

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 Plaintiff’s Motion in Limine to Preclude Defendants from Offering Factually Incorrect, Inadmissible, Misleading, Speculative, and Novel Medical Opinions of Dr. Peter Brier Regarding Life Expectancy, Dr. Christopher Haines Regarding Alleged Prior Bad Acts or Antecedent Comparative Fault of Decedent, and to Preclude Dr. James Rodgers from Discussing Dr. Brier’s Hypothesis in his Testimony, and/or for a Frye Hearing, filed September 13, 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, Plaintiff seeks to preclude the testimony of Dr. Peter Brier, who offers an opinion regarding the decedent’s life expectancy, Dr. Christopher Haines, who offers an opinion regarding the defendant physicians’ negligence (the lack thereof), and Dr. James Rodgers, who evaluates the economic damage report of Plaintiff’s expert. Plaintiff contends the opinions of Dr. Brier and Dr. Haines must be excluded because they are based on inadmissible information, specifically the decedent’s history of alcohol use, his admission into an ARD program in 2005, his personnel manager’s testimony that co-workers had reported his having smelled of alcohol on occasion, and his

having tested positive for marijuana at the time of his death, and further, that the opinion of Dr. Brier fails to cite to any medical studies. Plaintiff also seeks to preclude the opinion of Dr. Rodgers because it is based on Dr. Brier's opinion. In a separate motion, Plaintiff raised the alcohol-related issues and those issues were addressed in a separate opinion. Therefore, this opinion will address only the marijuana issue and the medical studies citation issue.

With respect to the marijuana issue, the court believes that neither expert should be permitted to testify regarding the fact that the decedent's urine tested positive for marijuana at the time of his death, but for separate reasons. In his report on life expectancy, Dr. Brier mentions the issue only in his concluding paragraph, as follows:

In short, at the time of his death, Mr. Moriarity had not made changes in his life style that were necessary because of his very serious heart condition and related anticoagulation therapy. Mr. Moriarity had already had major surgical intervention which required permanent medical therapy. He resumed drinking and smoking within eight months of that event and even tested positive for marijuana on June 27, 2009. Mr. Moriarity did not have a normal life expectancy as stated above.

Significantly, while Dr. Brier previously stated that the decedent's drinking and smoking put him at risk for complications and that his life expectancy was, as a result, "not normal", he nowhere connects marijuana use with life expectancy. The reference to the positive test result appears to be a gratuitous comment without probative value.

Dr. Haines, on the other hand, does opine that "[i]t is likely that marijuana use played a role in increasing Mr. Moriarity's INR and increasing his risk of bleeding." He cites to two studies, one of which "states a 'probable' relationship exists", and the other of which finds it "possible that marijuana components may increase the anticoagulant effects of warfarin". He then concludes that "[t]here exists significant evidence in the literature suggesting that Mr. Moriarity increased the risk of bleeding by choosing to smoke marijuana while on warfarin." The problem with this opinion is that it does not appear to be relevant to any issue in the case. As the court understands it, the allegations of negligence against Dr. Charles are that he failed to consider the decedent's prior medical history of a fall on May 31, 2009, and was negligent in failing to order an INR or CT scan when the decedent presented on June 26, 2009, with a severe headache and slightly blurred vision. Plaintiff alleges that had the test and scan been ordered, they would have revealed a subdural hematoma and life-saving intervention could

have been undertaken. Dr. Haines opines that Dr. Charles was not negligent in failing to order the test or scan. That the decedent may have increased the risk of bleeding and thus his risk of developing the hematoma in the first place does not appear to be relevant to Plaintiff's allegations of negligence or the defense that Dr. Charles was not negligent. While Defendants assert in their brief that Dr. Haines' testimony in this regard is relevant to "causation", that assertion is not further explained. Unless the relevance of an increased risk of bleeding can be shown, Dr. Haines' opinion regarding marijuana use and any reference to marijuana use will be precluded at trial.

Plaintiff also seeks to preclude Dr. Brier's opinion because he fails to cite to any medical studies or literature. Dr. Brier's report is indeed devoid of any such references, as he simply states that "[i]t is a medical fact" that tobacco use decreases life expectancy and "[i]t is also well known" that alcohol leads to difficulty managing Coumadin therapy. Defendants argue that an expert need not base his opinion on an article or text, that reliance on knowledge, education, reading and experience is sufficient, citing Smith v. Grab, 705 A.2d 894 (Pa. Super. 1997). The difficulty with that argument, however, is that here Dr. Brier does not indicate that he is basing his opinion on knowledge, education, reading and experience, and there is no CV provided which would illuminate the court as to his education and experience. In any event, Defendants assert in their brief that Dr. Brier will be providing a supplemental report which provides citations to relevant medical literature.¹ The court will thus defer ruling on this part of the motion pending receipt of that supplemental report.

Finally,² Plaintiff seeks to preclude testimony from Dr. Rodgers as his report relies on Dr. Brier's report. As the final decision on Dr. Brier's report is not yet made, ruling on this portion of the motion will also be deferred.

¹ A CV would be helpful, too.

² Plaintiff asks for a Frye hearing as an alternative to precluding outright the testimony of Defendants' experts. Plaintiff does not point to any novel scientific methodology employed by any expert here, however, and thus a Frye hearing is not appropriate. See Trach v. Fellin, 817 A.2d 1102 (Pa. Super. 2003)(Frye applies where an expert witness uses a novel scientific methodology in reaching his conclusion.)

ORDER

AND NOW, this 2nd day of December 2013, for the foregoing reasons, Plaintiff's Motion in Limine to Preclude Defendants from Offering Factually Incorrect, Inadmissible, Misleading, Speculative, and Novel Medical Opinions of Dr. Peter Brier Regarding Life Expectancy, Dr. Christopher Haines Regarding Alleged Prior Bad Acts or Antecedent Comparative Fault of Decedent, and to Preclude Dr. James Rodgers from Discussing Dr. Brier's Hypothesis in his Testimony, and/or for a Frye Hearing is GRANTED in part, DENIED in part, and DEFERRED in part, as detailed above.

BY THE COURT,

Dudley N. Anderson, Judge

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