

State of Ohio,)
County of Cuyahoga.)

FILED

JUN 14 1996

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

IN THE COURT OF

JACQUELINE FRANKLIN,)

Plaintiff,)

vs.)

METROHEALTH MEDICAL
CENTER, et al.,)

Defendants.)

Case No. 273,817

Judge Wm. Aurelius

DEPOSITION OF DEBRA A. GARGIULO, RN
Friday, March 31, 1995

The deposition of DEBRA A. GARGIULO, RN, a witness, called for examination by the Plaintiff under the Ohio Rules of Civil Procedure, taken before me, Diane M. Stevenson, a Registered Professional Reporter and Notary Public in and for the state of Ohio, by agreement of counsel, at MetroHealth Medical Center, 2500 MetroHealth Drive, Cleveland, Ohio, commencing at 9:15 a.m., the day and date above set forth.

Diane M. Stevenson, RPR, CM
Morse, Gantverq & Hodge

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Jeanne Tosti, Esq.
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5 Skylight Office Tower
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6 On behalf of the Defendants:

7 Christine Reid, Esq.
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Cleveland, Ohio 44114

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DEBRA A. GARGIULO, RN

A witness, called for examination by the Plaintiff, under the Rules, having been first duly sworn, as hereinafter certified, was examined and testified as follows:

CROSS-EXAMINATION

BY MS. TOSTI:

Q. Would you state your full name and spell your last name, please.

A. Debra Ann Gargiulo, G A R G I U L O.

Q. What is your home address?

A. 25130 Glenbrook, That is in Euclid.

Q. And your ZIP code?

A. 44117.

Q. Is that a house or an apartment?

A. House.

Q. Have you ever had your deposition taken before?

A. No.

Q. Well, I am sure that Mrs. Reid here has told you that this is a question and answer session that is under oath, and there are no right or wrong answers.

If you don't understand the question that I am asking you, tell me, I will be happy to repeat it or I will rephrase it. And sometimes the

1 question I ask may not make any sense, and if
2 that is the case, just tell me, and I will ask it
3 a little differently. Otherwise, I am going to
4 assume that you understand what I am asking you,
5 and that you are able to answer it,

6 Also, I would ask that you give all your
7 answers verbally because our court reporter can't
8 take down hand motions or head nods.

9 A. Okay.

10 Q. What have you reviewed for your deposition today?

11 A. The patient's chart.

12 Q. Have you reviewed any depositions of Jackie
13 Franklin?

14 A. No.

15 Q. Any deposition of Dr. Reinhold or Dr. Emery?

16 A. No.

17 Q. Any summaries of any depositions?

18 A. No.

19 Q. Have you discussed this case with anyone other
20 than with counsel?

21 A. No.

22 Q. Do you know who Dr. Reinhold and Dr. Emery are?

23 A. Yes.

24 Q. Have you had any discussions with them about the
25 case?

- 1 A. No.
- 2 Q. Do you have any personal notes or file dealing
3 with any of the care that Jackie Franklin
4 received back in January and February of 1993?
- 5 A. No.
- 6 Q. Did you ever make any personal notes on the case?
- 7 A. No.
- 8 Q. Now, you are currently employed by MetroHealth
9 Medical Center; is that correct?
- 10 A. Yes.
- 11 Q. What is your current position?
- 12 A. RN.
- 13 Q. When did you first become employed with
14 MetroHealth?
- 15 A. August of '85.
- 16 Q. And you are a registered nurse?
- 17 A. Yes.
- 18 Q. What type of basic nursing program did you go
19 through?
- 20 A. BSN program, four years.
- 21 Q. When was that?
- 22 A. 1990 -- sorry. 1980 to 1984.
- 23 Q. What school?
- 24 A. Ursulin College.
- 25 Q. I used to teach in the nursing program at

1 Ursulin.

2 MS. REID: Do you guys know each
3 other?

4 THE WITNESS: No.

5 Q. Have you had any additional training since the
6 time of graduation in nursing?

7 A. No.

8 Q. Now, in January and February of 1993, what
9 position did you hold with Metro?

10 A. Registered nurse.

11 Q. What area were you working in?

12 A. OB.

13 Q. That was your usual unit?

14 A. Yes.

15 Q. Was that a full-time position?

16 A. Yes.

17 Q. What hours did you normally work? Were you
18 assigned to a particular shift, or were you
19 rotating shifts?

20 A. Rotating.

21 Q. What shifts were you rotating?

22 A. Days, evenings, and nights.

23 Q. So all three?

24 A. Yes.

25 Q. Since you have been with Metro, have you always

1 been in the OB/GYN area?

