

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CHRISTOPHER J. CARROW,)	
Administrator of the Estate of)	CIVIL ACTION NUMBER
Judith A. Carrow, Deceased, and)	
CHRISTOPHER J. CARROW,)	05C-09-031-JOH
Individually)	
)	
Plaintiff)	
v.)	
)	
FREDERICK A. DRESSLER, M.D.)	
and MARK J. GARCIA, M.D.)	
)	
Defendants)	

Submitted: December 21, 2007

Decided: January 9, 2008

MEMORANDUM OPINION

*Upon Motion of Defendant Mark J. Garcia, M.D. to
Preclude the Testimony of Gregory Giugliano, M.D. - DENIED*

Appearances:

Gilbert F. Shelsby, Jr., Esquire, of Shelsby & Leoni, Wilmington, Delaware, attorney for plaintiff

Richard Galperin, Esquire, of Morris James Hitchens & Williams, Wilmington, Delaware, attorney for defendant Frederick A. Dressler, M.D.

John D. Balaguer, Esquire, of White and Williams, LLP, Wilmington, Delaware, attorney for defendant Mark J. Garcia, M.D.

HERLIHY, Judge

Plaintiffs have sued Dr. Mark J. Garcia, and another physician, Frederick Dressler, alleging medical negligence in that he failed to properly perform a coil embolization on decedent Judith A. Carrow. Dr. Garcia is an interventional radiologist.

Mrs. Carrow was at the Christiana Hospital for a cardiac catheterization for an acute coronary syndrome. During the procedure by Dr. Dressler, a cardiac vessel was perforated. After some other procedures were used to try to stop the bleeding and were not successful, Dr. Garcia performed a coil embolization to try to repair the perforation. It is alleged what his actions did enlarged it, causing Mrs. Carrow further complications.

The plaintiffs have identified Dr. Gregory Giugliano, an interventional cardiologist, as their expert against Dr. Garcia (and against Dr. Dressler who is an interventional cardiologist). Dr. Garcia moves to preclude Dr. Giugliano's testimony. His primary basis is that Dr. Giugliano is not of the same specialty and Delaware law requires the expert to be of the same specialty. Secondarily, Dr. Garcia argues Dr. Giugliano has limited experience with coil embolizations and would not be in a position to know what standard of care an interventional radiologist should follow.

The Court finds Dr. Giugliano's specialty and experience is sufficient to qualify him as a standard of care expert against Dr. Garcia as an interventional radiologist.

Discussion

Dr. Garcia quotes what he claims is a portion of this Court's pattern jury instructions as support for his motion:

“Healthcare providers are ‘held to the standard of care and knowledge possessed by members on good standing of (sic) his or her profession and specialty.’”¹

The doctor’s motion claims this language comes from this Court’s Pattern Jury Instructions § 7.1A.² There are several significant difficulties with his quoted language and his citation.

First, Dr. Garcia’s quote is not the statutory definition of medical negligence;

The standard of skill and care required of every health care provider in rendering professional services or health care to a patient shall be that degree of skill and care ordinarily employed in the same or similar field of medicine as defendant and the use of reasonable care and diligence.³

Secondly, Pattern Jury Instruction § 7.1A does not state what he quotes. Third, Dr. Garcia, for unknown reasons, jumbles into a “statement of law” two different pattern instructions which are quite distinct:

The standard of skill and care required of every healthcare provider in rendering professional services or healthcare to a patient shall be that degree of skill and care ordinarily employed, under similar circumstances, by members of the profession in good standing in the same community or locality, and the use of reasonable care and diligence.⁴

* * * * *

The standard of skill and care required of every healthcare provider in rendering professional services or healthcare to a patient shall be that degree

¹ Defendant’s Motion to Exclude.

² *Id.*

³ 18 *Del. C.* § 6801(7).

