

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| JOHN R. MILLER and JANET L. | : | NO. 04-00,691 |
| MILLER, his wife, | : | |
| Plaintiffs | : | |
| vs. | : | |
| | : | CIVIL ACTION - LAW |
| ROBERT E. PURCELL, JR., M.D., | : | |
| JOHN T. BURNS, M.D., SUSQUEHANNA: | : | |
| GASTROENTEROLOGY ASSOCIATES, | : | |
| LTD., RUDY J. NICOLAS, M.D., and | : | Joint Motion of Defendants Rudy Nicolas and |
| LOCK HAVEN HOSPITAL, | : | Lock Haven Hospital to Preclude Improper |
| Defendants | : | Expert Opinions of Dr. Conomy and Dr. Reed |

OPINION AND ORDER

Before the Court is a motion in limine filed October 28, 2005, by Defendants Rudy Nicolas, M.D. and Lock Haven Hospital, seeking to preclude certain portions of the anticipated testimony of two of Plaintiffs' expert witnesses, Dr. John Conomy and Dr. Douglas Reed. Argument on the motion was heard November 28, 2005.

Initially, the Court notes defense counsel's concession that Dr. Reed may properly testify regarding the medical history supplied to him and upon which he based his opinion and, with the understanding from Plaintiffs' counsel that the statements objected to by Defendants on page 2 of their brief are merely that, recitation of medical history provided by family members, the request to exclude that portion of Dr. Reed's anticipated testimony will be deemed resolved.

With respect to Dr. Conomy's anticipated testimony, Defendants argue that his opinion that Dr. Nicolas breached the applicable standard of care should be excluded because Dr. Conomy is not qualified to render such an opinion under the Medical Care Availability and Reduction of Error Act, 40 Pa.C.S. Section 1303.101 *et seq.* Defendants specifically object to the following portions of Dr. Conomy's report:

It is clear that the abdominal computed tomographic scan undergone by Mr. Miller at the direction of Dr. Burns, completed at the Lock Haven Hospital and interpreted by Dr. Rudy Nicolas on April 30, 2002 was read and

reported in error. What was thought to be a vesico-enteric fistula was in fact an intracavitary abscess due to rupture of a small portion of Mr. Miller's diseased colon.

...

Were it not for the erroneous interpretation of the computed tomographic study of Mr. Miller's abdomen and pelvis by Dr. Rudy Nicolas, Mr. Miller was very unlikely to have developed cardiovascular shock associated with sepsis (peritonitis) and the strike which followed upon the state of cardiovascular shock itself.

The Court does not believe, however, that these statements constitute an opinion that Dr. Nicolas breached the applicable standard of care.

As is stated in his report, Dr. Conomy sets forth to confine his opinions "to the issues of causation and damages with respect to the stroke Robert Miller, victimized by longstanding Crohn's Disease, incurred in the course of treatment of his near-mortal illness due to rupture of the colon and the peritonitis which followed upon it." Dr. Conomy indicates that all of his opinions "are based upon the evidence of medical record and associated documents currently" before him. He then goes on to elaborate as follows:

1. It is clear that the abdominal computed tomographic scan undergone by Mr. Miller at the direction of Dr. Burns, completed at the Lock Haven Hospital and interpreted by Dr. Rudy Nicolas on April 30, 2002 was read and reported in error. What was thought to be a vesico-enteric fistula was in fact an intracavitary abscess due to rupture of a small portion of Mr. Miller's diseased colon.
2. The infectious process established in Mr. Miller's abdomen and pelvis (peritonitis) was associated with sepsis and shock.
3. In spite of urgent and skillful treatment, Mr. Miller experienced sustained hypotension associated with other evidence of cardiovascular shock. Prime among these manifestations was severe and sustained arterial hypotension.
4. In the course of hypotension, and in spite of medical and surgical treatment aimed at its elimination, Robert Miller sustained a brain infarction in the course of surgery directed at the correction of the peritonitis. The probable cause of this stroke was perfusion failure in the arterial distribution of a stenotic intracranial vessel which was otherwise and would have likely remained silent and not the cause of damage to Mr. Miller.
5. The brain infarction suffered by Robert Miller involved his right (non-dominant) cerebral hemisphere. It has produced severe paralysis of the left side of his body

rendering him wheel-chair bound and incapable of independence. That condition is very likely to be permanent.

6. Were it not for the erroneous interpretation of the computed tomographic study of Mr. Miller's abdomen and pelvis by Dr. Rudy Nicolas, Mr. Miller was very unlikely to have developed cardiovascular shock associated with sepsis (peritonitis) and the stroke which followed upon the state of cardiovascular shock itself.

When the report is read as a whole, it appears Dr. Conomy is simply assuming, based on the records of other providers, that Mr. Miller suffered a stroke in the course of treatment for rupture of the colon and peritonitis, thus also assuming there was a rupture of the colon and peritonitis. He is further assuming, based on those records, that Mr. Miller experienced cardiovascular shock and accompanying sustained hypotension, and based on these assumptions, opining that the stroke was caused by perfusion failure in the arterial distribution of a stenotic intracranial vessel which failure resulted from the sustained hypotension. He relates the cardiovascular shock to the peritonitis and indicates that had the peritonitis not developed, the cardiovascular shock and stroke were very unlikely to have developed. These statements are not opinions respecting any breach of the applicable standard of care, but statements of the medical findings of others, and Dr. Conomy's conclusions drawn therefrom. The Court sees Dr. Conomy's reference to Dr. Nicolas' reading of the CT scan as "in error" and "erroneous" not as a comment on Dr. Nicolas' alleged negligence, but rather, simply an observation that an abscess must have been present since Mr. Miller was later found to have peritonitis, and thus a reading that did not find the abscess must have been incorrect.¹ Such an interpretation of these statements is supported by Dr. Conomy's indication that he speaks only to causation and damages. If at trial Dr. Conomy purports to offer an opinion that not finding the abscess from the CT scan was a breach of the applicable standard of care, the issue of Dr. Conomy's qualifications to do so will be revisited at that time.

¹ The Court notes defense counsel indicates Defendant Nicolas' position with respect to the scan is that there is no abscess shown in the scan.

ORDER

AND NOW, this 30th day of November 2005, for the foregoing reasons, the motion to preclude improper expert opinions is denied on the basis the statements are found not to be opinions, without prejudice, however, to defense counsel's right to further object at trial if such is deemed appropriate at that time.

BY THE COURT,

Dudley N. Anderson, Judge

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