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No. 93312-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

RUDY FRAUSTO,

Plaintiff/Appellant,

vs.

YAKIMA HMA, LLC,

Defendant/Respondent.

# BRIEF OF AMICUS CURIAE
# WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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## I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation under Washington law, and a supporting organization to Washington State Association for Justice (WSAJ). WSAJ Foundation has an interest in the proof requirements in medical negligence actions, including whether a nurse who is otherwise qualified to offer expert medical testimony within the scope of the nurse's practice may be disqualified from testifying to proximate cause solely because she is not a licensed physician.

## II. INTRODUCTION AND STATEMENT OF THE CASE

This case presents the Court with the opportunity to reaffirm that a health care professional who is otherwise qualified may offer expert medical testimony within the scope of his or her practice, and may not be disqualified solely because he or she is not a licensed physician. This action was brought by Appellant Rudy Frausto (Frausto) for injuries he sustained as a patient while in the care of Respondent Yakima HMA, LLC (HMA). The underlying facts are drawn from the briefing of the parties. See Frausto Br. at 5-6; HMA Br. at 2-3; Frausto Reply at 4.

For purposes of this brief, the following facts are relevant. On January 5, 2014, Rudy Frausto, a 70-year old quadriplegic, was admitted to

HMA for treatment for pneumonia and flu. During his ten-day period of hospitalization, Frausto developed severe bedsores allegedly caused by the failure of HMA's staff to provide reasonable care in bedding, skin assessment and general treatment.

Frausto brought suit against HMA. In support of his claims, Frausto submitted the opinion of an advanced registered nurse practitioner (ARNP), Karen Wilkinson (Wilkinson), who has 26 years experience practicing and teaching nursing. Wilkinson opined 1) that HMA's care fell below the standard of care in the industry, and 2) that HMA's breach caused Frausto's bedsores. HMA moved for summary judgment, asserting that Frausto had failed to produce competent expert testimony in support of proximate cause. Despite the court's recognition that Wilkinson "is extremely well qualified," see Frausto Br. at 16, the court held that because she is a nurse, she is not competent to offer expert medical testimony regarding proximate cause. On this basis, the court granted HMA's motion for summary judgment.

Frausto filed his brief with the Court of Appeals, Division III, on March 28, 2016. Thereafter, Frausto moved to transfer to this Court, and Frausto's Motion to Transfer was granted on September 26, 2016.

## III. ISSUE PRESENTED

Whether, in a medical negligence action, an otherwise qualified nurse who offers expert testimony regarding proximate cause within the scope of the nurse's practice may be disqualified solely because the nurse is not a licensed physician?

## IV. SUMMARY OF ARGUMENT

ER 702 governs the admissibility of expert testimony, and looks to whether expert testimony will be helpful to the trier of fact and whether the proffered witness is competent to offer expert opinions regarding the matter at issue. While a trial court's determination regarding the competency of an expert is generally reviewed for abuse of discretion, where such determinations are made in the context of summary judgment, they are reviewed de novo.

Due to the complexity of medical facts related to the standard of care and proximate cause, a plaintiff must generally prove these facts by submitting medical expert testimony. In evaluating the competency of an expert witness in a medical malpractice action, this Court has rejected a "per se" disqualification rule, holding that an otherwise qualified witness offering expert medical testimony within the scope of his or her practice, including testimony regarding medical causation, may not be disqualified solely because the expert is not a licensed physician. Instead, courts look

broadly to the factors enumerated in ER 702 to determine whether the expert has specialized knowledge that will assist the trier of fact.

In this case, Wilkinson offered expert testimony as to the proximate cause of Frausto's bedsores, a matter within a nurse's scope of practice. As an ARNP, Wilkinson is authorized to exercise independent medical judgment, including diagnosis and treatment. She has 26 years of teaching and nursing experience, and the trial court found she was "extremely well qualified." Because the trial court excluded Wilkinson's testimony solely because she is not a licensed physician, instead of inquiring whether she was otherwise qualified, the court erred.

