Position Statement
Providing Expert Nursing Testimony

Summary:
The purpose of this position statement is to establish that registered nurses are the only health care providers that should provide expert testimony related to nursing standards of care.

Introduction:
This position statement is the outcome of extensive review of literature and case law related to physicians testifying on nursing standards. Nurses are uniquely prepared to perform a critical review and analysis of clinical nursing care and administrative nursing practice which provide the foundation for testifying in nursing negligence issues.

Background and Discussion:
Medical malpractice is the failure of a professional health care practitioner to provide reasonable care. The required elements of proof in a medical malpractice case are a duty between the patient and health care practitioner, a breach of duty or departure from accepted practice and the departure being the proximate cause of the alleged injury. Expert opinion is typically required to establish the applicable standard of care and the actual departure from standard practice. The expert witness is required to possess the necessary skill, knowledge, training and experience to ensure that the opinion rendered is reliable.

It appears elementary that the only expert qualified to render expert opinion testimony would be a member of the same profession who practices in a substantially similar manner to the potential defendant in the case. For many years, physicians have routinely been admitted into evidence to offer testimony to establish the standard of care for the nursing profession. On the other hand, many courts have found that physicians are best qualified to render testimony as to standards of care for physicians and that in many other health care professions, only a member of that health profession is qualified to testify to standards of care for that discipline. Recently, the courts have begun to acknowledge that nurses possess specialized knowledge that physicians do not have unless they have been trained and practice as a nurse.

The Supreme Court of Illinois recently held that a board certified internal medicine physician was not competent to testify as to the standard of care of a nurse. Citing the Amicus Brief submitted by The American Association of Nurse Attorneys, the court noted:
“A physician who is not a nurse is no more qualified to offer expert opinion testimony as to the standard of care for nurses than a nurse would be to offer an opinion as to the physician standard of care. Certainly, nurses are not permitted to offer expert testimony against a physician based on their observances of physicians or their familiarity with the procedures involved. An operating room nurse, who stands shoulder to shoulder with surgeons every day, would not be permitted to testify as to the standard of care of a surgeon. An endoscopy nurse would not be permitted to testify as to the standard of care of a gastroenterologist performing a colonoscopy. A labor and delivery
A nurse would not be permitted to offer expert testimony as to the standard of care for an obstetrician or even a midwife. Such testimony would be, essentially, expert testimony as to the standard of medical care.” (Sullivan v. Edward Hospital., 806 N.E. 2d 645 (Ill. 2004).

Scholars and litigators have long held that “Physicians often have no first-hand knowledge of nursing practice except for observations made in patient care settings. The physician rarely, if ever, teaches in a nursing program nor is a physician responsible for content in nursing texts. In many situations, a physician would not be familiar with the standard of care or with nursing policies and procedures which govern the standard of care. Therefore, a physician’s opinions would not be admissible in jurisdictions which hold the expert must be familiar with the standard of care in order to testify as an expert.” (Elizabeth W. Beyer & Pamela W. Popp, Nursing Standard of Care in Medical Malpractice Litigation: The Role of the Nurse Expert Witness, 23A J.A. HEALTH & HOSP. L. 363-365 (1990)

Nursing has evolved into a profession with a distinct body of knowledge, university based education, specialized practice, standards of practice, a societal contract and an ethical code. The practice of nursing requires decision making and skill based upon principles of the biological, physical, behavioral and social sciences as well as evidence-based research related to functions such as identifying risk factors and providing specific interventions. Each state has a Board of Nursing that is the authorized state entity with the legal authority to regulate nursing practice. State legislature has set forth licensing and regulations for the nursing profession in their respective Nurse Practice Acts and Advanced Practice Nursing Acts. It is evident that under the nursing act, only a nurse would meet the qualifications for sitting for nursing licensure examination, and as such be eligible for licensure as a registered nurse.

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• Provides the foundation for best practices within the multitude of legal nurse consultant roles.
• Incorporates cutting edge clinical and consultative education to promote the practice of legal nurse consulting.
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Conclusion:
The profession of nursing is autonomous from the profession of medicine and other allied health disciplines. The profession of nursing has its own educational and licensing requirements which serve to identify registered nurses and, among registered nurses, further identify those with advanced training and certification in their nursing specialty. Nursing has the responsibility and knowledge to define its standards of practice and indeed has published these standards of care. Therefore, licensed registered nurses are competent to address these standards of nursing practice in the litigation arena.

It is the position of the American Association of Legal Nurse Consultants that when applicable nursing standards need to be established through expert testimony, that the expert shall be a licensed, registered nurse. Further, the only expert competent to testify on clinical and administrative nursing issues is a licensed, registered nurse.
Additional References:


P. Sweeney, *Proving Nursing Negligence,* 27 Trial 34, 36 (May 1991)

State Nurse Practice Acts

State Statutes regulating Expert Witness Testimony


Amicus brief submitted to Illinois Supreme Court – Karen Butler, Esq American Association of Nurse Attorneys

*Vassey v. Burch,* 45 N.C. App. 222, 226, 262 S.E. 2d 865, 867

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