

## **Dagner v. Anderson**

*By Dara Endres*

The Supreme Court of Virginia recently held that a doctor's familiarity with Alcohol Withdrawal Syndrome (AWS) in the context of treating patients in an emergency room setting is not a sufficient basis to qualify him as an expert on the issue of whether a patient suffered an AWS seizure, leading to brain injury and death.

In the underlying medical malpractice action against Dr. Anderson, the plaintiff, a diabetic, was admitted to the emergency room, intoxicated and hypoglycemic. After being discharged from the hospital, the plaintiff was later found hypoglycemic, comatose, and unresponsive, and died shortly thereafter. Dr. Anderson's defense included references to AWS seizures as the cause of the patient's coma, brain injury, and death.

Dr. Shank was Dr. Anderson's expert medical witness and testified that he was board certified in emergency medicine, and that while he did not have a neurologist's perspective on seizures, he felt that he had a reasonable physician's opinion from seeing seizures in emergency medicine.

Dr. Shank was successfully qualified as an expert on the standard of care owed by an emergency room physician providing treatment to a patient suffering from diabetes-related hypoglycemia. An attempt to qualify Dr. Shank as an expert on causation of brain injury by seizures, and capable of offering an opinion that the patient had suffered an AWS seizure was opposed.

The patient's estate contended that Dr. Shank was not qualified to offer an opinion on whether the brain injury and death were caused by AWS because he lacked the necessary background and training. Dr. Anderson responded that Dr. Shank was qualified to give an opinion on this issue because he treats between five and fifteen patients each year who suffer from AWS seizures.

Generally, an expert witness need only have a degree of knowledge of a subject beyond that of persons of common intelligence, so the witness' opinion will assist the trier of fact in weighing the evidence. The court concluded that improper admission of Dr. Shank's expert testimony that the patient had suffered an AWS seizure could have influenced the jury's determination that Dr. Anderson was not negligent, thus the judgment of the Circuit Court of Prince Edward County, Virginia was reversed and the case was remanded for a new trial.

### **Source:**

Dagner v. Anderson, 651 S.E.2d 640 (Va. 2007) *available at* <http://www.courts.state.va.us/opinions/opnscvwp/1062134.pdf>.