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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**COURT OF APPEALS,  
DIVISION III  
OF THE STATE OF WASHINGTON**

NO. III-324869

LORI A. SWEENEY and JEROLD L. SWEENEY,  
*Appellants*

v.

ADAMS COUNTY PUBLIC HOSPITAL DISTRICT NO. 2, ET AL.  
*Respondents*

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**BRIEF OF RESPONDENTS EAST ADAMS COUNTY PUBLIC  
HOSPITAL DISTRICT NO. 2 AND ALLEN D. NOBLE, PA-C**

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## **I. COUNTER STATEMENT OF CASE**

### **A. General Nature Of Case And Identity Of Parties**

This is a medical malpractice case. The Appellants (plaintiffs below) are Lori A. Sweeney and her husband Jerold L. Sweeney (“Ms. Sweeney”). The Respondents (defendants below) are Allen D. Noble, PA-C, et ux., (“Mr. Noble”); Adams County Public Hospital District No. 2, d/b/a East Adams Rural Hospital “EARH”); James Dunlap, MD, et ux., (“Dr. Dunlap”); and Providence Health Services, d/b/a Providence Orthopedic Specialties (“Providence”). The case arises from treatment Respondents provided to Ms. Sweeney in April and May of 2010 for a shoulder fracture and dislocation suffered in a fall. Ms. Sweeney appeals from Summary Judgment in favor of all Defendants/Respondents.

### **B. Material Facts Of Treatment In Question**

EARH is a “Critical Access Hospital” (“CAH”) located in Ritzville, Washington. By definition, CAHs are located in rural areas, and have a maximum of 25 beds. While EARH is licensed for 20 beds, it staffs only for eight. CP 317, 318.

CAHs provide emergency and acute in-patient care and are required to have available within 30 minutes, 24-hours a day, a physician, an advanced registered nurse practitioner, a clinical nurse specialist, or a physician’s

assistant. CP 318. As of April 25, 2010, EARH did not have MRI technology available nor did it have access to an orthopedic surgeon or any other type of surgeon. *Id.* Indeed, there were no orthopedic surgeons practicing in Adams County at that time. *Id.*

On April 25, 2010, Ms. Sweeney fell at a gas station and injured her right shoulder. CP 62. She presented to the emergency room at EARH where she was seen by Mr. Noble, a Certified Physician's Assistant. CP 78,102.03.

Even though a right shoulder dislocation was evident, Mr. Noble took a history regarding the injured right arm and shoulder, performed a focused exam, and ordered plain film x-rays. *Id.*, CP 85-86. The x-rays were digitally uploaded to a computer system connected to the internet ("Stentor"), allowing them to be accessed by other healthcare providers in other locations. CP 89-90.

After taking a history, examining Ms. Sweeney, and ordering x-rays, Mr. Noble consulted with an orthopedic surgeon. He telephoned the on-call orthopedic service at Providence in Spokane and spoke with Dr. Dunlap. CP 83-84, 87-88. Mr. Noble communicated the mechanism of injury, the presenting facts, his examination findings, and the two providers discussed the x-rays, which Dr. Dunlap reviewed. CP 88-89, 99-100. At the close of the conversation, Dr. Dunlap, a board certified orthopedic surgeon,

recommended Mr. Noble perform a closed reduction of the shoulder dislocation. CP 89.

Following Dr. Dunlap's recommendation, Mr. Noble attempted a closed reduction of the dislocation. CP 91-92, 102. The first two attempts were unsuccessful. On the third attempt, Mr. Noble felt a "click" or "pop" suggesting the humerus head had moved into the shoulder socket. *Id.* A post reduction x-ray was taken, which showed the humerus had moved into better alignment with the shoulder. CP 91-92. The humerus head, however, was still dislocated and remained in roughly the same location as before the reduction attempts. CP 92-93, 102, 105-106.

Ms. Sweeney was then transported to Providence where Dr. Dunlap assumed the role of primary attending physician. CP 102, 108. He performed surgery on Ms. Sweeney's right shoulder three (3) days later on April 28, 2010. *Id.*

### **C. Summary Judgment Procedure**

In support of their Summary Judgment Motion, EARH and Mr. Noble submitted the Declaration of Dr. James Nania, a board certified emergency medicine physician with 30 years of experience, who has reduced approximately 200 dislocated shoulders. CP 130-135. Dr. Nania opined that Mr. Noble complied with the applicable standard of care under the

circumstances confronting him on April 25, 2010. CP 132. More specifically, Dr. Nania explained it was appropriate and in full compliance with the standard of care for Mr. Noble, a Certified Physician's Assistant in a rural hospital, to call and consult with an orthopedic surgeon on Ms. Sweeney's care and treatment. CP 132-133. It was, likewise, appropriate and in compliance with the standard of care for Mr. Noble to rely on the advice and recommendation of the orthopedic surgeon, Dr. Dunlap. *Id.* Dr. Nania further opined that the reduction maneuvers used by Mr. Noble were well recognized, appropriate, and complied with the standard of care. CP 132-134.

On the issue of causation, Dr. Nania specifically described the maneuvers used by Mr. Noble during the three attempts to reduce Ms. Sweeney's dislocation. CP 133. Dr. Nania then opined the maneuvers did not involve sufficient forces or torque to produce any new fracturing of Ms. Sweeney's shoulder. CP 132-134.