2 A. Yes.

3 Q. Have you rotated at all through labor and
4 delivery, or do you work postpartum?

5 A. Postpartum.

6 Q. Do you do any labor and delivery?

7 A. No.

8 Q. Have you ever done labor and delivery?

9 A. We used to get floated over there years ago.

10 Q. But not anything on a regular basis?

11 A. No, no.

12 Q. Now, the questions I am going to be asking you
13 relate back to January and February of 1993, not
14 what you are currently doing, but what was being
15 done or what you did or what occurred back in
16 that time period. Okay?

17 A. Okay.

18 Q. Back in January and February of 1993, what were
19 your duties as an OB/GYN nurse in the postpartum
20 area? Just generally if you can describe it.

21 A. Assessments, teaching, newborn care.

22 Q. Were you assigned like management of particular
23 patients like you were given a group of patients
24 and you were the primary nurse for those
25 patients, or were you assigned tasks for a whole

1 group of patients and someone else would have
2 other tasks for those patients?

3 A. No, we would have one group of patients and
4 assigned all their tasks.

5 Q. And you would be the primary nurse for those?

6 A. For all that day, right.

7 Q. As part of your duty or duties, did you review
8 orders that were written on your patients?

9 A. Yes.

10 Q. Now, MetroHealth is a teaching hospital, right?

11 A. Yes.

12 Q. And so you work with a lot of residents who are
13 still in training in your area in the specialty
14 of obstetrics and gynecology, correct?

15 A. Yes.

16 Q. Would you agree that most of the orders written,
17 and a lot of the work such as deliveries and
18 other procedures that are done, are usually
19 handled by the residents that are assigned to
20 your particular area?

21 A. The postpartum orders are written by the
22 residents.

23 Q. What about procedures and things that are being
24 done in that area, is a good portion of it done
25 by the residents?

- 1 A. In postpartum?
- 2 Q. Yes.
- 3 A. Yes.
- 4 Q. Would you agree that when you work in an area
5 like postpartum for a number of years you become
6 familiar with many of the common postpartum
7 orders that are written on patients?
- 8 A. Yes.
- 9 Q. If you saw an order that seemed to you to be
10 wrong, you would question the doctor about it,
11 right?
- 12 A. In general?
- 13 Q. Yes.
- 14 A. Yes.
- 15 Q. Have you ever done that before?
- 16 A. Yes.
- 17 Q. Have you seen other nurses who question an order
18 and then go talk to the doctor about it?
- 19 A. Yes.
- 20 Q. Would you agree that sometimes patients will --
21 sometimes patients will be the ones that will
22 tell you when there is an error in an order?
23 Have you ever had a patient tell you that "This
24 medication isn't mine, This is wrong. The
25 doctor ordered it incorrectly"?

1 A. No

2 Q. Never?

3 A. No.

4 Q. Would it be fair to say that you have prepared
5 postpartum patients for discharge a number of
6 times?

7 A. Yes.

8 Q. On an average, in a week's time, how many would
9 you say that you would normally prepare for
10 discharge?

11 A. Just me?

12 Q. Right.

13 A. Back in '93? 12.

14 Q. Now, in January and February of '93, when a C.
15 section patient was being readied for discharge,
16 what type of discharge teaching did you routinely
17 do?

18 A. We have a discharge instruction sheet we give out
19 discussing signs of infection, activity, diet,
20 appointments, medication.

21 Q. And this isn't a memory game, so any time that
22 you care to look at any of the records -- we are
23 going to go through some specific sheets, I am
24 just asking generally at this point.

25 A. Birth control, nutrition, and emotional changes.

1 Q. When you would discuss birth control, what
2 methods would you discuss with the patient?

3 MS. REID: With any patient, just
4 generally?

5 MS. TOSTI: Just generally, yes.

6 A. Generally, birth control would be foam and
7 condoms, birth control pills, and at that time
8 Depo-Provera, and that's it.

9 Q. What information would you give about each of
10 those? Let's take them one at a time, like foams
11 and condoms, what would you tell a patient
12 generally about foams and condoms?

13 A. Generally, I tell them they need to be used
14 together, they are a good form to prevent
15 sexually-transmitted disease. And to make sure
16 that they read the can from the foam, there are
17 some further instructions on them.