## V. ARGUMENT

### A. Overview Of The Admissibility of Expert Testimony Under Wash. R. Evid. 702.

In Washington, the admissibility of expert testimony is governed by Wash. R. Evid. 702. ER 702 provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

ER 702 has been construed to require that the testimony will assist the trier of fact and that the witness qualifies as an expert. Lakey v. Puget Sound

Energy, 176 Wn.2d 909, 918, 296 P.3d 860 (2013). "Under Rule 702, the emphasis is on whether the witness could be helpful to the trier of fact rather than on the specific nature of the witness's credentials." 5B K. Tegland, Wash.Prac., *Evidence Law and Practice*, §702.5 at 47 (2016). The issue the trial court must determine is "whether the witness's knowledge of the subject matter is such that his opinion will most likely assist the trier of fact in arriving at the truth." Id. Whether an expert's testimony is admissible depends upon whether the subject matter is within his or her area of expertise. See In re Marriage of Katare, 175 Wn.2d 23, 38, 283 P. 3d 546 (2012).

Ordinarily, "[t]he qualifications of an expert are to be judged by the trial court, and its determination will not be set aside in the absence of a showing of abuse of discretion." McKee v. Am. Home Prods. Corp., 113 Wn.2d 701, 706, 782 P.2d 1045 (1989) (internal quotations and citations omitted). However, an appellate court uses the de novo standard of review when considering all trial court rulings concerning a summary judgment, including a trial court's ruling regarding the admissibility of an expert's affidavit. Folsom v. Burger King, 135 Wn.2d 658, 663-64, 958 P.2d 301 (1998). In Taylor v. Bell, 185 Wn. App. 270, 285, 340 P.3d 951 (2014), *review denied,* 183 Wn.2d 1012 (2015), the court stated:

> While ordinarily our review of evidentiary rulings made by the trial court is for abuse of discretion, we review de novo such rulings when they are made in conjunction with the summary judgment motion.... Hence we do not defer to a trial court's determination regarding the qualifications of an expert witness when made for purposes of summary judgment.

See also Davies v. Holy Family Hosp., 144 Wn. App. 483, 494, 183 P.3d 283 (2008) (reviewing de novo the trial court's ruling regarding the qualifications of an expert in the context of an expert witness affidavit submitted in conjunction with a summary judgment motion in a medical malpractice case); Seybold v. Neu, 105 Wn. App. 666, 678, 19 P.3d 1068 (2001) (similar).

**B. In A Medical Malpractice Action, An Otherwise Qualified Expert Witness Offering Expert Testimony Regarding Proximate Cause Within The Scope of The Witness's Practice Should Not Be Disqualified Solely Because The Witness Is Not A Licensed Physician.**

In a medical malpractice claim, a plaintiff must prove that the health care provider's treatment fell below the applicable standard of care and proximately caused the plaintiff's injuries. See RCW 7.70.040; Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015).[1] Generally, a plaintiff must establish the applicable standard of care and proximate causation through medical expert testimony. See Keck, 184 Wn.2d at 370; see also

[1] The current version of the full text of RCW 7.70.040 is reproduced in the Appendix.

Grove v. PeaceHealth St. Joseph Hospital, 182 Wn.2d 136, 144, 341 P.3d 261 (2014); Berger v. Sonneland, 144 Wn.2d 91, 111, 26 P.3d 257 (2001).

While this Court has consistently required plaintiffs to establish the applicable standard of care and proximate causation through medical expert testimony, it has not required specific qualifications to be present to qualify the witness as a competent expert. Instead, all of the factors enumerated in ER 702 are used to determine whether witnesses' "knowledge, skill, experience, training, or education" provides them with "specialized knowledge" that will assist the trier of fact.

In Harris v. Groth, 99 Wn.2d 438, 663 P.2d 113 (1983), this Court explicitly rejected the argument that a medical expert may be disqualified solely because the expert is not a licensed physician. See Harris, 99 Wn. 2d at 449-51. There, the plaintiff brought suit against her physician for alleged negligence in the treatment she received for chronic iritis. She alleged that her physician failed to conduct tests and provide appropriate treatment, and that this negligence caused a severe deterioration in her vision.

