

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SHAWNA MORIARITY,
Plaintiff

vs.

WILLIAMSPORT HOSPITAL AND MEDICAL CENTER,
WILLIAMSPORT REGIONAL MEDICAL CENTER FAMILY
MEDICINE RESIDENCY PROGRAM, SUSQUEHANNA
REGIONAL HEALTHCARE ALLIANCE, SUSQUEHANNA
HEALTH MEDICAL GROUP, TIMOTHY HEILMANN, M.D.,
DOUGLAS CHARLES, D.O., and SUSQUEHANNA HEALTH
SYSTEMS, INC.,
Defendants

: NO. 11 - 01,036
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: CIVIL ACTION - LAW
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: Motion in Limine

OPINION AND ORDER

Before the court is Defendants’ Motion in Limine to Preclude Plaintiff’s Neurosurgery Expert from Offering Standard of Care Opinions Against Dr. Charles and Dr. Heilmann, filed October 3, 2013. Argument on the motion was heard November 21, 2013.

In her Fourth Amended Complaint, Plaintiff asserts various claims of negligence against two individual physicians, Dr. Charles and Dr. Heilmann, and claims of vicarious liability and corporate negligence against the corporate defendants. The claims revolve around decedent’s care by Dr. Charles, a third year resident, as supervised by Dr. Heilmann, and an alleged delayed diagnosis and treatment of a subdural hematoma. In the instant motion, Defendants seek to preclude one of Plaintiff’s experts, Dr. Hamilton, from offering any opinion at trial regarding the standard of care and Dr. Charles’ or Dr. Heilmann’s compliance therewith, relying on Section 512 of the MCARE Act

Section 512 provides, in pertinent part, as follows:

§ 1303.512. Expert qualifications

...

(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 substantially 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 a related field of medicine within the previous five-year time period.

40 P.S. Section 1303.512. Defendants contend that Dr. Hamilton does not qualify under Subsection (c)(2) as he does not practice in the same subspecialty as the defendant physicians or in a subspecialty which has a substantially similar standard of care for the specific care at issue, as he is a neurologist and both defendant physicians practice in the field of family medicine. They also contend that Dr. Hamilton does not fall under the exception of Subsection (e) as he does not possess sufficient training, experience and/or knowledge relative to the practice of family medicine to waive the subspecialty and board certification requirements. Defendants' argument appears to consider both Dr. Charles and Dr. Heilmann together, and since one is board certified and the other is not, however, and since the Act provides for an exception which applies to only a board-certified defendant, the court believes it best to consider them separately.

With respect to Dr. Charles, although Dr. Hamilton does not practice in the area of family medicine, the court finds Subsection (d) applicable. Plaintiff's decedent presented to

Dr. Charles with a severe headache and slightly blurred vision. Dr. Hamilton, as a neurologist, is trained in the diagnosis and treatment of such a condition, and by diagnosing the condition (as a tension headache) and prescribing Percocet, Dr. Charles provided care for that condition and such care was not within his specialty or competence. Thus, the subspecialty requirement may be waived.

With respect to Dr. Heilmann, who is board certified in family medicine, in order for Dr. Hamilton, who is not board certified in family medicine, to testify regarding the standard of care, he must meet the exception of Subsection (e), that is, that he 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 a related field of medicine within the previous five-year time period. While his CV and report indicate that he has had administrative oversight of multiple residency and fellowship training programs, and thus he might be qualified to render an opinion regarding the standard of care of a supervising physician over a resident, that experience appears to have ended in 2004, more than five years ago. Further, the residency and fellowship training programs have not been shown to be in family medicine. Therefore, the court will not waive the board certification requirement and Dr. Hamilton is not qualified to render an opinion regarding the standard of care applicable to Dr. Heilmann, as either a supervising physician or in the care of Plaintiff's decedent directly.

ORDER

AND NOW, this 25th day of November 2013, for the foregoing reasons, Defendants' Motion in Limine to Preclude Plaintiff's Neurosurgery Expert from Offering Standard of Care Opinions Against Dr. Charles and Dr. Heilmann is hereby GRANTED in part and DENIED in part.. Dr. Hamilton may not render an opinion regarding the standard of care applicable to Dr. Heilmann.

BY THE COURT,

cc: Michael Foley, Esq.
600 Linden Street, Scranton, PA 18501
Richard Schluter, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge