

water for 10 minutes with the bathroom door closed, then allow the shower to settle for ten minutes with the door closed before a transplant patient could take a shower.

{¶4} Plaintiff alleges that defendant failed to inform him about the shower protocol; that defendant failed to flush the shower for him; and, that he contracted LD as a result of these failures.

{¶5} Plaintiff testified that he was advised about the restrictions regarding plants, bottled water, and ice, but that he was not told about the shower protocol; that on February 7, 2001, as he prepared to take a shower, a nurse was present and she covered his IV and surgical sites with a rubber glove; that she asked him if he needed help with the shower and that he declined; and that plaintiff turned on the water himself and showered without assistance. He further testified that when he was discharged, he did not drink tap water or use the shower before returning to the hospital.

{¶6} Plaintiff's wife, Kay Akers, testified that she remembers being advised that her husband should drink only bottled water, but that she was not advised of any shower protocol. She also added that she and her husband were diligent in following instructions from medical staff.

{¶7} Plaintiff's expert, Ronald Geckler, M.D., chairman of the Infection Control Department at Mercy Medical Center at the University of Maryland, testified that Legionella is present in the water supply in most large cities, including Columbus, Ohio; that he has treated approximately 20 to 50 patients with LD; that the mortality rate from Legionella for people with impaired immune systems can be reduced from 40 percent to five percent with early intervention; that transplant patients are more susceptible to infection; and that Legionella has been found to be present in hospital showerheads. He explained that Legionella can be contracted from exposure to contaminated air and water through either inhalation of airborne bacteria or by aspiration. He also testified that LD has an incubation period of 2 to 10 days after exposure and that the Center for Disease Control (CDC) has recognized that taking a shower is one mode of transmission of LD.

{¶8} Dr. Geckler opined that plaintiff acquired LD while he was hospitalized at defendant's facility; that it was a deviation from the standard of care for defendant to allow

plaintiff to shower without completing the shower protocol; and that plaintiff acquired LD from the shower at defendant's hospital as a proximate result of this deviation. He also criticized defendant for allowing transplant patients to take showers at all.

{¶9} However, Dr. Geckler also testified that it is not a deviation from the standard of care for Legionella to be present in defendant's water supply; that a patient could contract LD in a hospital without any negligence; that surgery is also a potential source of acquiring LD because the risk of infection increases with intubation; and that medical experts are divided as to whether LD can be transmitted via showers. Dr. Geckler conceded that he has never authored an article about LD.

{¶10} Patricia Kulich, a registered nurse (RN) employed by defendant, testified that defendant takes measures to control Legionella, such as "superheating" the water supply to 140 degrees, taking water cultures from the transplant unit every quarter and from all other areas of the hospital every six months, and enforcing the transplant patient protocols. She further testified that the purpose of the shower protocol is to remove any standing water that is in the shower, because Legionella grows in stagnant water.

{¶11} Beth Payne, RN, nurse manager of defendant's transplant unit, testified that nurses are taught the shower protocol during orientation and that the shower flush is performed as a matter of course on the transplant unit. In her opinion, the only way that plaintiff would have been allowed to shower without having it flushed would be if he did not tell the nurse that he was going to take a shower. Payne also testified that it would be a deviation from the standard of care for hospital staff to allow a transplant patient to take a shower without flushing it first. According to Payne, the notation in plaintiff's medical records for February 11, 2001, "bath/grooming per patient," means that plaintiff could have washed himself that day.

{¶12} Jan Pfeuffer, RN, has been a nurse in defendant's transplant unit for over five years. She testified that plaintiff's medical records document that plaintiff took a shower while on the transplant unit on February 11, 2001, and that the central venous catheter (CVC) dressing was changed after showering, but that it was not clear from the

records whether anyone assisted plaintiff with his shower. She also testified that although flushing the showers was standard practice on the transplant unit, it was not charted.