At trial, the plaintiff offered the testimony of multiple medical experts regarding the standard of care and proximate cause, including physicians and a professor of physiology. The trial court permitted the testimo-

ny of the plaintiff's physicians, but excluded significant portions of the physiology professor's testimony, concluding that he was not qualified to give expert testimony regarding the standard of care and medical causation because he was a nonphysician. The jury returned a verdict against the plaintiff. The court of appeals affirmed.

On review, this Court addressed whether the physiology professor's testimony was improperly limited on the basis of his status as a "nonphysician." The Court acknowledged that other courts have recognized "per se limitations on the testimony of otherwise qualified nonphysicians." Harris, 99 Wn.2d at 449 (citing Rodriquez v. Jackson, 574 P. 2d 481 (Ariz. Ct. App. 1977)). It rejected this categorical view, however, observing that "such limitations are not in accord with the modern trend in the law of evidence generally," and quoted favorably from Tegland:

> The witness need not possess the academic credentials of an expert; practical experience may suffice. Training in a related field or academic background alone may also be sufficient. [ER] 702 states very broadly that the witness may qualify as an expert by virtue of knowledge, skill, experience, training, or education.

99 Wn.2d at 449 (quoting 5A K. Tegland, Wash.Prac., *Evidence* § 290 (1982)).

On this basis, the Court held: "An expert witness is not per se disqualified from testifying in a medical malpractice action as to causation, reasonable prudence, or underlying facts tending to prove those ultimate facts. . . ." Id., 99 Wn.2d at 450. Rejecting this "per se" rule, the Court stated "nonphysicians, if otherwise qualified, may give expert testimony in a medical malpractice case." Id. at 439. Thus, while an expert's status as a licensed physician may be "an important factor" in evaluating the competency of an expert, "it may not be considered dispositive." Id. at 450-51.

Following Harris, several decisions have permitted expert testimony from nonphysicians on issues related to medical diagnoses and proximate cause. In In re Detention of A.S., 138 Wn.2d 898, 92 P.2d 1156 (1999), the petitioners argued that a social worker was not qualified to offer an opinion that they suffered from a mental disorder, asserting that only physicians and psychiatrists are qualified to diagnose medical disorders. Id. at 915. Applying the principles of ER 702 and 703, the Court held that in the absence of evidence that identification of a mental disorder is beyond the scope of a social worker's practice, or a declaration in the statute governing civil commitments requiring physician testimony regarding the existence of a mental disorder, "we decline to make a categorical

rule that a social worker, no matter how qualified by training and experience, may never opine about a person's mental disorder." Id. at 923.

Similarly, in Saldivar v. Momah, 145 Wn. App. 365, 186 P.3d 1117 (2008), *review denied*, 165 Wn.2d 1049 (2009), the court of appeals reviewed a trial court's exclusion of the testimony of a social worker at trial. It noted that "the trial court categorically excluded [the social worker's] testimony," on the basis that the social worker "was not qualified to opine on psychiatric conditions...and that with a master of social work...was in no way qualified to make any kind of diagnosis of [PTSD]." Id. at 398 (brackets added; internal quotations omitted). The court of appeals held:

> Because under ER 702, [the social worker] is a qualified expert through her education and experience, the trial court abused its discretion when it ignored [the social worker's] experience and held categorically that her masters in social work degree disqualified [the social worker] as an expert and refused to allow her to testify that [plaintiff] suffered from PTSD and discuss its effects.

Id. at 398-99 (brackets added).

In Goodman v. Boeing Co., 75 Wn. App. 60, 877 P.2d 703 (1994), *aff'd*, 127 Wn.2d 401 (1995), Boeing appealed a trial court verdict for the plaintiff, arguing, *inter alia*, there was no competent testimony to support the jury's award for expenses related to the plaintiff's need for a personal companion. Goodman had presented expert testimony at trial from a nurse

who testified that Goodman's medical condition would deteriorate in 12 years to the point where she would require the services of a personal companion. The court relied upon Harris, observing that "[p]er se limitations on the testimony of otherwise qualified nonphysicians are not in accord with the general trend in the law of evidence, which is away from reliance on formal titles or degrees." Goodman, 75 Wn. App. at 81 (brackets added). The court concluded:

> [The nurse's] training and experience qualify her as an expert on care needs, present and future. She is a registered nurse with 35 years experience, a master's degree in nursing, and specializes in rehabilitation, hospice and home care nursing. She makes care referrals without a physician's supervision and creates long-term nursing plans. Thus, [the nurse] was a competent witness.