18 Q. In regard to birth control pills, what would you
19 tell them?

20 A. They would have to start them on the Sunday they
21 were leaving, They need to take one every day,
22 not to skip a day. They need to use birth
23 control pills with foam and condoms for a backup,
24 to be effective, and go over the side effects,
25 because the birth control pills take about two or

1 four weeks before becoming effective, so use foam
2 and condoms as a backup.

3 Q. Once they had been on the Pill for four weeks,
4 they discontinue --

5 A. No, we still tell them about foam and condoms
6 because of sexually-transmitted disease.

7 Q. What would you tell them about Depo-Provera?

8 A. It is a shot, goes into the arm, effective
9 immediately, prevents pregnancy. They need to
10 follow-up every three months for another shot,
11 and also need to take foam and condoms along with
12 that for sexually transmitted diseases, because
13 it does not prevent any. And we also have a
14 handout sheet that we give them.

15 Q. Now, would you give all this information to all
16 of the mothers, or would you ask a mother what
17 particular method she was interested in using or
18 had decided upon?

19 A. We would ask them what she had decided upon.

20 Q. So your instructions, then, would be tailored to
21 what the mother's decision was in regard to birth
22 control?

23 A. Correct.

24 Q. So depending on what the mother responded, your
25 teaching then would be appropriate and it may be

1 for foams and condoms, birth control pill, or the
2 Depo-Provera, or the combination that you
3 mentioned?

4 A. Right.

5 Q. Did you consult with the family planning
6 counselor before doing any of your discharge
7 instructions in regard to family planning, birth
8 control, routinely?

9 A. No. Do I talk to them personally?

10 Q. Yes.

11 A. No, I do not.

12 Q. **So**, generally speaking, then, you would approach
13 a mother, and would you ask them, "What have you
14 decided upon as far as birth control," and then
15 tailor your teaching to that decision?

16 A. Yes.

17 Q. Did you routinely consult with physicians before
18 doing any of the discharge teaching in relation
19 to birth control?

20 A. I don't understand the question.

21 Q. That is okay. Before you would go and prepare a
22 mother for discharge and discuss methods of birth
23 control with her, would you go to one of the
24 physicians that had been working on the case to
25 get any type of guidance from that individual,

1 that physician, in regard to birth control for
2 that mother, or would you approach the patient
3 directly and find out what her decision was?

4 A. Usually the patient made a decision and has
5 talked to the physician already. A lot of times
6 they will write it in the chart, and then we
7 discuss it with the patient.

8 Q. So would you routinely check the chart, then, to
9 see if there were orders for anything related to
10 birth control?

11 A. Yes.

12 Q. Before you would then go into the teaching?

13 A. Yes.

14 Q. Now, if a patient had undergone C. section with
15 tubal ligation, would what you have described to
16 me as far as your discharge instructions change
17 any? Would you do anything differently in regard
18 to birth control methods?

19 A. Generally?

20 Q. Yes.

21 A. Well, we would still discuss foam and condoms.

22 Q. Now, if a mother tells you that she is in a
23 long-term, monogamous relationship, would you
24 still instruct her to use foams and condoms?

25 A. Yes.

1 Q. So regardless of the patient, regardless of what
2 procedure they have done, all patients, all
3 patients that have delivered at Metro, are
4 instructed on foams and condoms?

5 A. Yes.

6 Q. And they are told to continue to utilize that?

7 A. Yes.

8 Q. Now, are you aware of any policies or procedures
9 that say all patients are instructed on foams and
10 condoms in order to prevent sexually-transmitted
11 disease?

12 A. Policy?

13 Q. Yes.

14 A. No.

15 Q. Are there any teaching guidelines in the chart
16 that you have sitting before you that say that
17 the patient is to be instructed in the use of
18 foams and condoms to prevent sexually-transmitted
19 diseases?

20 A. The teaching sheet that I handed to her when they
21 go home, here it is, not to prevent sexually-
22 transmitted diseases.

23 Q. So you are looking at the discharge/home-going
24 instruction sheets for postpartum?

25 A. Yes.

1 Q- And you are looking at the area that is marked
2 "Medications"?

3 A. Yes.

4 Q. And can you read to me what it says about foams
5 and condoms on that use?

6 A. "Use together to prevent pregnancy as instructed
7 by your nurse."

8 Q. So you agree that at least as far as the
9 discharge and home-going instructions, the
10 instructions only say that the foams and condoms
11 are to be utilized to prevent pregnancy?

12 A. Yes.

13 Q. And that there is nothing on these sheets that
14 indicates that it is to prevent sexually-
15 transmitted diseases?

