

# WASHINGTON CASE UPDATE

## ARNP Can Opine on Proximate Cause in Medical Malpractice Case

**From the desk of Thomas McCurdy:** Washington law has long been clear that an advanced registered nurse practitioner (“ARNP”) can testify as an expert with respect to the applicable standard of care, but it has been less clear as to whether an ARNP can testify on the issue of causation. Read on to learn more.

**Claims Pointer:** In this case arising out of a medical malpractice claim, the Washington Supreme Court held that an ARNP can testify on the issue of causation provided that the ARNP meets the threshold requirements for expert witnesses. The case changes how trial courts will approach an ARNP’s causation testimony, an important consideration for medical malpractice claims.

Frausto v. Yakima HMA, No. 93312-0, Washington Supreme Court (April 27, 2017)

the care of patients within the scope of their particular certifications.

Rudy Frausto (“Frausto”), a 70-year-old quadriplegic man, checked into Yakima HMA, LLC (“Yakima”) for pneumonia. The nurses allegedly failed to provide proper care during his stay, including moving him, turning him, and providing him with an appropriate bed. Frausto developed pressure ulcers, and he filed suit against Yakima.

In Washington, plaintiffs in a medical malpractice claim must prove two key elements: (1) that the defendant health care provider failed to exercise the standard of care of a reasonably prudent health care provider in that same profession, and (2) that such failure was a proximate cause of the plaintiff’s injuries. Washington courts have repeatedly held that expert testimony will generally be necessary to establish the standard of care. Similarly, Washington courts have stated that expert testimony is always required to establish causation except in those few instances where technical medical expertise is not necessary (for example, where a physician amputates the wrong limb).

Yakima moved for summary judgment, arguing that Frausto had failed to provide expert testimony as required by statute. Frausto then offered the sworn affidavit of an ARNP with more than 30 years of experience. The ARNP stated that her professional opinion was that the treating nurses breached the applicable standard of care and that this breach proximately caused Frausto’s pressure ulcers. However, the trial court held that while the ARNP was qualified as an expert and could speak to the applicable standard of care, the law prohibited her from testifying on the issue of proximate cause. The trial court then granted summary judgment in favor of Yakima, and Frausto appealed.

In this case, the trial court believed it did not have any discretion to allow a nursing expert to testify regarding medical causation as a matter of law based on prior appellate decisions in which the Court of Appeals determined that medical doctors (and not nurses) must generally connect the patient’s injury with the alleged medical deficiencies. However, in another decision, the Court of Appeals noted that the statutory scheme does not suggest that a nurse should be categorically denied the right to express opinions on the proximal relationship between a breach of a duty of care and an injury. Instead, the court in that case explained that under Washington’s Evidence Rule (“ER”) 702 governing expert qualifications, a witness may testify as an expert if that witness possesses knowledge,

The Supreme Court framed the issue before it narrowly: whether an ARNP may express an opinion on proximate cause in a medical malpractice cause under the applicable statute. The Court then took note of the fact that ARNPs have been designated by the Washington legislature as the highest tier of nurses, prepared and qualified to assume primary responsibility and accountability for

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skill, experience, training, or education that will assist the trier of fact. Thus, the scope of the expert's knowledge, not his or her professional title, should govern the admissibility of expert medical testimony in a medical malpractice case.

The Supreme Court examined these decisions and decisions from other jurisdictions on both sides of this issue, and the Court ultimately concluded that an ARNP should not be categorically excluded from providing expert testimony on causation in a medical malpractice case. The Court explained that two key factors led to its conclusion. First, Washington's nursing statute differs from statutes in other states because it empowers ARNPs to diagnose illnesses and injuries to at least a limited degree. Additionally, the jurisdictions that allow nurses to testify on causation rely on ER 702 for the requisite qualification of experts. Thus, the Court held that ER 702 provides the appropriate means for determining whether an ARNP's causation opinion is sufficient based on the qualifications of the ARNP and the statutory scope of that ARNP's authority and certification as a health care provider. For the Court, if an ARNP is qualified to independently diagnose a particular medical condition, it follows that the ARNP may have the requisite expertise under ER 702 to discuss medical causation of that condition. The trial court therefore should have determined whether the ARNP had the requisite specialized knowledge to qualify as an expert on causation under the rules of evidence. Summary judgment was therefore inappropriate, and the case was remanded to the trial court to make that determination.

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View full opinion at: <https://www.courts.wa.gov/opinions/pdf/933120.pdf>



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