Id. (brackets added).

Finally, in Breit v. Saint Luke's Hospital, 49 Wn. App. 461, 743 P. 2d 1254 (1987), the court noted that the modern trend in the law is not to impose per se limitations on the testimony of otherwise qualified nonphysicians, and held the testimony of a pharmacologist was admissible to show that paralysis was a possible adverse reaction to a morphine injection. 49 Wn. App. at 463-65.

Of the court of appeals opinions on which the parties predominantly rely, Colwell v. Holy Family Hosp., 104 Wn. App. 606, 15 P.3d 210,

*review denied,* 144 Wn.2d 1016 (2001), Hill v. Sacred Heart Medical Center, 143 Wn. App. 438, 177 P.3d 1152 (2008) and Davies v. Holy Family Hosp., 144 Wn. App. 483, 183 P.3d 283 (2008), it appears only the Hill opinion captures the import of this Court's holding in Harris. In Hill, relatives of the deceased brought suit against the deceased's physicians and the hospital, alleging, in part, that negligent nursing care during hospitalization caused the patient's death. The defendants moved for summary judgment, and the plaintiffs submitted multiple affidavits regarding the standard of care and proximate cause, including an affidavit from Candice Mohar, R.N., Ph.D. The court granted defendants' motion for summary judgment, based, in part, on its conclusion that the nurse was not qualified to offer an expert opinion regarding medical causation.

The court of appeals reversed. While the court ultimately relied on the affidavit of a doctor regarding proximate cause to find summary judgment improper, it discussed the admissibility of qualified nurse testimony regarding proximate cause, and agreed that a categorical rule excluding such testimony would be improper:

> We have previously made the categorical statement that nurses are not competent to testify to causation in a medical malpractice action. *Colwell*, 104 Wn. App. at 612. But we now question that holding. There is nothing in the statutory scheme that suggests that a nurse should be categorically denied the right to express opinions

> on the proximal relationship between a breach of a duty of care and an injury. *See* ch. 7.70 RCW. Certainly, if the failure to meet the standard of care is the physician's, then a physician will most likely be required to pass on whether the breach of the standard of care caused a particular injury. RCW 7.70.040(1). But if the breach of the standard of care is the standard of a reasonable nurse, we fail to see why a nurse could not offer opinions that the nursing failures resulted in a given injury.

Hill, 143 Wn. App. at 446.[2]

Notwithstanding the authority in Washington to the contrary, HMA urges the Court to adopt a per se disqualification rule, asserting that "the majority rule in the United States [is] that in general a nurse is not competent to express medical causation opinions." HMA Br. at 6-7. In fact, courts around the country appear to be split. Compare Vaughn v. Mississippi Baptist Medical Center, 20 So.3d 645, 652 (Miss. 2009) (holding that "nurses cannot testify as to medical causation") and Richberger v. West

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[2] It is unclear to what degree Colwell and Davies are inconsistent with the argument presented here, because neither case explicitly holds that a nurse is incompetent to testify regarding proximate cause in all cases. In both Colwell and Davies, it was alleged that negligent nursing care in monitoring the decedents was at least a partial cause of death. The courts of appeals held that the nurses were not competent to testify regarding cause of death. See Colwell, 104 Wn. App. at 613 (while a nurse "possesses the education and skill to testify to the standard of care of the decedent's treating nurses, a medical doctor must still generally connect [the patient's] death to the alleged nursing deficiencies"); Davies, 144 Wn. App. at 500-01 (concluding that "[w]hile a registered nurse may possess the education and skill necessary to testify as to the standard of care of a patient's treating nurse, a nurse is not competent to testify as to the patient's cause of death"). To the extent Colwell and/or Davies can be read for the proposition that a nurse, as a nonphysician, can never qualify as a competent medical expert who may opine as to proximate cause, this categorical rule would appear inconsistent with the holding in Harris.

