

Feb 08, 2017, 3:59 pm

No. 93312-0

RECEIVED ELECTRONICALLY

SUPREME COURT
OF THE STATE OF WASHINGTON

Rudy Frausto,

Appellant/Plaintiff,

vs.

Yakima HMA, LLC, et al.,

Respondents/Defendants.

APPELLANTS' ANSWER TO AMICI CURIAE

Favian Valencia, WSBA# 43802
Counsel for Appellant
Sunlight Law, PLLC
402 E. Yakima Ave, Ste 730
Yakima, Wa 98902
(509)388-0231

TABLE OF CONTENTS

Table of Authorities 2

I. REPLY TO AMICI CURAE'S ARGUMENTS **ERROR! BOOKMARK NOT DEFINED**

a. Appellant's Expert Has Already Been Found Competent To Testify As To The Breach of The Standard of Care Of Repondents..... 3

b. Registered Nurses (RN) Have Legal Authority To Independently Diagnose And Should Also Have Legal Authority To Testify As To Causation3

c. Pediatric ARNPs Are Legally Authorized To Diagnose And Prescribe Bedsores.....6

II. CONCLUSION **ERROR! BOOKMARK NOT DEFINED.**

TABLE OF AUTHORITIES

Cases

Harris v. Groth, 99 Wn.2d 438, 439, 663 P.2d 113 (1983) 6
Richberger v. West Clinic, P.C., 152 S.W.3d 505 (Tenn. Ct. App. 2004)3
Vaughn v. Mississippi, 20 So.3d 645, 652 n.2 (Miss. 2009)..... 3

Statutes

RCW 18.71.011 5, 6
RCW 18.71.910 6
RCW 18.79.0205
RCW 18.79.050 4, 5
RCW 18.79.0604
RCW 18.79.2564, 5
WAC 246-840-300..... 4, 5
WAC 246-840-340..... 5
WAC 246-840-700..... 4
WAC 246-840-705.....4, 5
WAC 246-919-010..... 5

Statutes

Wash. R. Evid. 702 6

II. REPLY TO AMICI CURIAE'S ARGUMENTS

Appellant hereby adopts amicus curiae Washington State Association For Justice Foundation's brief and argument.

a. **Appellant's Expert Has Already Been Found Competent To Testify As To The Breach of The Standard of Care Of Repondents**

The trial court ruled that Appellant's expert was qualified to establish that Respondents' staff violated the standard of care and this is undisputed by Respondent. *See* Yakima HMA, Llc (HMA) Br. At 2. The only issue before this Court is whether Plaintiff's expert ARNP is allowed to testify as to medical causation on the breach of the standard of care Respondents' staff. Amici Curae Washington State Medical Association, et al, (WSMA) argue that Appellant's expert ARNP, Karen Wilkinson, is not qualified to testify as to the standard of care, which is irrelevant because this issue is not before this court. WSMA Br. at 9.

b. **Registered Nurses (RN) Have Legal Authority To Independently Diagnose And Should Also Have Legal Authority To Testify As To Causation**

Washington Defense Trial Lawyers (WDTL) and WSMA argue that RNs are not qualified to independently diagnose. Instead of supporting their argument with our State's rules, WSMA cite to an obscure article by the American Academy of Family Physicians that advertises to hospitals why more physicians and less nurses should be hired. WSMA also cites to an article by the Mayo Clinic that states that physicians are better at diagnosing complex problem. These are not reliable sources because these are general articles about physicians and nurses across the country, which are not representative of the standards in Washington State. In Mississippi and Tennessee, for example, nurses are legally prohibited from diagnosing patients. *Vaughn v. Mississippi*, 20 So.3d 645, 652 n.2 (Miss. 2009), *Richberger v. West Clinic, P.C.*, 152 S.W.3d 505, 511 (Tenn. Ct. App.

2004).

