

Scope of practice should set limits on medical liability testimony

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Which medical professionals are qualified to provide medical causation testimony before a court? In *Frausto v. Yakima HMA*, the Supreme Court of Washington will determine whether an advanced registered nurse practitioner (ARNP) is qualified to testify as to the causation of a patient's medical condition.

Rudy Frausto, a quadriplegic, presented to Yakima Regional Medical Center with symptoms of general body weakness, influenza and pneumonia. He was treated for 10 days and, during that time, developed decubitus ulcers.

Frausto sued the hospital for medical malpractice. To support his claim, Frausto offered an affidavit from Karen Wilkinson, an ARNP. Wilkinson's affidavit stated that the hospital had failed to provide Frausto with proper bedding, skin assessments and other care and had thus caused the bed sores.

A trial court noted that Wilkinson had practiced as a licensed nurse for more than 26 years, had taught other nurses and had extensive experience as a staff nurse. The court held that she was qualified to testify as to the standard of care. But the court also held that Wilkinson, as a nurse, was unqualified to testify about medical causation.

Frausto appealed to the Supreme Court of Washington.

"The ability to testify accurately regarding causation is dependent upon the ability to render a medical diagnosis identifying the etiology of a condition or injury," the Litigation Center of the AMA and several other medical societies argue in an amicus brief.

Why physician testimony is required

There are significant differences in the training requirements for ARNPs and physicians. For example,

a family physician, following undergraduate education, undergoes four years of a doctoral program, three years of residency training and must have a minimum of 1,650 patient encounters before practicing independently, resulting in more than 20,000 total hours of training. An ARNP, after undergraduate education, undergoes 1.5 to three years of a master's program, resulting in 2,800 to 5,350 total hours of training. Neither residency training nor a minimum number of patient encounters is required.

“A family practice physician receives almost twice the amount of general education and over three times the amount of clinical experience obtained by an ARNP,” the brief says. “The difference in experience and training has been shown to have an effect on the quality and nature of diagnoses and referral patterns.”

The court, in light of these differences in education and training, should limit the ability to testify regarding causation of an injury arising from a physician's alleged breach of the standard of care to another physician, the brief says.

“While there may be some circumstances where an ARNP is qualified to testify regarding medical causation resulting from a breach of the *nursing* standard of care, these situations should be limited to those medical procedures or issues within the scope of that ARNP's certification and ability to practice, and consequently, diagnose independently,” the brief says.

“Unlike a nursing diagnosis, which focuses on the patient's response to an illness in an effort to provide the most appropriate nursing care, a medical diagnosis involves the identification of the ultimate cause of a patient's illness.”

The Litigation Center argues that only a physician will have the appropriate diagnostic training and clinical experience necessary to “opine whether a physician's breach of the standard of care has caused the medical injury in question.”

Briefing in the Supreme Court has now been completed and oral argument has been set for Feb. 21.