Clinic, P.C., 152 S.W.3d 505, 511 (Tenn. Ct. App. 2004) (finding that "the trial court did not err in concluding that [the nurse] was prohibited from testifying as an expert witness with regard to the issue of causation"), with Freed v. Geisinger Med. Ctr., 971 A.2d 1202, 1212 (Pa. 2009) (holding that "an otherwise competent and properly qualified nurse [may not be prohibited] from giving expert opinion testimony regarding medical causation") and State v. Tyler, 485 S.E.2d 599, 608 (N.C. 1997) (upholding trial court's admission of nurse's testimony regarding cause of death).

Moreover, to the extent the law in outside jurisdictions regarding nurses' qualifications to diagnose and treat is substantively different from the law in Washington, these authorities would have limited value here. For instance, in Vaughn, on which HMA relies, see HMA Br. at 7, the Mississippi Supreme Court excluded the expert testimony of a nurse, but explicitly noted that under the Mississippi Nursing Practice Law, the practice of nursing does not include medical diagnosis. See Vaughn, 20 So.3d at 652 (concluding that because "medical diagnosis is outside a nurse's scope of practice, logically it would follow that a nurse should not be permitted to testify as to his/her diagnostic impressions or as to the cause of a particular infectious disease or illness"). In contrast, Washington statutory and regulatory law specifically authorizes nurses to exercise independent

medical judgment and to diagnose and treat. See RCW 18.79.040(1) (defining "[r]egistered nursing practice" to include (a) "observation, assessment, *diagnosis*, care or counsel . . . of individuals with illnesses, injuries, or disabilities"; italics added); WAC 246-840-300(5)(a) (defining an ARNP's scope of practice to include authority to "[e]xamine patients and *establish diagnoses* by patient history, physical examination, and other methods of assessment"; brackets and italics added).[3] The more expansive scope of nursing practice in Washington as compared to Mississippi arguably renders the Vaughn opinion inapposite. See also Richberger, 152 S.W.3d at 509 (approving the trial court ruling that "[a]ccording to [Tennessee law defining the practice of nursing], a registered nurse is prohibited from making a medical diagnosis and is therefore not competent to offer opinions on medical causation in a medical malpractice action"; bracket added).

In sum, this Court has rejected a categorical rule that would permit disqualification of an otherwise qualified witness to offer expert testimony within the witness's scope of practice based solely on the fact that the witness is not a licensed physician. Instead, courts should look "very broadly"

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[3] The current versions of RCW 18.79.040 and WAC 246-840-300 are reproduced in the Appendix.

at whether "the witness may qualify as an expert by virtue of knowledge, skill, experience, training, or education." Harris, 99 Wn.2d at 449.

### C. The Trial Court Erred By Disqualifying Wilkinson As An Expert Witness Solely Because She Is Not A Licensed Physician, Instead Of Inquiring Whether Wilkinson Was Otherwise Qualified To Offer Expert Testimony Regarding The Proximate Cause of Frausto's Bedsores.

In this case, the parties agree that the trial court concluded that because Wilkinson is a nurse, she is not competent to offer expert testimony regarding proximate cause. See Frausto Br. at 5-6.; HMA Br. at 1. As Harris establishes, however, a witness who is otherwise qualified may not be per se disqualified solely because the witness is not a licensed physician. Rather, the factors enumerated in ER 702 — knowledge, skill, experience, training, or education — must be applied, and if the witness is "otherwise qualified," the fact that he or she is not a licensed physician may go to weight, but should not, on its own, render the opinion inadmissible.

In this case, there is support in the record for the conclusion that Wilkinson's knowledge, skill, experience, training and education renders her qualified to offer an expert opinion as to the proximate cause of Frausto's injuries. First, the trial court explicitly acknowledged that Wilkinson is "extremely well qualified." Frausto Br. at 16. This conclusion is reinforced

by Wilkinson's credentials and experience, which include her certification as an ARNP and 26 years of teaching and nursing experience.

