

# [This Expert Witness Was Not Qualified To Render An Expert Opinion About Pressure Wounds Development](#)

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## **Avoiding Liability Bulletin - December 2024**

[Expert witness opinions](#) in any case alleging professional negligence by a nurse or other health care provider is essential for the case to be adjudicated, as I described in an earlier post on this blog [site](#).

In a recent case (Polimeda v. M.R. of Teaneck, LLC, d/b/a Teaneck Nursing Center, Superior Court of New Jersey, A-0484-23, October 23, 2024), the plaintiff's nurse expert's testimony was questioned as to whether she could testify as to the causation of a decedent's pressure wounds.

### Facts Leading Up to Case Filing

The female patient, ninety years old, was a resident of a nursing home for a year. Upon her admission, she was diagnosed with several medical issues, including Alzheimer's disease, heart failure, peripheral vascular disease, and hypertension. The nursing staff also assessed her of being incontinent of bowel and bladder.

During her residency at the nursing home, she developed pressure wounds in the "lower back and buttocks area." The wounds did not heal but progressed to "unstageable wounds on her sacrum and coccyx, among other injuries."

The patient died at the nursing home.

Her husband, as executor of her estate, filed a professional negligence claim against the nursing home alleging negligence in her care and treatment, causing her pain and suffering, and that its negligence contributed to her death.

### Trial Court Proceedings

In support of the husband's allegations of professional negligence, he retained a nurse expert, an RN and a licensed nursing home administrator, to render an opinion in support of his allegations.

The nurse expert's report stated that:

- The nurses failed to follow "procedures for wound care identification, prevention, and

documentation [regarding] changes in [decedent's] skin integrity.”

- The nurses “failed to exercise adequate care in the supervision of [decedent] as mandated” by the state nurse practice act.
- The nurses “failed to apply evidence-based treatment modalities commensurate with wound assessment and classifications.”
- As a “direct and proximate cause of the negligence...the staff...caused [decedent] to sustain multiple pressure ulcers, which increased to the size of unstageable wounds, endure great physical pain and [were responsible] for further medical and hospital care and treatment as pressure ulcers are slow in healing.”

At her deposition, the RN was asked if she were rendering an opinion as to the medical causation of the pressure wounds. She testified that she was not because as a nurse in the State of New Jersey, she could only testify to what contributed to the cause of the pressure wounds and not to their medical causation.

The nursing home filed a Summary Judgment Motion to dismiss the husband's claims. The home argued that because there was no testimony offered by the plaintiff/husband from a physician concerning the medical causation of the pressure wounds the case should be dismissed.

In response to the Motion, the RN then filed an affidavit attesting to her misinterpretation of the question at her deposition. She maintained that she meant to state that “[she] was giving an opinion as to causation as a result of the negligence” of the staff which “contributed to and caused [decedent] to sustain multiple pressure ulcers.”

The trial court granted the nursing home's Motion for Summary Judgment, holding that the RN was not qualified to “offer medical opinion testimony.” The husband was required to retain a physician to provide the testimony.

The husband appealed that decision, asserting that there were material issues of fact which barred Summary Judgment, that the court erred in failing to determine that the husband's nursing expert was qualified to opine as to the causation of the decedent's pressure wounds, and that there was no need for expert testimony needed to establish the lack of care provided to the decedent.

### Appellate Court Decision

The Court noted that there could be other reasons why pressure wounds would occur in a patient other than the failure of nursing staff, citing the decedent's “significant comorbidities” that required a doctor to “diagnose” causation.

In addition, the Court continued, the state nurse practice act's definition of nursing practice allows for a “nursing diagnosis”, not a “medical diagnosis.” The Court, quoting a part of the nurse practice act itself,

noted:

“..Diagnosing in the context of nursing practice means the identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen with the scope of practice of the registered nurse. Such diagnostic privilege is distinct from a medical diagnosis.”

As a result, the Court opined, it was an error for the trial court to accept the RN’s testimony.

In regard to the plaintiff/husband’s argument that there was no need for expert testimony as to the causation of the pressure wounds because their development would be “common knowledge”, the Court also rejected this argument. It stated that the:

“identification, assessment, diagnosis, and treatment of pressure ulcers involve do not involve matters that are within the ordinary understanding and experience of a layperson.”

Thus, expert testimony is required.

The grant of the nursing home’s Summary Judgment Motion was affirmed.

#### Talking Points Of This Case

Although this case was an unpublished one (meaning it is not precedent or binding on any court, but only on the parties in the case), it addresses the importance of a state nurse practice act’s definition of nursing practice in any case alleging professional negligence by nursing staff.

In this state, and some others, the definition of RN nursing practice excludes the authority to make a medical diagnosis. In other states, the definition includes the authority of the RN to make a [nursing diagnosis](#).

In contrast, the definition of an advanced practice registered nurse’s (APRN’s) [scope of practice](#) provides for an expanded role, including the authority to diagnose.

Had an APRN with clinical practice experience and certification in wound care been utilized as the expert in the case, the Summary Judgment Motion may have been overturned by the Appellate Court.

Knowing the definition of nursing practice in the state in which you practice in any nursing role is essential, not only in order to conform with that definition when practicing nursing, but also if you undertake the role of any expert witness in a nursing professional negligence case.

Regardless of your role—plaintiff, defendant, or nurse expert witness- in a case alleging professional negligence, it is imperative that you not answer a question posed to you that you do not understand, needs more clarification, or if it is unclear.

Your attorney will emphasize this with you as he or she prepares you for your sworn testimony in a deposition or at trial. Once an answer is given, it is difficult to “take it back”, as occurred in this case.

You might wonder if a plaintiff can file a case again with the testimony of an expert witness who fit a state’s requirements for an expert witness, such as an APRN or a physician.

Keep in mind that when there has been a final judgment in favor of a defendant, such as with a Summary Judgment, the decision is indeed final. An appeal can be taken. But, in this case, the appellate court affirmed the granting of the Summary Judgment Motion.

So, when an appeal determines the validity of a Summary Judgement Motion, unless there is new evidence that can be raised by a new expert witness, a second filing would most likely not be possible.

As a result, if you undertake the role of an expert witness for a plaintiff, ensure that you are qualified and able to testify about the nursing care issue that is the focus of the case. Otherwise, you may be the reason why the case is summarily adjudicated in favor of the defendant prior to a trial.