

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

ALBERT BURKHART, a Minor, : No. 01-00310
By NEDRA BURKHART, Guardian :
Plaintiff :
 :
 :
vs. : Civil Action - Law
 :
PHILLIP BYLER, M.D.; CHARLES :
LAMADE, M.D. LYCOMING :
OBSTETRICS & GYNECOLOGY; :
ASSOCIATES, P.C.; CORNERSTONE :
FAMILY HEALTH, P.C.; THE :
WILIAMSPORT HOSPITAL and :
SUSQUEHANNA HEALTH SYSTEM, :
Defendants : Motion for Summary Judgment

ORDER

AND NOW, this ___ day of March 2003, upon
consideration of Defendant Williamsport Hospital's Motion
for Summary Judgment, it is ORDERED and DIRECTED as follows:

1. The Court GRANTS the Motion with respect to
the Plaintiff's theory of corporate negligence. The Court
finds the Plaintiff's expert reports are insufficient to
establish either breach of the standard of care or causation
on the part of the hospital. The hospital is not mentioned
in either of the Plaintiff's medical experts' reports. The
only references of the expert reports relied on by the
Plaintiffs are the following two sentences from Dr. Jones'

report: "It is somewhat surprising that only a medical student evaluated the patient by physical exam upon admission to the hospital in labor. The medical student did not perform a pelvic exam and did not assess the fetal size." Plaintiff argues these statements are sufficient to establish that allowing a medical student to perform the initial exam of Mrs. Burkhart violated the standard of care.¹ This Court cannot agree. Although an expert need not use "magic words," his report taken as a whole must establish a breach of the standard of care to a reasonable degree of certainty. The 'somewhat surprising' verbiage utilized by Dr. Jones is insufficient to meet the reasonable certainty threshold. See Corrado v. Thomas Jefferson University Hospital, 790 A.2d 1022 (Pa.Super. 2001); Eaddy v. Hamathy, 694 A.2d 639, 642 (Pa.Super. 1997); Kravinsky v. Glover, 263 Pa.Super. 8, 21-22, 396 A.2d 1349, 1355-1356 (1979). The Plaintiff's experts' also related the cause of the brachial plexus injury to the use of vacuum extraction and the exertion of fundal pressure, which could have been avoided by performing a cesarean section. There is nothing

¹ Plaintiff also argued that expert testimony was not required. A plaintiff must produce expert testimony to establish a claim of corporate negligence unless the negligence is obvious. The Court does not believe this is an instance where the negligence is obvious. The Court does not believe the average layperson would know the situations where it would be appropriate to utilize a medical student and those where it would not.

in the documents submitted in response to this summary judgment motion that would indicate the medical student was involved in the delivery of Mrs. Burkhart's child. Therefore, there is no expert evidence to establish causation with respect to the medical student's purported negligence.²

2. The Court also GRANTS the Hospital's Motion with respect to direct vicarious liability. It is clear that Dr. Byler and Dr. Lamade were not employees of the Hospital and that any claim of vicarious liability would be based on a theory of ostensible agency.

3. The Court GRANTS the Hospital's Motion with respect to ostensible agency with respect to Dr. Byler, but DENIES it with respect to Dr. Lamade. Since Mrs. Burkhart saw Dr. Byler at the Muncy Valley Clinic for her prenatal visits, she would not believe Dr. Byler was an employee of the Williamsport Hospital. Given the circumstances surrounding Dr. Lamade's involvement in Mrs. Burkhart's delivery, though, there is a factual question whether she would have a reasonable belief that he was an employee of the Williamsport Hospital. In her deposition, Mrs. Burkhart indicated that when the delivery became difficult there was

² The insufficiency of the expert report pertaining to the medical student also would preclude vicarious liability on the hospital for that

a discussion about the nurses going to get someone and the nurses went and got Dr. Lamade. Dep. Of Nedra Burkhart, pp. 59-60, 63-64. It does not appear that Mrs. Burkhart had ever seen Dr. Lamade before the nurses left the delivery room and returned with him.

By The Court,

Kenneth D. Brown, Judge

cc: John Kusturiss, Esquire
David Bahl, Esquire
Darryl Wishard, Esquire
Mark Perry, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File

individual.