Second, as mentioned above, see supra at 14-15, Washington statutory and regulatory provisions establish that as an ARNP, Wilkinson has received training and been authorized to exercise independent medical judgment, including diagnosis and treatment. RCW 18.79.040(1) states that "[r]egistered nursing practice" involves "the performance of acts requiring substantial specialized knowledge, judgment, and skill based on the principles of the biological, physiological, behavioral, and sociological sciences," and subsection (a) of that statute clarifies that such acts include "observation, assessment, diagnosis, care or counsel . . . of individuals with illnesses, injuries, or disabilities." WAC 246-840-300(5) provides that ARNPs may perform acts "within the scope of the ARNPs knowledge, experience and practice," and this includes the authority to "[e]xamine patients and establish diagnoses by patient history, physical examination, and other methods of assessment." WAC 246-840-300(5)(a).

Finally, the medical matter at issue — bedsores — is squarely within a nurse's area of expertise. Indeed, while there is a split of authority as to whether nurses may offer expert testimony regarding proximate cause generally, courts around the country have tended to deem nurses

uniquely qualified to offer expert medical testimony on the issue of bedsores. See Gaines v. Comanche County Medical Hosp., 143 P.3d 203, 206 n.10 (Okla. 2006) (surveying cases and concluding "our research reveals that, in all causes in which the issue of a nurse's expert testimony arose in response to inquiries concerning a patient's development of and the treatment for bedsores, all jurisdictions having addressed the issue allow the testimony"). Whether a matter is within the scope of a witness's expertise is a critical fact in evaluating competency as an expert. See, e.g., Queen City Farms, Inc. v. Cent. Nat'l Ins. Co. of Omaha, 126 Wn.2d 50, 102, 882 P.2d 703, 891 P.2d 718 (1994) (noting that "[a]n expert must stay within the area of his expertise"); Esparza v. Skyreach Equip., Inc., 103 Wn. App. 916, 924, 15 P.3d 188 (2000), *review denied*, 144 Wn.2d 1004 (2001) (observing that "expert testimony of an otherwise qualified witness is not admissible if the issue at hand lies outside the witness' area of expertise").

In sum, there is evidence in the record that Wilkinson is an "otherwise qualified" nurse who should be deemed competent to testify to proximate cause regarding Frausto's bedsores. By failing to ascertain whether Wilkinson was otherwise qualified to opine as to the proximate cause of Frausto's bedsores, and instead excluding her testimony solely because she is not a licensed physician, the court erred. At trial, HMA is free to argue

that Wilkinson's status as a nonphysician permits the jury to afford it less weight, but this status should not, on its own, render her testimony inadmissible. See State v. Rangitsch, 40 Wn. App. 771, 779, 700 P.2d 382 (1985) (holding that "doubts as to [a doctor's] training and qualification will affect the weight rather than the admissibility of his testimony"; brackets added); In re Welfare of Young, 24 Wn. App. 392, 397, 600 P.2d 1312 (1979), *review denied*, 93 Wn.2d 1005 (1980) (recognizing that once "the basic requisite qualifications are established, any deficiencies in an expert's qualifications go to the weight, rather than the admissibility, of his testimony"); see also Walker v. Bangs, 92 Wn.2d 854, 859, 601 P.2d 1279 (1979) (concluding that the fact a lawyer testifying to the standard of care in Washington is not licensed in this state "should go to the weight, not the admissibility of his testimony, assuming he is otherwise qualified").[4]

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[4] As Harris states, a witness's status as a licensed physician is "an important factor." 99 Wn.2d at 450. Admittedly, there may be particularly complex cases in which the only qualified medical expert witnesses will be licensed physicians. However, consistent with Harris, a nurse may not be categorically disqualified from offering expert medical testimony regarding proximate cause solely because he or she is not a licensed physician.

## VI. CONCLUSION

The Court should adopt the arguments advanced in this brief in the course of resolving this appeal.

DATED this 6th day of January, 2017.

for VALERIE D. MCOMIE DANIEL E. HUNTINGTON

On Behalf of WSAJ Foundation

# Appendix

## RCW 7.70.040

### Necessary elements of proof that injury resulted from failure to follow accepted standard of care.

The following shall be necessary elements of proof that injury resulted from the failure of the health care provider to follow the accepted standard of care:

(1) The health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs, in the state of Washington, acting in the same or similar circumstances;

(2) Such failure was a proximate cause of the injury complained of.

