1. [Colston v. Regency Nursing, LLC](#), Civil Action No. 3:16-CV-0050-GNS, United States District Court, Western District of Kentucky, Louisville Division, February 6, 2018.

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