16 A. Yes.

17 Q. But you have just testified that in addition to
18 what is on here, you also tell patients that they
19 need to utilize it in order to prevent sexually-
20 transmitted diseases?

21 A. Yes.

22 Q. Do you have any independent recall of Jackie
23 Franklin?

24 A. No.

25 Q. Now, in reviewing the medical records, could you

1 tell me the dates that you had any responsibility
2 for giving or overseeing or directing or
3 monitoring any aspect of Jackie Franklin's care.
4 I believe she delivered on January 29 and was
5 discharged on February 1st. If you could just
6 tell me what days that you may have had nurse/
7 patient contact with her or had some contact with
8 an aspect of her care.

9 A. February 1 and January 31.

10 Q. Did you have any contact with her on January 30
11 that you know of, or did you --

12 A. This is the 30th. I don't see my name anywhere.

13 MS. REID: Your signature is not
14 on the 30th?

15 THE WITNESS: Not on there. No, I
16 do not see anything on the 30th.

17 Q. Now, from your review of the record, can you tell
18 me -- you said that you had some contact with her
19 on the 31st, and on the 2nd?

20 A. On the 1st.

21 Q. I am sorry, on the 31st and February 1st. Can
22 you tell me, let's start with the 31st, what your
23 contact was and what your responsibilities were.
24 And then I would also like to know what sheets in
25 the chart that you are looking at to determine

1 that.

2 A. The narrative note.

3 MS. REID: The narrative note on
4 January 31?

5 THE WITNESS: January 31.

6 MS. REID: It is in with the
7 physician progress notes, You are looking at a
8 progress note that is dated 1/31/93 and timed at
9 1340 hours; is that correct?

10 THE WITNESS: Yes.

11 Q. And that is your note?

12 A. Yes.

13 Q. Is that an indication that you were the primary
14 care nurse for that patient on that day?

15 A. Yes.

16 Q. And that you would have been working on the day
17 shift?

18 A. Yes.

19 Q. And what hours would you have been working that
20 day? What was your normal shift time?

21 A. 7:00 to 3:00.

22 Q. Then on February 1st, can you tell me where you
23 are looking to indicate that you also cared for
24 her?

25 A. The teaching checklist and the discharge

1 instructions.

2 Q. The sheet that we just looked at?

3 A. Yes.

4 Q. The discharge/home-going instruction sheet?

5 A. Yes.

6 Q. And on February 1st, you had primary responsi-
7 bility from a nursing perspective for discharging
8 that patient?

9 A. Yes.

10 (Thereupon, Plaintiff's Exhibit 1 was marked
11 for identification.)

12 Q. I am going to hand you what has been marked as
13 Plaintiff's Exhibit 1, consisting of six
14 double-sided pages from the chart, and I will ask
15 if you recognize it to be a portion of the
16 teaching plan for Jackie Franklin that you
17 completed?

18 A. Yes.

19 Q. Now, were these forms standard forms that were
20 used for all the patients who had undergone C.
21 section delivery in the hospital?

22 A. Yes.

23 Q. So these same forms would appear on every
24 patient's chart?

25 A. Yes.

1 Q. And would be filled out by the nurse who would be
2 doing the discharge for that patient?

3 A. Yes.

4 Q. Now, if a patient had a C. section with a tubal
5 ligation, would the same forms be on the
6 patient's chart?

7 A. Yes.

8 Q. They wouldn't put any additional forms on the
9 chart?

10 A. No.

11 Q. They would all be the same?

12 A. Yes.

13 Q. When you would fill these forms out, you are only
14 required to make a notation in the column of the
15 flow sheet, correct, such as a check mark or
16 initial or a date?

17 A. Yes, yes.

18 Q. And if there were any additional comments that
19 you wanted to make, you could record that on the
20 far right-hand side of the page in the "Comment"
21 column, right?

22 A. Yes.

23 Q. So, basically, as far as the documentation in the
24 columns, other than the "Comment" section, it
25 would look precisely the same for a C. section

1 patient as well as for a C. section patient with
2 tubal ligation?

3 A. You are talking two different plans here. The
4 post-operative care, yes. There is --

5 Q. Well, let me ask it a little differently since
6 you seem to be a little confused. Or maybe I
7 just didn't articulate that question very well.

8 As far as the long narrow columns, and I am
9 not talking about the "Comments" section, would
10 your charting for a C. section patient be any-
11 different than a charting for a C. section
12 patient with a tubal ligation?

