

BONNIE JEAN WELCH, Surviving  
Spouse and Executrix of the Estate of  
GEORGE H. WELCH, Deceased,  
Plaintiff

vs.

MARTHA B. FINN, M.D.,  
LOCK HAVEN HOSPITAL,  
ANANTKUMAR BHAVSAR, M.D.,  
RONALD N. EISTER, M.D.  
SUSQUEHANNA HEALTH SYSTEM  
PROVIDER NETWORK, a/d/b/a DIVINE  
PROVIDENCE HOSPITAL and  
WILLIAMSPORT HOSPITAL AND  
MEDICAL CENTER,  
Defendants

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA  
:  
: JURY TRIAL DEMANDED  
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: NO. 99-00,821  
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: CIVIL ACTION  
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:  
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:  
: MOTION FOR SUMMARY JUDGMENT

***Date: December 15, 2003***

**OPINION and ORDER**

Before the Court for determination is the Motion for Summary Judgment of Defendant Martha Finn, M.D. filed October 15, 2003.<sup>1</sup> The Court will deny the motion.

The case *sub judice* is a medical malpractice cause of action that arises out of the medical care rendered the decedent, George Welch, from May 23, 1997 to June 7, 1997. To support her cause of action, Plaintiff has offered the opinion of John Tafuri, M.D. Defendant Martha Finn, M.D. asserts in the Motion for Summary Judgment that Plaintiff

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<sup>1</sup> The Court must note that the Plaintiff failed to file a response to Defendant Dr. Finn's Motion for Summary Judgment as required by Pa.R.C.P. 1035.3(a). Under Pa.R.C.P. 1035.3(d), the Court may grant the motion for summary judgment against the party who fails to respond. On November, 24, 2003, Dr. Finn filed a Motion for Entry of Judgment based on the Plaintiff's failure to file a response to the Motion for Summary Judgment and failure to file a brief within the time limits prescribed by this Court's October 17, 2003 Order. The Court denied that motion in a separate order.

has failed to establish a *prima facie* case of medical malpractice because Plaintiff has not produced expert testimony from a qualified expert to support her claim. The Court concludes that Plaintiff has produced testimony from a qualified expert and has established a *prima facie* case in that regard.

A party may move for summary judgment after the pleadings are closed. Pa. R.C.P. 1035.2. Summary judgment may be properly granted “when the uncontraverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law.” ***Rauch v. Mike-Mayer***, 783 A.2d 815, 821 (Pa. Super. 2001); ***Godlewski v. Pars Mfg. Co.***, 597 A.2d 106, 107 (Pa. Super. 1991). The party making the motion has the burden of proving that there are no genuine issues of material fact. ***Rauch***, 783 A.2d at 821. In determining a motion for summary judgment, the court must examine the record “ ‘in the light most favorable to the non-moving party accepting as true all well pleaded facts in its pleading and giving that party the benefit of all reasonable inferences.’ ” ***Godlewski***, 597 A.2d at 107 (quoting ***Hower v. Whitmak Assoc.***, 538 A.2d 524 (Pa. Super. 1988)). Summary judgment will only be entered in cases that “are free and clear from doubt” and any “doubt must be resolved against the moving party.” ***Garcia v. Savage***, 586 A.2d 1375, 1377 (Pa. Super. 1991).

Summary judgment may be properly entered if the evidentiary record “either (1) shows that the material facts are undisputed or (2) contains insufficient evidence of facts to make out a *prima facie* cause of action or defense.” ***Rauch***, 783 A.2d at 823-24. If the defendant is the moving party bringing the motion under Pa.R.C.P. 1035.2(2), then “he may

make the showing necessary to support the entrance of summary judgment by pointing to material which indicates that the plaintiff is unable to satisfy an element of his cause of action.” *Id.* at 824. “Conversely, the [plaintiff] must adduce sufficient evidence on an issue essential to [his] case and on which [he] bears the burden of proof such that a jury could return a verdict favorable to the [plaintiff].” *Ibid.* If the plaintiff fails to establish a *prima facie* case, then summary judgment is proper as a matter of law. *Ack. v. Carrol Township*, 661 A.2d 514, 516 (Pa. Cmwlth. 1995).

In order to establish a medical negligence claim, a plaintiff must prove (1) that the defendant owed the plaintiff a duty; (2) the defendant breached that duty; (3) the breach of duty was the proximate cause in bringing about the harm suffered; and (4) the damages suffered by the plaintiff resulted directly from that harm. *Mitzelfelt v. Hamrin*, 584 A.2d 888, 891 (Pa. 1990); *Rauch*, 783 A.2d at 824; *Gregorio v. Zeluck*, 678 A.2d 810, 813 (Pa. Super. 1996). In a medical malpractice case, a plaintiff is generally required to provide expert testimony to “establish, to a reasonable degree of medical certainty, that the acts of [the defendant] deviated from acceptable medical standards and such deviation was a proximate cause of the harm suffered.” *Mitzelfelt*, 584 A.2d at 891; *Yacoub v. Lehigh Valley Med. Assocs., P.C.*, 805 A.2d 579, 591 (Pa. Super 2002). However, expert medical testimony is not required where the “matter is so simple or the lack of skill or care is so obvious as to be within a lay person’s range of experience and comprehension.” *Hightower-Warren v. Silk*, 698 A.2d 52, 54 n.1 (Pa. 1997); *Rauch*, 783 A.2d at 824 n. 8.

