

LINDA L. DRUM, Individually and As	:	IN THE COURT OF COMMON PLEAS OF
Administrator of the Estate of	:	LYCOMING COUNTY, PENNSYLVANIA
SHANNON RAE DRUM,	:	
Plaintiff	:	JURY TRIAL DEMANDED
	:	
vs.	:	NO. 00-01,580
	:	
DIVINE PROVIDENCE HOSPITAL OF	:	CIVIL ACTION
THE SISTERS OF CHRISTIAN CHARITY:	:	
a/k/a DIVINE PROVIDENCE HOSPITAL,	:	MOTION IN LIMINE OF DEFENDANTS
COMMUNITY HEALTH CENTER,	:	RE: EXPERT TESTIMONY OF
KAREN PETERMAN, CRNP,	:	WAYNE K. ROSS, M.D.
Defendants	:	

Date: January 14, 2003

OPINION AND ORDER

Before the Court is the Motion in Limine of Defendants Re: Expert Testimony of Wayne K. Ross, M.D. The Motion seeks to preclude testimony from an additional Plaintiff's Expert, Wayne K. Ross, M.D., which is to be rendered in accordance with a report dated December 24, 2002 and faxed to defense counsel on December 26, 2002.

At the pretrial conference held December 12, 2002, Defendants' pretrial memo included a supplemental report from their expert, Dr. Ross, dated October 22, 2002, which referenced his examination of the autopsy slides. The autopsy slides could not be obtained for Plaintiff's expert review until shortly prior to the pretrial conference. It was therefore the agreement of all parties that together with the permission of the Court Plaintiff's expert, Dr. Ross, could complete his review of those slides and furnish an appropriate report. This Court's written Order of December 12, 2002, noted that Plaintiff's expert (understood to be Dr. Ross but unnamed in the pretrial order of December 12, 2002) was reviewing slides from the

autopsy, which could necessitate a responsive report to Defendants' expert. The Order specified that the discovery should be completed before December 20, 2002.

Defense counsel first objects on the basis that the report coming in on December 26, 2003 rather than by the deadline of December 20, 2002, is untimely. Plaintiff's counsel counters that he was not aware from the pretrial conference that this Court had established a specific deadline of December 20th. The pretrial conference order, although dictated December 12, 2002, was not filed until December 17, 2002, and the Court is unsure when the written Order actually reached counsel. It very well may be that this Court arbitrarily inserted the December 20th date when the Order was being dictated after the pretrial conference and may not have discussed that deadline date with counsel. Regardless, the Court believes there is no significant prejudice arising due to the failure to comply with the December 20, 2002 deadline and the fact that the report was furnished by December 26, 2002, is of so little prejudice to the defense that the Court does not believe it appropriate to exclude the report on the untimeliness basis.

Defense also objects to the report of Dr. Ross on the basis it goes beyond the permissible scope of a responsive report in paragraphs 4, 5 and 6. At paragraph 4 the report of Dr. Ross discusses the clinical evidence and history of the patient; at paragraph 5 it discusses the effects of thromboembolia in relation to clinical signs and symptoms; and paragraph 6 asserts that the deceased, Shannon Drum, "suffers severe conscious pain and suffering."

These additional objections of the defense are also to be DENIED with the exception as to the objection as to Dr. Ross's opinion in paragraph 6 that Ms. Drum suffered severe conscious pain and suffering. Paragraphs 4 and 5 of Dr. Ross's report essentially

explain his reasons and support in the records and medical field for his opinions concerning the autopsy slides and what it is that they do or do not reveal. Paragraph 6, however, goes far beyond the scope anticipated to be addressed by Dr. Ross. It is the first assertion made by Plaintiffs that the deceased did suffer conscious pain and suffering to any extent in connection with the onset of her death.

This Court had issued a Scheduling Order on June 12, 2002, establishing expert report deadlines of August 31, 2002, for Plaintiff and October 15, 2002 for Defendants. The Order scheduling this case for pretrial conference in the timeframe of December 10 to 13, 2002 and trial in the January 2003 Civil Trial Term (from the 6th to 24th). At the pretrial conference held December 12, 2002, as part of the pretrial memorandum Plaintiff submitted the expert report of Dr. Powell which addressed the medical negligent issues and causation factors as would relate to the opinion he had that Ms. Drum died as a result of pulmonary embolism (PE) that was not appropriately diagnosed or treated by Defendants. Nowhere in that report was the aspect of conscious pain and suffering discussed. Nor in Defendants' responsive report by Dr. Rubin (also furnished in the pretrial memorandum) is there any reference to the presence of conscious pain and suffering by the deceased or lack thereof in her demise.

It is not appropriate for Plaintiff at this stage in the case to now interject a medical opinion in this regard, after all the expert opinions have been exchanged and all other discovery completed. In order to counter the aspect that there was conscious pain and suffering as expressed by Dr. Ross, not only would Defendants be expected to have the matter further reviewed by their experts but also there would likely be the necessity of interviewing other witnesses familiar with the facts and activities of Ms. Drum at or near the time of her death. In

other words, substantial further investigation would need to occur. In addition, this Court notes there are few if any facts specifically stated in Dr. Ross's report to support his conclusion concerning the suffering of severe conscious pain and suffering. Perhaps that is associated with any death from PE and then again, perhaps it is not. Nevertheless, it is clear that the information necessary to support or detract from such a conclusion was or should have been available to Plaintiff and does not originate from an examination of the autopsy slides, particularly in view of the initial expert's report asserting that Ms. Drum died from PE.

Although neither party has asked for nor suggested a continuance regarding the issues presented by the Motion, this Court has considered whether it would be appropriate to grant a continuance in order to remedy the prejudice Defendants would suffer if Dr. Ross were allowed to testify concerning the pain and suffering issues. The Court concludes a continuance is not appropriate. It is difficult to schedule the trial of a malpractice case and get all parties to the Courtroom door with all the necessary witnesses and evidence. The Court selected a jury for this case on the first day of the Civil Term, January 6th and set the case for trial on the dates of January 15-17, 2003. A continuance would only compound the difficulties of trial scheduling and may frustrate the parties' rights to have the issues under litigation timely and appropriately resolved. In addition, Dr. Ross's report has not revealed the facts or information that he relies upon to support his opinion as to Ms. Drum suffering pain in her demise and it is not clear to this Court that such facts do exist.

Accordingly, the following Order will be entered.

ORDER

The Defendants' Motion in Limine to Preclude the Testimony of Plaintiff's Expert Wayne K. Ross, M.D., filed December 31, 2002, is DENIED with the exception that Dr. Ross may not testify as would relate to paragraph 6 of his report dated December 26, 2002, concerning his opinion that the deceased patient "suffered severe conscious pain and suffering."

BY THE COURT:

William S. Kieser, Judge

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Judges
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Gary L. Weber, Esquire (Lycoming Reporter)