⁴ Civil Pattern Jury Instruction § 7.1.

of skill and care ordinarily employed, in the same or similar field of medicine as [the] defendant, and the use of reasonable care and diligence.⁵

In short, Delaware law does not mandate as Dr. Garcia argues that the expert always be of the same specialty. Delaware does, however, require:

No person shall be competent to give expert medical testimony as to applicable standards of skill and care unless such person is familiar with the degree of skill ordinarily employed in the field of medicine on which he or she will testify.⁶

While Dr. Garcia's argument about "same" specialty lacks merit, Dr. Giugliano, nevertheless must meet that statutory expert requirement. Dr. Garcia, without citing the requirement, suggests Dr. Giugliano's expertise as a interventional cardiologist does not meet that requirement to offer standard of care opinions about interventional radiologists.

Dr. Garcia does argue, however, that *per se* Dr. Giugliano is not competent to testify against him because he, Dr. Garcia, is an interventional radiologist. He cites no authority, aside from the mish-mashed pattern instruction, that such a *per se* rule exists in Delaware jurisprudence. The two statutory provisions § 6801(7) and § 6854 do not compel such a ruling. "Field of medicine" in § 6854 is sufficiently broad to get Dr. Giugliano past the first hurdle. But the Court's analysis does not end there.

⁵ Civil Pattern Jury Instructions §§ 7.1 and 7.1A.

⁶ 18 *Del. C.* § 6854.

The additional analysis starts with the undisputed fact that Dr. Garcia had never done a coil embolization on a cardiac structure prior to the one at issue in this case.⁷ Dr. Garcia does not raise the issue that there is a Delaware or regional standard of care versus a national one. Nor does Dr. Garcia proffer that there is a different standard of care for interventional radiologists and another for interventional cardiologists. To the contrary, it appears his standard of care expert has testified there is no difference on the standard of care for an interventional cardiologist and an interventional radiologist when performing this procedure.

He does, however, argue that Dr. Giugliano's own experience with coil embolization in heart vessels is too limited, and to a degree, perhaps, stale. A review of Dr. Giugliano's deposition testimony indicates.

1. He has performed or been part of less than ten coil embolizations in the period 2002 - 2007.
2. Of these, he could recall two that would have been in a cardiac structure.
3. His training in such procedures was part of his interventional cardiology fellowship training in 1999 to 2002 and the training he currently does in his own lab. Also he said:

I also bring in representatives from companies that make the coils to do inservice training to the cath lab staff and physicians. I try to do it on at least a yearly basis. Because these procedures are

⁷ While not part of the motion, there apparently is a factual dispute about whether Dr. Garcia informed Dr. Dressler of this.

rare, particularly in coronary vessels, ongoing training is important to make sure that when this event occurs, that when one maybe needed, people are up to speed.⁸

4. In the hospital he said:⁹
 - a. interventional radiologists perform coil embolizations, but
 - b. they do not do them in heart vessels because they are not credentialed to do so.¹⁰
5. Though conclusory in nature, he said he is qualified to provide expert testimony about interventional radiologists when the procedure is within the cardiac structure. There are other areas of their work which he testified he would not be so qualified.

The Court is satisfied this testimony means Dr. Giugliano meets the qualifications for a medical negligence expert under Delaware law. He does not , in this case, have to be of the same specialty as Dr. Garcia. He is of a similar specialty and is familiar with the degree of skill and care needed in this field of medicine for this procedure in a heart vessel.¹¹

⁸ Dr. Giugliano's deposition at p. 18.

⁹ Which hospital is not revealed in the deposition pages provided in the plaintiffs' response to Dr. Garcia's motion.

¹⁰ The Court is unaware if this is an issue in this case.

¹¹ *Accord Corbitt v. Fatagari*, 804 A.2d 1057 (Del. 2002); *Balan v. Horner*, 706 A.2d 518 (Del. 1998).

Conclusion

For the reasons stated herein, defendant Mark J. Garcia's motion to preclude the testimony of Dr. Gregory Giugliano is **DENIED**.

IT IS SO ORDERED.

J.