The standards for determining whether an expert is qualified to give an opinion in a medical malpractice case are set forth in 40 P.S. §1303.511. Those standards are as follows:

- (a) General Rule. – No person shall be competent to offer an expert medical opinion in a medical professional liability action against a physician unless that person possesses sufficient education, training, knowledge and experience to provide credible, competent testimony and fulfills the additional qualifications set forth in this section as applicable.
- (b) Medical testimony – An expert testifying on a medical matter, including the standard of care, risks and alternatives, causation and the nature and extent of the injury, must meet the following qualifications:
  - (1) Possess an unrestricted physician’s license to practice medicine in any state or the District of Columbia.
  - (2) Be engaged in or retired within the previous five years from active clinical practice or teaching.

Provided, however, the court may waive the requirements of this subsection for an expert on a matter other than the standard of care if the court determines that the expert is otherwise competent to testify about medical or scientific issues by virtue of education, training, or experience.

- (c) Standard of Care. – In addition to the requirements set forth in subsections (a) and (b), an expert testifying as to a physician’s standard of care also must meet the following qualifications:
  - (1) Be substantially familiar with the applicable standard of care for the specific care at issue as of the time of the alleged breach of the standard of care.
  - (2) Practice in the same subspecialty as the defendant physician or in a subspecialty which has a similar standard of care for the specific care at issue, except as provided in subsection (d) or (e).

- (3) In the event the defendant physician is certified by an approved board, be board certified by the same or a similar approved board, except as provided in subsection (e).
- (d) Care outside specialty. – A court may waive the same subspecialty requirement for an expert testifying on the standard of care for the diagnosis or treatment of a condition if the court determines that:
  - (1) the expert is trained in the diagnosis or treatment of the condition, as applicable; and
  - (2) the defendant physician provided care for that condition and such care was not within the physician’s specialty or competence.
- (e) Otherwise adequate training, experience and knowledge. - A court may waive the same specialty and board certification requirements for an expert testifying as to a standard of care if the court determines that the expert possesses sufficient training, experience and knowledge to provide the testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or related field of medicine within the previous five-year time period.

40 P.S. §1303.512.

The Court concludes that Plaintiff has provided a qualified expert to support her claim for medical malpractice against Dr. Finn. The thrust of Plaintiff’s claim against Dr. Finn is that she failed to properly act upon the symptoms that Mr. Welch presented with. Plaintiff asserts that Dr. Finn should have admitted Mr. Welch and that she failed to properly diagnosis Mr. Welch’s condition.

To support this claim, Plaintiff has produced the expert report of Dr. John Tafuri. Dr. Tafuri is competent to provide expert medical testimony because he possesses sufficient education, training, knowledge, and experience. Dr. Tafuri possesses a license to

practice medicine in both Pennsylvania and Ohio. Dr. Tafuri has also been a staff physician at Fairview Health System since 1996.

Dr. Tafuri is substantially familiar with the standard of care for the care at issue in the case *sub judice*. The care at issue here is what would the proper medical treatment be when an individual presents with the symptoms that Mr. Welch did. As an emergency room physician, Dr. Tafuri would be qualified to assess and diagnose patients to determine a preliminary diagnosis and course of treatment. Therefore, Dr. Tafuri is qualified to testify regarding the standard of care at issue.

Dr. Tafuri does not practice in the same subspecialty as Dr. Finn. Dr. Finn's practice is in nephrology, while Dr. Tafuri's practice is in emergency medicine. However, Dr. Tafuri practices in a subspecialty with a similar standard of care regarding the care at issue here. Both an emergency room physician and a nephrologist would be guided by the same principles of medicine when making a preliminary diagnosis and course of treatment when presented with a patient with these particular symptoms. Both would be required to evaluate and diagnose the patient along the same medical standards.

Dr. Tafuri is not board certified in the same board as Dr. Finn. Dr. Tafuri is board certified in emergency medicine. Dr. Finn is board certified in nephrology and internal medicine. Nevertheless, the Court will waive the same board certification requirement because Dr. Tafuri possesses the training, experience, and knowledge to testify because of his active involvement within the last five years in emergency medicine, which is an applicable subspecialty in light of the care at issue. The knowledge and training Dr. Tafuri possesses as an emergency room physician allows him to speak intelligently regarding the proper standard

of care for a patient that presents with the symptoms that of Mr. Welch. The care at issue in the case *sub judice* does not center on a unique nephrological condition that would be within the exclusive purview of a nephrologist. An emergency room physician, as well as a nephrologist, would have sufficient knowledge and training to identify the proper initial diagnosis and treatment.

Therefore, Plaintiff has provided sufficient evidence to establish a *prima facie* case with regard to producing a qualified expert under 40 P.S. §1303.511 to support her claim.

Accordingly, the Motion for Summary judgment is denied.

**ORDER**

It is hereby ORDERED that the Motion for Summary Judgment of Defendant Martha Finn, M.D. filed October 15, 2003 is denied.

BY THE COURT:

William S. Kieser, Judge

cc: William J. Gagliardino, Esquire (Welch)  
The Benedum-Trees Bldg., 223 Fourth Ave., 10<sup>th</sup> Floor; Pittsburgh, PA 15222  
David Lingenfelter, Esquire (Eister)  
David R. Bahl, Esquire (Weber)  
Stuart L. Hall, Esquire (LHH & Bhavsar)  
333 North Vesper Street; Lock Haven, PA 17745  
Evan Black, Esquire (Finn)  
Thomas, Thomas & Hafer; 305 North Front Street, Sixth Floor  
P. O. Box 999; Harrisburg, PA 17108  
Raymond E. Ginn, Jr., Esquire (DP/WH)  
Ginn & Vickery; 23 East Avenue; P. O. Box 34; Wellsboro, PA 16901  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)