The applicable rules on this issue are spelled out in our State's code. RNs are, in fact, legally authorized to independently diagnose and treat patients. WAC 246-840-705(3). WAC 246-840-700 outlines the standards for RNs and for Licensed Practical Nurses (LPN). Whereas a RN is legally authorized to independently analyze, diagnose, care and evaluate patients, LPNs are dependent on the guidance and supervision of RNs, ARNPs and/or physicians and only play an assistant role. WAC 246-840-705(3), RCW 18.79.060.

An ARNP has the same legal authority as an RN except that she has additional superpowers vested on her by our Legislature and the Washington State Nursing Care Quality Assurance Commission (WSNCQA). Namely, an ARNP may perform an "expanded role in providing health care services as recognized by the *medical* and nursing professions." RCW 18.79.050 (italics added). An ARNP also has the legal authority to independently "prescribe legend drugs and controlled substances." *Id.* Additionally, an ARNP has the legal authority to "assume primary responsibility and accountability for the care of patients." WAC 246-840-300. What is more on point in this case is that an ARNP "may sign and attest to any certificates, cards, forms, or other required documentation that a *physician* may sign, so long as it is within the [ARNP's] scope of practice." RCW 18.79.256 (italics added). These superpowers are only granted within the ARNP's certification and scope of practice. WAC 246-0840-300. These regulations are the reason why an ARNP can open her own independent practice within her certification and take in, diagnose and care for her own patients, without supervision of physicians. The reason for this is because an ARNPs has to successfully undergo rigorous additional education, training, experience, evaluation

and testing in their particular certification. WAC 246-840-340.

WDTL and WSMA also argue that a physician's diagnosis is different than a RN's or ARNP's diagnosis. To support this argument WSMA, again, cites the article by the American Academy of Family Physicians, which is merely a promotional article to hospitals as to why it is better to hire more physicians instead of nurses. Again, this is not appropriate because it does not address Washington State standards. WDTL cites to a definition nursing diagnosis of NANDA, which is an international nurses organization—not in line with Washington State standards.

WDTL properly cites to chapters 18.71 RCW and 18.79 RCW as authorities of what a diagnosis means. Chapter 18.71 RCW does not define diagnosis and does not differentiate between a nursing diagnosis and a physician diagnosis. RCW 18.71.011, WAC 246-919-010. RCW 18.79.020(4) defines diagnosis as the “identification of, an discrimination between, the person's physical and psychosocial signs and symptoms that are essential to effective *execution and management of the nursing regimen.*” (italics added). The nursing regimen includes RNs diagnosing for the purposes of treating patients. WAC 246-840-705(3). The nursing regimen also includes ARNPs being primary care providers, diagnosing, prescribing and attesting as a physician. RCW 18.79.256, 18.79.050, WAC 246-840-300. Legally there is no difference between a RN's and/or an ARNP's and a physician's diagnosis.

Our Legislature, WSNCQA and the Washington State Medical Quality Assurance Commission (WSMQAC) expressly allow RNs and ARNPs the authority to independently diagnose and treat patients similar to the authority of a physician. RNs and ARNPs are held to high standard by the required training, education, experience and continuing education

and oversight. These regulations have been in effect since, as early as, 1909. RCW 18.71.910. If our Legislature, WSNCQA or WSMQAC did not intend to give RNs and ARNPs the authority that they have, they would have amended our laws by now.

This Court has also established that “nonphysicians, if otherwise qualified, may give expert testimony in a medical malpractice case.” *Harris v. Groth*, 99 Wn.2d 438, 439, 663 P.2d 113 (1983). Wash. R. Evid. 702 only requires that an expert witness be qualified by “knowledge, skill, experience, training, or education.” Appellant does not deny the fact that physicians are required to undergo more education and training than RNs and ARNPs. It is appropriate to require testimony from a physician on cases that involve medical procedures that only a physician is authorized to perform. A case involving negligence in a brain surgery procedure, for example, only a physician would be able to testify because this process involves severing a human tissue, which only a licensed physician is legally authorized to perform. RCW 18.71.011. The case at bar involves a bedsore which is within the legal authority and the scope of practice of a physician, RN or ARNP. Therefore it is appropriate to allow Ms. Wilkinson to testify as to medical causation, because she has already testified that she has education, training and experience to diagnose and treat bedsores. CP 126-127.

