

LEGAL EAGLE EYE NEWSLETTER

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For the Nursing Profession

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Nursing Expert: Suit Dismissed, No Opinion What Nurses Should Have Done Differently.

The ninety-one year-old patient was hospitalized for multiple rib fractures and a pneumothorax from a fall at home.

In the hospital he came down with pneumonia and was diagnosed with renal failure.

He was transferred to another hospital where he spent ten days in the ICU before he passed.

According to the chart from the ICU it was in the ICU that he sustained a hand laceration and an arm injury being reclined in a geri chair. It was those injuries for which the family sued the hospital.

For their lawsuit the family retained a registered nurse as their expert to testify on the standard of care for the patient's nurses in the ICU.

The expert noted from the records that the patient's injuries occurred while he was receiving hands-on care from his nursing caregivers.

Based on that alone, the expert concluded the injuries to the patient were the result of negligence by the patient's nurses.

The hospital challenged the family's nursing expert's conclusions as insufficient to support a successful negligence case against the hospital.

It was argued that the expert failed to specify exactly what the nurses should have done differently to fulfill the legal standard of care and prevent the specific injuries to the patient.



It is not sufficient for the patient's family's nursing expert to opine in general terms that the patient's nurses departed from the standard of care.

It was clear from the medical chart that the patient sustained skin lacerations while being cared for by the nurses.

However, the family's nursing expert failed to specify exactly what the nurses should have done differently.

COURT OF APPEAL OF LOUISIANA
May 29, 2024

The Court of Appeal of Louisiana agreed with the hospital and dismissed the family's lawsuit.

To start with, a defendant healthcare provider does not have to disprove negligence or malpractice. It is sufficient to point out correctly that the patient or patient's family has not supported their case with competent evidence.

The family's evidence was a statement from a nursing expert simply that the hospital's nurses did not exercise reasonable care when the patient was injured. The expert did not identify what exactly the nurses should have done differently.

The expert conceded that this elderly patient's skin was highly vulnerable to injury. His skin could have been traumatized even during care fully in line with the applicable standard of care.

On this point the expert again failed to follow through with an explanation of what exactly the nurses should have done differently to protect a patient with vulnerability to skin tears or lacerations.

Photos of the injuries and entries from the chart showed only that the injuries occurred, which was not in dispute.

The mere fact of an injury to a patient is irrelevant without expert testimony explaining the standard of care and identifying a causative breach. Gibson v. Hospital, __ So. 3d __, 2024 WL 2745026 (La. App., May 29, 2024).

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