

Nursing Notes Not Enough Support to Prove Physician Negligence; Expert Witness Testimony Required

written by Nancy Brent | May 1, 2017

Avoiding Liability Bulletin - May 1, 2017

P.C. was admitted to the hospital to undergo bilateral knee replacement.¹ Prior to the surgery, he had blood drawn in the event that a blood transfusion was needed. After the surgery, a transfusion was needed but P.C. was given a unit of blood that was not his.

P.C. had symptoms of a reaction to the transfusion, including “feeling extremely cold, chills, severe subjective complaints of feeling unwell, anxiety, disorientation, wheezing, headache and shortness of breath”.² Allegedly, the hospital and the nurse who was later named in the suit failed to monitor or treat the reaction.

During the next eleven months, P.C. suffered from “severe, permanent and disabling injuries”, including insulin dependent diabetes mellitus, acute congestive heart failure, and left lower lobe pneumonia. His physician, a pulmonologist, treated P.C. during this time and had him admitted to the hospital with a diagnosis of acute community acquired pneumonia.

Two days later, P.C. died. Documentation indicated P.C. died principally from “severe pulmonary fibrosis with severe underlying lung function and the need for oxygen.”

P.C.’s widow filed a medical malpractice action against the hospital and the nurse who cared for P.C. during his initial hospitalization. P.C.’s widow died during the pendency of the case, so a substitute plaintiff was allowed by the court.

The allegations against the defendants were that the blood transfusion administered to P.C. resulted in a reaction to it and that the defendants failed to monitor or treat that reaction which resulted in injuries to P.C. that culminated in his death.

During discovery, the plaintiff initially named two nurse expert witnesses who were to testify to the nursing standard of care and the causal relationship to the blood transfusion and its effects that ultimately lead to the death of P.C.

The defendants’ counsel named the pulmonologist as an expert witness. Plaintiff also named the pulmonologist as an expert witness some time later. However, due to several legal procedures that were not followed by the plaintiff and her tardiness to name the physician as an expert witness, the

court, upon a motion by the defendants' to preclude the pulmonologist's testimony, granted the exclusion from him testifying.

In addition, the court excluded the two nurse experts from testifying after a request for a two-month continuance of the case for trial was requested by defendants' counsel to depose the pulmonologist.

The trial court then granted the defendants' Motion for Summary Judgment and the plaintiff appealed that decision.

The appellate court's opinion supports the trial court's decision to preclude the testimony of the pulmonologist due to a result of "both undue prejudice to the defendants and undue interference with the orderly progression of trial". The court then turned its attention to whether the nursing notes surrounding P.C.'s care could be introduced as evidence in lieu of expert testimony normally required in a claim for medical malpractice.

The court emphatically opined that the nursing notes in the second admission of P.C. did not contain anything that could prove the nurse who wrote them could be qualified as an expert. Part of the nursing note in question was full of abbreviations, rather ambiguous, and her opinion that the blood transfusion was the result of P.C.'s subsequent health problems, including those for which he was re-admitted to the hospital.

Because P.C.'s death was due to a complicated medical condition, the cause of his death could not be "obvious or common in everyday life" to allow non-expert testimony support the cause of P.C.'s death.

Nursing documentation is essential and very important in any case as it relates to supporting or not supporting the nursing standard of practice and the legal standard of care. However, it cannot support a claim for medical malpractice when the standard of practice and standard of care require an expert witness to establish those standards.

The necessity for a nurse expert witness is also required when a nurse is alleged to have been professionally negligent.

You can read the entire case, and the nursing notes the court relied on, at www.leagle.com/decision/20052136882A2d1254_12072/CAVALLARO%20%20HOSPITAL%20Of%20SAINT%20RAPHAEL

FOOTNOTES

1. CAVALLARO v. HOSPITAL OF SAINT RAPHAEL, 882 A2d 1254 (2005).
2. , at 1254.

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.