13 A. No.

14 MS. REID: As to what notations
15 are placed?

16 MS. TOSTI: In the columns.

17 THE WITNESS: Right. I
18 understand.

19 Q. So, for example, on the first page of the
20 document that I gave you, which is titled,
21 "Teaching Checklist," as you look down on
22 the left-hand side of the page and there are a
23 number of items listed there, No. 5 is "Methods
24 of Birth Control." Now you have at the top of
25 the columns put a date in, and you have initialed

1 your initials and then drawn a line down the
2 columns.

3 A. Right.

4 Q. Why don't you tell me what that line is
5 indicating when you do that?

6 A. That we went over everything on the page.

7 Q. Which means you talked to the mother about
8 methods of birth control?

9 A. Yes.

10 Q. And on the second page that is in that exhibit
11 that I handed you marked, "Discharge Teaching:
12 Postpartum Care Needs," the titles on the center
13 portion of columns, "How Much do you Know," you
14 have checked off a number of items as being that
15 the individual knows some things?

16 A. No, I didn't check that.

17 Q. You didn't fill out this portion of it?

18 A. No, I didn't.

19 Q. Well, let's go to the third page, then. Did you
20 fill out this page?

21 A. Yes.

22 Q. And this is the page that is entitled, "Knowledge
23 Deficit Re: Post-operative Care"?

24 A. Yes.

25 Q. And that you did fill out?

1 A. Yes.

2 Q. And the fourth page entitled, "Post-operative
3 Care," did you fill that one out?

4 A. Are we talking about this?

5 Q. Yes.

6 A. No.

7 Q. How do you know that you did not fill that out?
8 I don't see a signature on that page.

9 A. Because up here where it says "Directions," it
10 reads, "Here are a list of topics that you will
11 need to understand before you go home. You may
12 or may not already know about these things.
13 Please mark the amount you know so we may help
14 you to learn how to care for yourself at home,"
15 and there is a signature at the bottom.

16 Q. So this would be one that the patient fills out?

17 A. Yes.

18 Q. Would that be true of the other sheet, the
19 "Postpartum Needs"?

20 A. Yes.

21 Q. The patient fills this out?

22 A. Yes.

23 Q. And then based on what the patient had indicated,
24 would then the nurse design her teaching plan for
25 the patient?

1 A. Yes.

2 Q. Now, when does the patient fill those out, those
3 two forms that we just looked at, the one that
4 says "Post-operative Care. How much do you
5 Know?" and the other one that says, "Discharge
6 Teaching: Postpartum Care Needs"? When does the
7 patient fill those out?

8 A. On discharge.

9 Q. So, for Jackie Franklin, she would have filled
10 those out on February 1?

11 A. Right.

12 Q. Would this be something, if you were the primary
13 care nurse, that you would have handed to her and
14 asked her to fill out?

15 A. Yes.

16 Q. And then she would have handed it back to you?

17 A. Yes.

18 Q. And then you would sit down and talk with her
19 about it?

20 A. Yes.

21 Q. The last two pages of that packet that I gave
22 you, the fifth page being, "Knowledge Deficit Re:
23 Post-operative Care," and the sixth page,
24 "Knowledge Deficit Re: Post-operative Care"
25 that begins with the word, "**Content**," did you

1 fill out those two pages?

2 A Begins with the word -- I am sorry?

3 Q The last two pages.

4 A Because ours are --

5 MS. REID: We have front and back.

6 MS. TOSTI: You don't have a fifth
7 and sixth page?

8 MS. REID: Why don't we do it this
9 way: We have "Knowledge Deficit," it is page
10 three of six, and on the package it is four of
11 six. That is what is confusing.

12 THE WITNESS: I am sorry, what
13 page?

14 Q. The last two pieces of paper, front and back
15 sides in that packet that I handed you, did you
16 fill both of those pages out?

17 A. Where it says, "Symptoms/Signs Lists to Watch
18 for"?

19 Q. Yes.

20 A. Yes, and yes.

21 Q. Now, in any of the forms that you have reviewed,
22 either in the teaching checklist or any place
23 else, can you show me anywhere in this record
24 where you specifically documented a conversation
25 with Jackie Franklin about her tubal ligation?

Diann M. Stephenson, RPR, CM
Morse, Gantverq & Hodge

1 A. No.

2 Q. So there is no documentation where you had a
3 specific conversation about tubal ligation?

4 A. Correct.

5 Q. And you have no recall as to whether you talked
6 to her about that; is that correct?

7 A. Yes.

8 Q. Can you show me anywhere in the record where
9 Jackie Franklin told you that she had a tubal
10 ligation?

11 A. No.

12 Q. So is it possible that the fact that she had a
13 tubal ligation wasn't discussed at the time that
14 she was discharged?