[ 2011 c 336 § 251; 1983 c 149 § 2; 1975-'76 2nd ex.s. c 56 § 9.]

**NOTES:**

**Severability—1975-'76 2nd ex.s. c 56:** See note following RCW 4.16.350.

**RCW 18.79.040**

**"Registered nursing practice" defined—Exceptions.**

(1) "Registered nursing practice" means the performance of acts requiring substantial specialized knowledge, judgment, and skill based on the principles of the biological, physiological, behavioral, and sociological sciences in either:

(a) The observation, assessment, diagnosis, care or counsel, and health teaching of individuals with illnesses, injuries, or disabilities, or in the maintenance of health or prevention of illness of others;

(b) The performance of such additional acts requiring education and training and that are recognized by the medical and nursing professions as proper and recognized by the commission to be performed by registered nurses licensed under this chapter and that are authorized by the commission through its rules;

(c) The administration, supervision, delegation, and evaluation of nursing practice. However, nothing in this subsection affects the authority of a hospital, hospital district, in-home service agency, community-based care setting, medical clinic, or office, concerning its administration and supervision;

(d) The teaching of nursing;

(e) The executing of medical regimen as prescribed by a licensed physician and surgeon, dentist, osteopathic physician and surgeon, podiatric physician and surgeon, physician assistant, osteopathic physician assistant, or advanced registered nurse practitioner, or as directed by a licensed midwife within his or her scope of practice.

(2) Nothing in this section prohibits a person from practicing a profession for which a license has been issued under the laws of this state or specifically authorized by any other law of the state of Washington.

(3) This section does not prohibit (a) the nursing care of the sick, without compensation, by an unlicensed person who does not hold himself or herself out to be a registered nurse, (b) the practice of licensed practical nursing by a licensed practical nurse, or (c) the practice of a nursing assistant, providing delegated nursing tasks under chapter 18.88A RCW.

[ 2012 c 13 § 1; 2003 c 140 § 1; 1995 1st sp.s. c 18 § 50; 1994 sp.s. c 9 § 404.]

**NOTES:**

**Effective date—2003 c 140:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [ 2003 c 140 § 13.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

WASHINGTON STATE LEGISLATURE

# WAC 246-840-300

## ARNP scope of practice.

The scope of practice of a licensed ARNP is as provided in RCW 18.79.250 and this section.

(1) The ARNP is prepared and qualified to assume primary responsibility and accountability for the care of patients.

(2) ARNP practice is grounded in nursing process and incorporates the use of independent judgment. Practice includes collaborative interaction with other health care professionals in the assessment and management of wellness and health conditions.

(3) The ARNP functions within his or her scope of practice

following the standards of care defined by the applicable certifying body as defined in WAC 246-840-302. An ARNP may choose to limit the area of practice within the commission approved certifying body's practice.

(4) An ARNP shall obtain instruction, supervision, and consultation as necessary before implementing new or unfamiliar techniques or practices.

(5) Performing within the scope of the ARNP's knowledge, experience and practice, the licensed ARNP may perform the following:

(a) Examine patients and establish diagnoses by patient history, physical examination, and other methods of assessment;

(b) Admit, manage, and discharge patients to and from health care facilities;

(c) Order, collect, perform, and interpret diagnostic tests;

(d) Manage health care by identifying, developing, implementing, and evaluating a plan of care and treatment for patients;

(e) Prescribe therapies and medical equipment;

(f) Prescribe medications when granted prescriptive authority under this chapter;

(g) Refer patients to other health care practitioners, services, or facilities; and

(h) Perform procedures or provide care services that are within the ARNP's scope of practice according to the commission approved certifying body as defined in WAC 246-840-302.

[Statutory Authority: RCW 18.79.050, 18.79.110, and 18.79.160. WSR 16-08-042, § 246-840-300, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 18.79.010, [18.79.]050, [18.79.]110, and [18.79.]210. WSR 09-01-060, § 246-840-300, filed 12/11/08, effective 1/11/09. Statutory Authority: RCW 18.79.110 and 18.79.050. WSR 00-21-119, § 246-840-300, filed 10/18/00, effective 11/18/00. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-300, filed 6/18/97, effective 7/19/97.]