{¶13} Diana Lemley, RN, worked in defendant's abdominal transplant unit in February 2001 and rendered care to plaintiff. She testified that she performed plaintiff's initial assessment upon admission and that his records show that she explained the transplant patient policies to plaintiff. She further testified that Deb Owens was the nurse on duty when plaintiff showered on February 11, 2001, and that Owens had changed plaintiff's dressing after the shower. Lemley admitted that there is nothing on the checklist in the records that specifically addresses the shower policy, but she stated that she would normally discuss it when she discussed the other infection prevention policies.

{¶14} In order to prevail on a claim of medical malpractice or professional negligence, plaintiff must first prove: 1) the standard of care recognized by the medical community; 2) the failure of defendant to meet the requisite standard of care; and 3) a direct causal connection between the medically negligent act and the injury sustained. *Wheeler v. Wise* (1999), 133 Ohio App.3d 564; *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. The appropriate standard of care must be proven by expert testimony. *Bruni* at 130. That expert testimony must explain what a medical professional of ordinary skill, care, and diligence in the same medical specialty would do in similar circumstances. *Id.*

{¶15} "In a negligence action involving the professional skill and judgment of a nurse, expert testimony must be presented to establish the prevailing standard of care, a breach of that standard, and, that the nurse's negligence, if any, was the proximate cause of the patient's injury." *Ramage v. Cent. Ohio Emergency Serv., Inc.*, 64 Ohio St.3d 97, 1992-Ohio-109, paragraph one of the syllabus.

{¶16} Victor Yu, M.D., testified that he was board certified in internal medicine and infectious diseases, and that he had authored over 100 articles regarding Legionella. He stated that drinking water is a major source of infection. He opined that although studies have linked showering to Legionella, showering is not a statistically significant mode of transmission. He further stated that recent studies have shown that showering is not a link at all, but that aspiration is the link, most likely from being intubated during

surgery. He also testified that most major transplant hospitals, including Duke, Harvard, and the Cleveland Clinic allow their transplant patients to take showers.

{¶17} Dr. Yu opined that defendant did not deviate from the standard of care when it allowed plaintiff to take a shower. Moreover, he opined that based on the most current medical literature, flushing the shower is not necessary because Legionella cannot be transmitted by way of a shower.

{¶18} The court notes that bathing was charted on plaintiff's medical records for February 8, 9, 11, and 12; that "bed" baths were charted for February 8, 9 and 12; and that on February 11, plaintiff bathed on his own, either by showering or taking a bed bath. Bathing was not charted on February 7. Assuming that plaintiff took a shower on February 11, plaintiff has failed to prove by a preponderance of the evidence that defendant did not perform the shower protocol. From the testimony given by the nursing personnel that the flush was standard procedure, that it was not charted, and that a nurse changed plaintiff's CVC dressing after the shower, the court is persuaded that the shower flush was performed.

{¶19} Furthermore, the court finds that even if the shower flush were not performed, plaintiff has failed to prove that showering was the proximate cause of his LD. Although Dr. Geckler opined that plaintiff contracted LD from the shower, he also stated that plaintiff could have contracted it from being intubated, and that he also could have contracted it without any negligence on defendant's part. "In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess *** as to any essential issue in the case, he fails to sustain the burden as to such issue." *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, at paragraph six of the syllabus.

{¶20} Based on his extensive experience in treating LD and his many publications regarding Legionella, the court finds the testimony of defendant's expert, Dr. Yu, to be more credible than that of Dr. Geckler. Even Dr. Geckler acknowledged that Dr. Yu was a leading expert in the country regarding LD.

{¶21} For the foregoing reasons, the court finds that plaintiff has failed to prove by a preponderance of the evidence that defendant breached any standard of care owed to him and accordingly, judgment shall be rendered in favor of defendant.

{¶22} This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

FRED J. SHOEMAKER
Judge

Entry cc:

John K. Fitch
580 South High Street, Suite 300
Columbus, Ohio 43215

Attorney for Plaintiff

Timothy T. Tullis
Traci A. McGuire
Special Counsel to Attorney General
65 East State Street, Suite 1800
Columbus, Ohio 43215

Attorneys for Defendant

HTS/cmd
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