15 MS. REID: Discussed with her?

16 MS..TOSTI: Yes.

17 MS. REID: Between the nurse

18 and --

19 Q. By you.

20 A. By me? Could you repeat the question?

21 Q. Yes. Is it possible that the topic of tubal
22 ligation was never discussed by you with Jackie
23 Franklin prior to her discharge?

24 A. It is possible.

25 Q. Do you know what the drug Depo-Provera is?

1 A. Yes.

2 Q. Would you agree that one of its main uses in
3 postpartum patients is to provide birth control
4 that lasts for several months?

5 A. Yes.

6 Q. And have you personally administered it to your
7 postpartum patients?

8 A. Yes.

9 Q. Have you ever seen it routinely ordered for a
10 patient that has undergone tubal ligation?

11 A. No.

12 Q. And you would agree it would be highly unusual
13 for a patient who has undergone a tubal ligation
14 to receive Depo-Provera?

15 A. Yes.

16 Q. I am going to hand you, as soon as I find it, one
17 of the sheets of the doctor's orders, and I am
18 going to ask you if you can identify what this
19 sheet is.

20 A. Yes.

21 Q. You have to tell the court reporter what it is.

22 A. A physician order sheet.

23 Q. And the date on that sheet?

24 A. There are a couple dates. 1/29/93 at 1917,
25 1/31/93 at 2330, and 2/1/93.

1 (Thereupon, Plaintiff's Exhibit 2 was marked
2 for identification.)

3 Q. We are going to call this Plaintiff's Exhibit 2.
4 Were you the nurse that reviewed these particular
5 orders that are written on February 1 of 1993?

6 A. Yes.

7 Q. How did you determine that you were the nurse
8 that reviewed them?

9 A. Because my signature is on the orders under
10 "Nurse's Signature."

11 Q. That is your signature off to the right-hand
12 side?

13 A. Yes.

14 Q. Now, would you agree that this order should have
15 raised your level of suspicion that an error had
16 been made in regard to the Depo-Provera for this
17 particular patient, Jackie Franklin?

18 MS. REID: Objection. Go ahead.

19 Q. You can answer.

20 MS. REID: You can answer, if you
21 understand it.

22 A. I really don't understand it.

23 Q. At the time that you cared for Jackie Franklin on
24 February 1st, were you aware that she had had a
25 tubal ligation?

1 A. I don't remember.

2 Q. Based on your review of the chart, is it likely
3 that you knew that she had a tubal ligation?

4 A. No.

5 Q. It is not likely?

6 MS. REID: Likely that she knew or
7 that the patient had one?

8 MS. TOSTI: Likely that she knew.

9 A. That I knew? No.

10 Q. What is the basis for you saying that it is
11 likely that you did not know she had a tubal
12 ligation?

13 A. Because I did not document it anywhere that I
14 knew.

15 Q. So at the time that you looked at this
16 Depo-Provera order, is it likely that you were
17 unaware that she had had a tubal ligation?

18 A. That I was unaware, yes.

19 Q. Now, if you had known that she had a tubal
20 ligation, and saw the Depo-Provera order,
21 wouldn't this raise your level of suspicion that
22 the order was incorrect?

23 A. If I remembered and knew that she had a tubal,
24 yes.

25 Q. Based on your review of the record, can you

1 determine whether you questioned this order at
2 all, asked the physicians whether it was correct
3 or incorrect?

4 A. No.

5 Q. Knowing now that Jackie Franklin has had a tubal
6 ligation, wouldn't you agree that this particular
7 order should have been checked by the nurses?

8 A. Knowing now?

9 Q. Yes.

10 A. Yes.

11 Q. Didn't you have a duty to be aware of the fact
12 that the patient that you had primary care
13 responsibility for had undergone tubal ligation?

14 A. Yes.

15 Q. And you would agree that it was a breach in your
16 care to give this patient Depo-Provera without
17 checking that order?

18 MS. REID: Objection. Do you
19 understand what "breach in care" means? I think
20 you are using that --

21 Q. It was below the standard of nursing care to give
22 a patient Depo-Provera who had just had a tubal
23 ligation without checking that order with a
24 physician before giving it. Would you agree that
25 that is below the standard of nursing care?

