

JOSEPH S. HARZINSKI and	:	IN THE COURT OF COMMON PLEAS OF
DARLENE M. STRANGE, individually	:	LYCOMING COUNTY, PENNSYLVANIA
and as Administrators of the Estates of	:	
Joseph L. Harzinski and Stasia Mary	:	
Harzinski,	:	
Plaintiffs	:	
	:	
vs.	:	NO. 98-01,322
	:	
GORDON HASKEL, M.D.,	:	
Defendant	:	MOTION FOR POST-TRIAL RELIEF

DATE: June 28, 2001

OPINION AND ORDER

Before the Court is the Plaintiffs’ Motion for Post-Trial Relief filed January 31, 2001. A jury verdict returned after trial on January 25, 2001 found Defendant Dr. Haskell not negligent.

The Motion for Post-Trial Relief requested a new trial and in support thereof asserted the Court erred in granting the Defendant’s Motion in Limine (filed 1/12/01) prohibiting testimony of Physician’s Assistant Moroschok and Registered Nurse Totin to the effect that upon learning of the deceased’s complaints and symptoms it “immediately occurred to them that a bowel obstruction was possible.” *See* Plaintiff’s Motion for Post-Trial Relief filed January 31, 2001 at paragraph 1.(a). The Post-Trial Relief motion also raised objection to certain points for charge to be more specifically set forth upon transcription of the charge and charge conference. Subsequently, by letter dated April 20, 2001 Plaintiffs’ counsel withdrew argument concerning the Court’s charge.¹

¹ The original of that letter is attached to the original of this Opinion for purposes of filing the same of record.

After reviewing the original briefs filed by the parties relating to the Motion in Limine seeking to prohibit the testimony from the physician's assistant and nurse witnesses concerning their thoughts that a bowel obstruction might be a possibility, and upon review of the post-trial briefs submitted on this issue, the Court finds that its original ruling concerning exclusion of the testimony of these witnesses on this point was correct.

Briefly stated, the Court finds the Supreme Court of Pennsylvania in *Flanagan v. Labe*, 547 Pa. 254, 690 A.2d 183 (1997) has ruled that such testimony from a registered nurse cannot be admitted at the trial of the case because of the language of the professional nursing law prohibiting nurses from making diagnosis. On the same rationale the physician assistant's testimony was excluded as a similar law and regulations (*see* 63 P.S. 422.13 and 49 Pa. Code §18.151) do not permit physician's assistants to make such diagnosis.

In addition, this Court believes that the testimony concerning the suspicions of these individuals cannot be attributed to have been within the knowledge of Defendant Dr. Haskell because their thoughts were not communicated to him. It was not at all clear from the testimony at trial that the symptoms and complaints described by the deceased to these individuals were the same as were described to Dr. Haskell. Furthermore, these thoughts of the witnesses were expressed as being in terms of possibilities or suspicions. They did not amount to the forming of a reasonable conclusion or opinion.

Finally, as noted in Defendant's Post Trial Brief filed March 20, 2001, the issue concerning whether or not the deceased had a bowel obstruction and whether a bowel obstruction was appropriately considered as part of the Defendant Dr. Haskell's diagnosis were appropriately submitted to the jury by evidence introduced by Plaintiffs by other witnesses. The jury found by

its verdict that Doctor Haskell was not negligent. To the extent that decision rested upon whether or not Dr. Haskell included the potential for a bowel obstruction in his diagnosis, it may very well be that the jury considered the acknowledged autopsy finding that no such bowel obstruction existed as persuasive evidence that Dr. Haskell was correct in not making consideration of an obstruction part of his diagnosis.

Accordingly, the following Order will be entered.

ORDER

The Post-Trial Motion of Plaintiffs filed January 31, 2001 is DENIED.

The Prothonotary shall enter judgment on the verdict in favor of the Defendant.

BY THE COURT,

William S. Kieser, Judge

cc: William A. Hebe, Esquire
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Judges
Suzanne Lovecchio, Law Clerk
Jeffrey L. Wallitsch, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)