

MEMORANDUM IN SUPPORT MOTION TO LIMIT EXPERT TESTIMONY

I. INTRODUCTION

This is an action for medical malpractice arising from the death of Daniel F. Sheffield (hereinafter "Mr. Sheffield"). Plaintiffs, Yong Hui Sheffield, individually and as executrix of the Estate of Daniel Sheffield, and Amber Sheffield, individually, originally filed this action on January 8, 2013. Plaintiffs' Amended Complaint alleges that Paul Gullet, R.N. (hereinafter "Nurse Gullet"), acting within the scope of his employment with Defendant, The Ohio State University Medical Center, negligently removed Mr. Sheffield's central venous catheter resulting in his eventual death. Plaintiffs' Amended Complaint states that Nurse Gullet's negligence included failing to ensure that Mr. Sheffield was in a proper position both during and after the removal of the central venous catheter, in failing to instruct Mr. Sheffield to hold his breath or bear down during the removal of the central venous catheter, in failing to utilize any ointment or other occlusive dressing following removal of the central venous catheter, and in failing to apply pressure to the insertion site for a sufficient time following the removal of the central venous catheter.

On July 21, 2014, Defendant served Plaintiff with Defendant's Disclosure of Expert Witnesses. Defendant therein identified three nursing experts to testify regarding the standard of care in this case: John Askins, R.N. (Amarillo, Texas), Jenny Beerman, R.N. (Kansas City, Missouri), and David Woodruff, R.N. (Macedonia, Ohio). It is apparent from their reports that each of these experts will present identical opinions that Nurse Gullet met the standard of care based on accepted principles of nursing. There is no justification for having three separate nurses provide redundant opinions as to the standard of care in this

case. To do so would be unduly cumulative, wasteful, and costly. Plaintiffs have identified only one nursing expert and respectfully move this Court to limit and/or exclude the testimony of Defendant's to one nursing expert. Both the Ohio Rules of Civil Procedure and the Ohio Rules of Evidence support Plaintiffs' Motion.

II. LAW AND ARGUMENT

Trial courts possess extensive power to control discovery pursuant to Civ. R. 26(C), which states in part:

Upon motion by any party or by the person for whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or **undue burden or expense**, including one or more of the following:

- 1) that discovery not be had:
- 2) that the discovery may be had only on specified terms and conditions...(emphasis added)

It is the right and duty of trial courts to impose reasonable limits and conditions on the discovery process so as to expedite the administration of justice. *Penn Cent. Transp. Co. v. Armco Steel Corp.*, 27 Ohio Misc. 76, 271 N.E.2d 877 (C.P.1971). The decision to grant a motion for protective order pursuant to Civ. R. 26(C) is left to the sound discretion of the trial court, and will not be reversed on appeal absent abuse of that discretion. *Ruwe v. Bd. of Twp. Trs.*, 29 Ohio St.3d 59, 61, 505 N.E.2d 957 (1987). The standard for abuse of discretion is defined as more than error of law or judgment and implies an attitude on the part of the trial court that is unreasonable, arbitrary, or unconscionable. *See Ruwe v. Bd. of Twp. Trs.*, 29 Ohio St.3d 59, 61, 505 N.E.2d 957 (1987); *Sgro v. McDonald's Rest.*, 21 Ohio App.3d 41, 486 N.E.2d 157 (8th Dist.1984). In *Washington v. Greenfield*, 1986 U.S. Dist. LEXIS 19037(D.D.C.Oct. 15, 1986), the Court did not abuse its discretion in a medical malpractice action when it limited the number

of gynecologist expert witnesses so as to avoid unnecessarily cumulative evidence and waste because each of the proposed witnesses planned to present similar testimony and had similar expertise.

Federal Courts have adopted a Reference Manual on Scientific Evidence to assist judges in effectively managing expert evidence. While not binding on this Court, Plaintiffs urge the Court to consider the sound reasoning and studied conclusion of its authors.

Some local rules and standing orders limit parties to one expert per scientific discipline. Ordinarily, it should be sufficient for each side to present, say a single orthopedist, oncologist, or rehabilitation specialist. However, as science increases in sophistication, subspecialties develop. In addition, experts in a single subspecialty may be able to bring a variety of experiences or perspectives relevant to the case. If a party offers testimony from more than one expert in what appears to be a distinct discipline, the party should justify the need for it and explain why a single expert will not suffice. **Attorneys may try to bolster the weight of their case before the jury by cumulative expert testimony, thereby adding cost and delay. The court should not permit such cumulative evidence, even where multiple parties are represented on one or both sides.** (Emphasis added). Federal Judicial Center, *Reference Manual on Scientific Evidence*, 48 (2nd Ed. 2000).

In addition to this Court's authority to regulate discovery, Ohio Evid R. 104(A) permits trial courts to determine preliminary questions concerning the admissibility of evidence. Evid. R. 403(B) provides that a trial court may exclude relevant evidence where its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence. It is within the trial court's discretion to exclude expert witness testimony as needlessly cumulative when other experts have testified to the point in question. *In re Ohio Tpk. Com.*, 164 Ohio St. 377, 386, 131 N.E.2d 397 (1955).

In the instant case, Defendant wishes to present three nursing expert witnesses whose reports offer essentially identical opinions: that Nurse Gullet met the standard of care based on accepted nursing principles. Neither is it the case that Defendant's proposed nursing experts offer distinct expertise in any relevant subspecialty of nursing which might arguably justify such redundant testimony. Rather, Defendant seeks to offer duplicative nursing expert testimony, which will result in the presentation of needlessly cumulative evidence and undue expense. If required to depose these three nursing experts located in three separate states, Plaintiffs' will exert undue time, travel, and expense including the payment of court reporters and experts only to amass redundant testimony from substantially similar experts. Accordingly, this Court has ample authority and reason under Civ. R. 26(C) and Evid. R. 403(B) to limit the number of nursing experts in this case.

III. CONCLUSION

Based on the foregoing, Plaintiffs respectfully move this Court for an Order limiting the number of Defendant's nursing expert witnesses.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served upon the following counsel of record via ordinary U.S. mail, postage prepaid this 27 day of September, 2014:

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