



January 13, 2019

Dr. Expert, M.D.
711 W. 108th Street
Overland Park, KS 66210

Re: Our Client: Jane Doe
Date of Malpractice: 6/01/2018

Dear Dr. Expert:

Thank you for reviewing the medical records of Jane Doe and then sharing with me your thoughts concerning the investigation of medical malpractice.

As you may know, Florida has created mandatory pre-suit investigation of all claims of medical malpractice. Part of the Florida law requires the claimant to obtain an affidavit from a "Qualified Expert" pursuant to Florida Statute 766.102 (5) which I quote:

(5) A person may not give expert testimony concerning the prevailing professional standard of care unless the person is a health care provider who holds an active and valid license and conducts a complete review of the pertinent medical records and meets the following criteria:

(a) If the health care provider against whom or on whose behalf the testimony is offered is a specialist, the expert witness must:

1. Specialize in the same specialty as the health care provider against whom or on whose behalf the testimony is offered; and
2. Have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:
 - a. The active clinical practice of, or consulting with respect to, the same specialty;
 - b. Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same specialty; or
 - c. A clinical research program that is affiliated with an accredited health professional school or accredited residency or clinical research program in the same specialty.

(b) If the health care provider against whom or on whose behalf the testimony is offered is a general practitioner, the expert witness must have devoted professional time during the 5 years immediately preceding the date of the occurrence that is the basis for the action to:

1. The active clinical practice or consultation as a general practitioner;
2. The instruction of students in an accredited health professional school or accredited residency program in the general practice of medicine; or

3. A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the general practice of medicine.

(c) If the health care provider against whom or on whose behalf the testimony is offered is a health care provider other than a specialist or a general practitioner, the expert witness must have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:

1. The active clinical practice of, or consulting with respect to, the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered;

2. The instruction of students in an accredited health professional school or accredited residency program in the same or similar health profession in which the health care provider against whom or on whose behalf the testimony is offered; or

3. A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered.

(6) A physician licensed under chapter 458 or chapter 459 who qualifies as an expert witness under subsection (5) and who, by reason of active clinical practice or instruction of students, has knowledge of the applicable standard of care for nurses, nurse practitioners, certified registered nurse anesthetists, certified registered nurse midwives, physician assistants, or other medical support staff may give expert testimony in a medical negligence action with respect to the standard of care of such medical support staff.

(7) Notwithstanding subsection (5), in a medical negligence action against a hospital, a health care facility, or medical facility, a person may give expert testimony on the appropriate standard of care as to administrative and other nonclinical issues if the person has substantial knowledge, by virtue of his or her training and experience, concerning the standard of care among hospitals, health care facilities, or medical facilities of the same type as the hospital, health care facility, or medical facility whose acts or omissions are the subject of the testimony and which are located in the same or similar communities at the time of the alleged act giving rise to the cause of action.

(8) If a health care provider described in subsection (5), subsection (6), or subsection (7) is providing evaluation, treatment, or diagnosis for a condition that is not within his or her specialty, a specialist trained in the evaluation, treatment, or diagnosis for that condition shall be considered a similar health care provider.

...

(11) Any attorney who proffers a person as an expert witness pursuant to this section must certify that such person has not been found guilty of fraud or perjury in any jurisdiction.

(12) If a physician licensed under chapter 458 or chapter 459 or a dentist licensed under chapter 466 is the party against whom, or on whose behalf, expert testimony about the prevailing professional standard of care is offered, the expert

witness must be licensed under chapter 458, chapter 459, or chapter 466 or possess a valid expert witness certificate issued under s. 458.3175, s. 459.0066, or s. 466.005.

As you can see as an expert you must meet certain requirements for us to begin the pre-suit investigation of this matter. I have prepared a very rough draft of an affidavit for your review and editing. In the affidavit I have incorporated much of the above statute, and would request that you remove the parts that are not relevant to your expertise. And I would request that you add into the affidavit your expert opinions regarding the defendant's violations of the standard of care in this matter.

And as always, please call me to discuss your findings and thoughts to allow us to move forward with this matter.

Sincerely,

Matthew D. Powell

MDP/MDP

Enclosures: Proposed Affidavit
§-C-600