1 A. Yes.

2 Q. Now, you were the nurse that administered the
3 Depo-Provera; is that correct?

4 A. Yes.

5 Q. Could you tell me what time you gave her the
6 Depo-Provera?

7 MS. REID: What are you looking
8 for?

9 THE WITNESS: The med. sheet.

10 (Thereupon, Plaintiff's Exhibit 3 was marked
11 for identification.)

12 Q. I am handing you Plaintiff's Exhibit 3, which is
13 the medication sheet. And I would just like you
14 to identify it as that if that is, indeed, what
15 you think it is.

16 A. I gave it at 2:30 p.m. --

17 MS. REID: Why don't you answer
18 the question first.

19 THE WITNESS: I am sorry.

20 Q. Identify the --

21 A. It is a medication administration record.

22 Q. And the date that appears at the top under the
23 first entry is January 29 of 1993, correct?

24 A. Yes.

25 Q. Now, you are looking at the bottom portion of the

1 page; is that correct?

2 A. Yes.

3 Q. And that is where you are looking at the entry
4 made for Depo-Provera, and you have determined by
5 looking at that that you gave the medication at
6 **2:30**, correct?

7 A. Ses.

8 Q. Based on your review of the record, do you know
9 what time Jackie Franklin was discharged?

10 A. No, I don't.

11 Q. Is that recorded routinely anywhere in the usual
12 notes?

13 A. No.

14 Q. So no notation is routinely made when a patient
15 leaves the hospital?

16 A. The date -- I am looking for the summary.

17 MS. REID: The discharge summary?

18 THE WITNESS: Yes.

19 A. No. The date is.

20 Q. But the time generally, routinely, isn't
21 recorded?

22 A. Correct.

23 Q. And you are unable to determine, based on
24 anything you have looked at in the record, as to
25 what time she left the hospital after that

1 medication was given?

2 A. Correct.

3 Q. Now, before you gave the Depo-Provera to Jackie
4 Franklin, would it have been your routine to
5 explain to the patient what this drug was for?

6 A. Yes.

7 Q. And what would you usually tell a patient about
8 Depo-Provera before you gave it?

9 A. It is a form of birth control. It is good for
10 three months. You need to come back every three
11 months for a shot. It is effective immediately,
12 and you need to use foam and condoms for
13 sexually-transmitted diseases.

14 Q. Now, if the patient had commented, "I don't need
15 this, I have had a tubal ligation," would that
16 have been something that you would have recorded
17 somewhere in the record?

18 A. Yes.

19 Q. And you would agree that if Jackie Franklin
20 underwent a tubal ligation, there would be no
21 need for long-term contraception such as
22 Depo-Provera for this patient?

23 A. Yes.

24 Q. Would you agree that you would not have given
25 this medication had Jackie told you that she had

1 had a tubal ligation?

2 A. Yes.

3 Q. Now, in your nursing judgment, is it reasonable
4 that a patient who has just undergone tubal
5 ligation would sit quietly by while you explain
6 that you were going to give her an injection for
7 protection from pregnancy for several months?

8 MS. REID: Objection. She doesn't
9 know what the patient is thinking or why a
10 patient would respond or what a patient would-
11 tell her.

12 MS. TOSTI: I am asking in her
13 nursing judgment, based on her experience with
14 patients.

15 Q. (Continuing.) Would it be your experience that a
16 patient who had undergone tubal ligation would
17 sit quietly by and listen to you explain a
18 medication that is supposed to give protection
19 from conception for a long period of time if she
20 had just undergone a tubal ligation?

21 MS. REID: I am going to object,
22 You can answer, if you can answer that.

23 A. That's a hard one to answer. I don't know.

24 Q. Is it reasonable, in your mind, based on your
25 nursing experience, for a patient to accept the

1 discomfort of an injection for long-term birth
2 control protection if she had just undergone a
3 tubal ligation?

4 A. Well, you asked if they would listen to me. Most
5 of them will listen through the whole spiel and
6 then say, you know --

7 Q. My question wasn't whether she would listen. My
8 question was: Wouldn't you expect that she would
9 make a comment after she listened to you?

10 A. After.

11 Q. "I have had a tubal ligation, I don't need this
12 particular medication." Wouldn't you expect
13 that, based on your nursing experience?

14 A. Yes.

15 Q. And, in this instance, because you told me if she
16 would have said that you would have charted it,
17 isn't it likely that she didn't make any comment
18 to you about it?