In response to EARH and Mr. Noble's Motion, Ms. Sweeney submitted a number of expert witness declarations, including one from Steven R. Graboff, MD, an orthopedic surgeon. CP 276-284. Therein, Dr. Graboff set forth his interpretation of the April 25, 2010, pre and post reduction x-rays and then stated, "The culmination of these three attempts [to reduce Ms. Sweeney's shoulder dislocation] caused a severely comminuted

fracture in at least 3 parts of the right shoulder. Thus, as a result of the 3 reduction maneuvers by Mr. Noble at the instruction of Dr. Dunlap, Ms. Sweeney's right shoulder glenohumeral joint and humeral head were completely fractured and destroyed with loss of the joint surfaces and articulation and persistent anterior-inferior dislocation of the large humeral head fragment." CP 280-281.

Ms. Sweeney also submitted the Declaration of Jeffrey Nicholson, PhD, PA-C, a Physician's Assistant. His sole opinion on causation was that "[a]s a proximate cause of the breach of the standard of care for emergency physician's assistants, Ms. Sweeney sustained what is likely a permanent injury to her right upper extremity." CP 354

The trial court found Ms. Sweeney had submitted sufficient expert testimony to raise a material issue of fact on whether Mr. Noble complied with the standard of care. However, the court found Ms. Sweeney had not raised a material issue of fact with respect to causation, that is, whether Mr. Noble's alleged violation of the standard of care worsened Ms. Sweeney's shoulder fracture or in any way effected Ms. Sweeney's outcome. Thus, the trial court granted summary judgment in favor of the hospital and Mr. Noble on proximate cause.<sup>1</sup>

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<sup>1</sup> The trial court also granted summary judgment in favor of EARH on Ms. Sweeney's corporate negligence claim. That ruling is not challenged on appeal.

## II. ARGUMENT AND AUTHORITIES

### A. Standard Of Review And Summary Judgment Burden In Medical Negligence Case

Summary judgment rulings are reviewed *de novo*. *Seybold v. Neu*, 105 Wn. App. 666, 675, 19 P.3d 1068 (2001). An appellate court engages in the same inquiry as the trial court, considering all facts and reasonable inferences in the light most favorable to the non-moving party. *Kahn v. Salerno*, 90 Wn. App. 110, 117, 951 P.2d 321 (1998). Summary judgment is appropriate if the record before the court shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c); *Ruff v. County of King*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). An appellate court may affirm a trial court's disposition of a summary judgment motion on any basis supported by the record. *Redding v. Virginia Mason Med. Ctr.*, 75 Wn. App. 424, 426, 878 P.2d 483 (1994).

### B. Required Expert Testimony On Causation

Expert testimony is generally required to prove causation in a medical negligence action. *Guile* at 25. Specifically, a plaintiff must show through competent expert testimony, the defendant's breach of the standard of care caused the injury. *Davies v. Holy Family Hospital*, 114 Wn. App. 483, 492, 183 P.3d 283 (2008).

In a medical negligence case, when a defendant moves for summary judgment, the burden shifts and, where the plaintiff files medical experts affidavits opposing summary judgment, those affidavits must set forth specific facts supporting the experts' opinions, not conclusory statements without adequate factual support. *Keck v. Collins*, 181 Wn. App. 67, 91, 325 P.3d 306 (2014); *Guile v. Ballard Community Hospital*, 70 Wn.App. 18, 25, 851 P.2d 689 (1993).

“Broad generalizations and vague conclusions are insufficient to resist a motion for summary judgment . . . [A]fter the moving party submits adequate affidavits, the non-moving party must set forth specific facts that sufficiently rebut the moving party’s contentions and disclose that a genuine issue as to a material fact exists.”

*Thompson v. Everett Clinic*, 71 Wash. App. 548, 555-56, 860 P.2d 1054 (1993). *See also, Seven Gables Corporation v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

On summary judgment, expert opinion on the cause of a fracture cannot be conclusory. Rather, the affidavit must explain how, mechanically, the fracture occurred. *See, e.g., Hash v. Children’s Orthopedic Hospital*, 49 Wn. App. 130, 133-34, 741 P.2d 584 (1987).

**C. Ms. Sweeney Failed To Respond To Mr. Noble And EARH's Summary Judgment Motion With Sufficient Testimony On Causation.**

In his Declaration, Dr. Graboff stated Mr. Noble's reduction attempts caused additional fracturing of Ms. Sweeney's shoulder. However, he provided absolutely no explanation of how the maneuvers employed by Mr. Noble caused that alleged additional fracturing. And he made no effort to address Dr. Nania's testimony that the standard maneuvers employed by Mr. Noble simply do not produce enough torque or force to fracture bone. Mr. Nicholson, for his part, simply made the conclusory statement Mr. Noble's failure to comply with the standard of care proximately caused an injury to Ms. Sweeney's shoulder. Because these opinions on causation were conclusory, unsupported by sufficient facts and did not address how the alleged increased fracturing occurred, the trial court properly found that it was insufficient to defeat summary judgment.

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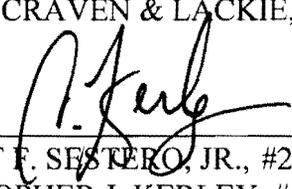
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### III. CONCLUSION

Based on the foregoing argument and authorities, Mr. Noble and EARH respectfully request that summary judgment in their favor be affirmed.

DATED this 10th day of December, 2014.

EVANS, CRAVEN & LACKIE, P.S.

By 

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**CERTIFICATE OF SERVICE**

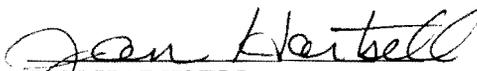
Pursuant to RCW 9A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the below date, I caused to be hand-delivered locally and mailed via U.S.P.O. to out of town recipients to the address(es) below a true and correct copy of **Brief of Respondents Adams County Public Hospital District No. 2 and Allen D. Noble, PA-C:**

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