

LINDA L. DRUM, Individually and As Administrator of the Estate of SHANNON RAE DRUM, Plaintiff	:	IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
	:	
	:	JURY TRIAL DEMANDED
	:	
vs.	:	NO. 00-01,580
	:	
DIVINE PROVIDENCE HOSPITAL OF THE SISTERS OF CHRISTIAN CHARITY: a/k/a DIVINE PROVIDENCE HOSPITAL, COMMUNITY HEALTH CENTER, KAREN PETERMAN, CRNP, Defendants	:	CIVIL ACTION MOTION IN LIMINE OF DEFENDANTS TO PRECLUDE DIAGNOSIS AND CAUSATION TESTIMONY OF PLAINTIFF'S NURSE EXPERT, KAY GENTIEU

Date: January 14, 2003

MEMORANDUM OPINION AND ORDER

Before the Court is the Defendants' Motion in Limine to Preclude Diagnosis and Causation Testimony of Plaintiff's Nurse Expert, Kay Gentieu, MSN, CRNP, filed December 4, 2002. Nurse Gentieu is a certified registered nurse practitioner (CRNP). She has rendered an expert report on behalf of Plaintiff, which expresses the opinion that an employee of Defendants, Karen Peterman, also a CRNP, was negligent in failing to appropriately care for Plaintiff's decedent, Shannon Rae Drum, when Nurse Peterman examined her on October 20, 1998. Subsequent to being treated by Nurse Peterman, Shannon Drum died on the morning of October 21, 1998. The cause of the decedent's death, as set forth in an autopsy, was a pulmonary embolism. The report of Plaintiff's expert Nurse Gentieu asserts Nurse Peterman was negligent for failing to appropriately examine and treat Ms. Drum, specifically, Nurse Peterman failed to include in the differential diagnosis and treatment plan a diagnosis of pulmonary embolism. The target of the Defendants' Motion in Limine is the specific wording of the report that states Nurse Peterman's failure to include pulmonary embolism in her

differential diagnosis “substantially increased the likelihood of death for Ms. Drum.” Defendants seek to exclude this testimony on the basis that such testimony goes to providing expert testimony as to diagnosis and causation, which a nurse is prohibited from expressing under *Flanagan v. Labe*, 690 A.2d 183 (Pa. 1997).

In *Flanagan* the Pennsylvania Supreme Court, in affirming a summary judgment motion which dismissed the plaintiff’s claim because of the lack of expert testimony, held that a registered nurse could not supply necessary expert causation testimony because the statutes establishing the proper scope of the registered nursing practice do not include acts of “medical diagnosis.” 690 A.2d at 185. *Flanagan* recognized in a footnote that a certified registered nurse practitioner is authorized to perform acts of medical diagnosis. *Id.* at 185 n.2.

The applicable regulatory statute and regulations that apply to certified registered nurse practitioners are found at 63 P.S. §422.15 and 49 Pa. Code §21.251, *et seq.* The statute at §422.15 authorizes the joint issuance of regulations by the State Board of Medicine and State Board of Nurse Examiners, which would authorize a CRNP to perform acts of medical diagnoses and prescription of medical, therapeutic, diagnostic or directive measures. 49 Pa. Code §21.251 defines a CRNP as a registered nurse certified in a particular clinical specialty who, while functioning as a professional nurse, performs acts of medical diagnosis or prescription of medical, therapeutic or corrective measures in collaboration with and under the direction of a physician. The defendants object to the expert report of Nurse Gentieu on the basis that it was not prepared “in collaboration and under the direction of a physician” as set forth in the referenced definition at 49 Pa. Code §21.251. The defendants also object on the basis that Nurse Gentieu does not have the requisite qualifications to state that the deviations

from care asserted against Nurse Peterman increased the likelihood of death to Ms. Drum. This Court must deny Defendants' Motion.

It is clear that the *Flanagan* Court prohibited the registered nurse from expressing an expert opinion as to causation because such was beyond her realm of authorized ability and scope of nursing practice. On the other hand, a CRNP is authorized to perform acts of medical diagnosis as well as corrective measures. As a CRNP, Nurse Gentieu is able to review and express opinions upon the level of care provided by Nurse Peterman. In doing so, Nurse Gentieu opines that Nurse Peterman was presented with sufficient clinical signs and symptoms by Ms. Drum that should have permitted Nurse Peterman to make a medical diagnosis, which should have included pulmonary embolism, at the time and authorize appropriate care and treatment. Nurse Peterman admits that such would have been within the scope of her duties and the care she was authorized and able to render. *See*, Deposition of Karen Peterman, filed December 13, 2002 (June 23, 2001, pp. 28-31). Thus, the reasoning expressed in *Flanagan* does not prohibit the expression of a medical diagnosis by a CRNP within her field of practice.

In addition, it is clear from *Flanagan* that the courts regard the expression of whether or not deviations from medical care are a causal factors as being within the realm of making a "medical diagnosis." Therefore, it is appropriate that a CRNP can express opinions in the form that Nurse Gentieu has expressed as would relate to the evaluation of another CRNP.

Defendants' reliance upon the requirement that a CRNP act in collaboration with and under direction of a physician is misplaced. As appropriately argued in Plaintiff's brief on this

issue (filed January 10, 2003), 49 Pa. Code §21.251, under the heading “Direction,” establishes the meaning of the phrase “in collaboration with and under the direction of a physician.” The Code establishes specific requirements for collaboration and direction including: immediate availability of a physician for communication directly or indirectly; a plan for emergency services; the availability of a physician for referrals; the review of the aspects of medical practice standards being met, including consultation and chart review; establishing and updating appropriate orders for drug and other medical protocols in the practice setting; and periodic updating of medical diagnosis and therapeutics and co-signing records when necessary to document accountability. *See*, 49 Pa. Code § 21.251. These provisions apply to supervision of a CRNP at the locations where medical care is provided and the actual provision of medical care. The regulations do not in any way provide that before a diagnosis is made and treatment is rendered by a CRNP a physician must first be consulted and approval obtained.

The evidence in the case in front of us, in fact, indicates that such things as “co-signing” should occur within 24 hours where necessary for such aspects of treatment as admission to a hospital. Also, it is obvious from the record in front of us that there are many aspects of the CRNP’s work that are not co-signed and not directly reviewed by a physician unless requested either by the CRNP or by the patient. The regulations do not affect the manner in which a CRNP is to make a medical diagnosis nor prevent a CRNP from doing so. These regulations do not operate in any way to prohibit a CRNP from stating an expert opinion as to a diagnosis, the making of a diagnosis, or causation.

The essence of Nurse Gentieu’s testimony is that it was appropriately within the scope of Nurse Peterman’s duties and responsibilities to make an appropriate diagnosis. Nurse

Gentieu offers her opinion that the appropriate diagnosis was not made and that as a result the risk of harm to the decedent was substantially increased. As a CRNP, the testimony of Plaintiff's expert opinion as to failure of another CRNP to make the appropriate diagnosis is permissible.

Accordingly, the following Order will be entered.

ORDER

The Motion of Defendants filed December 4, 2002, to preclude diagnosis and causation testimony of Plaintiff's Nurse expert, Kay Gentieu, is DENIED.

BY THE COURT:

William S. Kieser, Judge

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