c. Pediatric ARNPs Are Legally Authorized To Diagnose And Prescribe Bedsores

WDTL and WSMA argue that Ms. Wilkinson should not be allowed to testify as to causation in regards to an adult’s bedsores because she is certified as a pediatric ARNP. WDTL and WSMA do not provide any authority to argue that an adult’s bedsore is any different than a child’s bedsore. The reason they did not provide any authority on this issue is

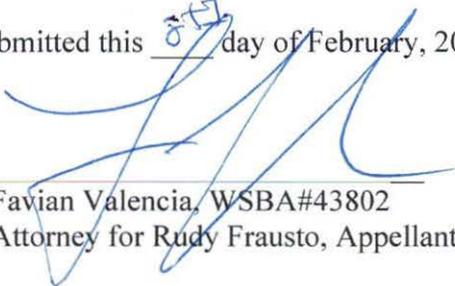
because preventing and treating a bedsore has to do with a person's skin and the skin is the same for a child as it is for an adult. Ms. Wilkinson testified that she had training and experience as an ARNP treating bedsores on adults. *Id.* This is sufficient to allow her to testify as to the cause of Appellant's bedsore.

Alternatively, even if this Court concludes that children bedsore and adult bedsores are different in terms of prevention, causation and treatment, Ms. Wilkinson has testified that she has the requisite training, knowledge and experience in treating bedsores on adult quadriplegic patients as an RN. As explained above, an RN does have the legal authority to independently diagnose and treat patients. WSMA agrees that a practitioner that is "licensed to make an independent diagnoses of the specified medical condition at issue, and can likewise show 'sufficient expertise' as to the medical problem, that practitioner would be presumptively qualified to testify as to the medical causation of an injury." WSMA Br. at 14. Ms. Wilkinson is legally authorized to independently diagnose and treat bedsores as an ARNP, and should therefore be allowed to testify as to the medical causation of Appellant's bedsore.

III. CONCLUSION

For the foregoing reasons, Appellant respectfully asks this Court to reverse and remand the trial courts grant of summary judgment.

Respectfully submitted this 8th day of February, 2017.



Favian Valencia, WSBA#43802
Attorney for Rudy Frausto, Appellant

CERTIFICATE OF SERVICE

The undersigned makes the following declaration certified to be true under penalty of perjury pursuant to RCW 9A.72.085:

On the date given below, I hereby certify that the Appellant's Answer to Amici Curiae was served on the following in the manner indicated:

Jerome Aiken Meyer, Fluegge & Tenney 230 S. 2nd Street, #101 Yakima, WA 98901 aiken@mftlaw.com	<input checked="" type="checkbox"/> Electronic mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Legal Messenger <input type="checkbox"/> U.S. mail <input type="checkbox"/> Other: hand delivered
Supreme Court of Washington <i>supreme@courts.wa.gov</i> P.O. Box 40929 Olympia, WA 98504	<input checked="" type="checkbox"/> Electronic mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. first class mail <input type="checkbox"/> Other: hand delivered
Rhianna M. Fronapfel 601 Union St, Suite 1500 Seattle WA 98101 rfronapfel@bblaw.com	<input checked="" type="checkbox"/> Electronic mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. first class mail <input type="checkbox"/> Other: hand delivered
Valerie D. McOmie Daniel E. Huntington 422 W. Riverside, Suite 1300 Spokane, WA 99201 <i>danhuntington@richter-</i> <i>wimberley.com</i> <i>valeriemcomie@gmail.com</i>	<input checked="" type="checkbox"/> Electronic mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. mail <input type="checkbox"/> Other: hand delivered

Gregory M. Miller 701 Fifth Avenue, Suite 3600 Seattle, Washington 98104-7010 miller@carneylaw.com	<input checked="" type="checkbox"/> Electronic mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. mail <input type="checkbox"/> Other: hand delivered
--	--

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct

Executed this 8 day of February, 2017, at Yakima, Washington.


Vita Ramirez
Paralegal