19 A. Yes.

20 Q. Now, you also gave Jackie Franklin instructions
21 on condoms and foam; is that correct?

22 A. Yes.

23 Q. And you have told me that you instruct all your
24 patients, all your postpartum patients, on the
25 use of condoms and foam?

1 A. Yes.

2 Q. The purpose for that is in order to help prevent
3 sexually-transmitted diseases, correct?

4 A. Yes.

5 (Thereupon, Plaintiff's Exhibit 4 was marked
6 for identification.)

7 Q. I am going to hand you Plaintiff's Exhibit 4 and
8 ask if you can identify that for me.

9 A. "Discharge/home-going instructions" postpartum.

10 Q. Is this a form that you completed?

11 A. Yes.

12 Q. Under the "Medications" area, can you tell me
13 what you have circled in regard to birth control?

14 A. Sure. "Iron."

15 Q. No, in regard to birth control.

16 A. Birth control. I am sorry. "Foam and condoms,"
17 and it looks like I circled "birth control
18 pills."

19 MS. REID: Just one big circle.

20 THE WITNESS: Yes. I am sorry.

21 Q. Go ahead. Would all of your postpartum patients
22 have been circled "foam and condoms"? That is
23 just a routine step that you would take?

24 A. That I would take, yes.

25 Q. You would agree that a woman who has undergone a

1 tubal ligation has no need to take further
2 precautions to prevent unwanted pregnancies,
3 correct?

4 A. Yes.

5 Q. And knowing that you administered the drug
6 Depo-Provera and explained it to the patient on
7 the same day that she was discharged, would you
8 agree that it is not likely that you ever
9 discussed tubal ligation with her?

10 A. Yes.

11 Q. Do you know of any alterations that have been
12 made in any documentation in Jackie Franklin's
13 chart after the time of her discharge?

14 A. No.

15 Q. Do you know of any documentation that may be
16 missing or lost from the chart?

17 A. No.

18 Q. To your knowledge, was Jackie Franklin ever
19 notified by you, or anyone else that you know of,
20 that she had received Depo-Provera in error?

21 A. No.

22 Q. To your knowledge, was an investigation by any
23 hospital entity ever made in this matter?

24 A. No.

25 Q. Do you have any explanation as to how this error

1 of a patient who has had a tubal ligation, then
2 received Depo-Provera, how that occurred?

3 A. No.

4 Q. And you would agree that you had a duty and a
5 responsibility to be aware of the procedures that
6 your patients had in regard to the surgical
7 procedures, as a nurse?

8 A. Yes.

9 Q. And that you had a duty to discuss those
10 procedures with the patient?

11 A. No.

12 MS. REID: When? What procedure
13 are you talking about? That is kind of an
14 ambiguous question.

15 Q. In your discharge teaching plan, I believe that
16 you indicated at one point that there was a
17 discussion had in regard to the type of surgery.

18 MS. REID: Where are you looking?

19 MS. TOSTI: I am looking on the
20 third page.

21 Q. (Continuing,) And therefore you, as a nurse,
22 caring for this patient as the primary nurse, had
23 a duty to insure that this patient had an
24 understanding of the surgical procedures that she
25 had undergone; is that correct?

1 A. Yes.

2 Q. And that based on your review of the record in
3 this instance, it is likely that you did not
4 discuss or review with Jackie Franklin anything
5 about her tubal ligation?

6 A. Correct.

7 Q. Do you know, to your knowledge, was an incident
8 report ever made out on the fact that Jackie
9 Franklin had been given Depo-Provera after tubal
10 ligation?

11 A. No.

12 Q. Are you critical of anyone who rendered care to
13 Jackie Franklin during the time that she was in
14 the hospital?

15 A. No.

16 MS. TOSTI: Okay, I think we are
17 done.

18 - - -

19 (DEPOSITION CONCLUDED.)

20

21

22

23

24

25

DEBRA A. GARGIULO, RN

- - -

CERTIFICATE


State of Ohio,)
) SS:
County of Cuyahoga.)

I, Diane M. Stevenson, a Registered Professional Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named witness, DEBRA A. GARGIULO, RN, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by her was by me reduced to 'stenotypy in the presence of said witness, afterwards transcribed by means of computer-aided transcription, and that the foregoing is a true and correct transcript of the testimony as given by her as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, employee or attorney of any party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 26th day of APRIL, 1995.


Diane M. Stevenson, RPR, CM
Notary Public in and for
The State of Ohio.

My Commission expires October 31, 1995.

Diane M. Stevenson, RPR, CM
Morse, Gantverq & Hodge