



BSPH congratulates Paul W. McCartney and Christopher F. Mars on their Fifth District Court of Appeals decision affirming the dismissal of Plaintiff's Complaint for failure to file an affidavit of merit compliant with Civil Rule 10(D)(2). Plaintiff alleged that the Defendant nursing home was negligent in administering an antibiotic to the decedent resident for a urinary tract infection which caused the decedent to suffer an allergic reaction and subsequent death. Plaintiff further alleged that the Defendant nursing home was negligent in failing to timely recognize and treat the decedent's allergic reac-

nurse is not competent to render an opinion on the issue of proximate cause. The trial court agreed a nurse is not competent to render an opinion on causation. Thus, the nurse's affidavit of merit was inadequate pursuant to Civ.R. 10(D)(2). Plaintiff appealed to the Fifth District Court of Appeals. Plaintiff argued that the affidavit of merit of the nurse was adequate because she is a nurse practitioner and because the causation of the decedent's injuries and death was within the common knowledge of a lay person. In affirming, the Fifth District rejected both of these arguments. Priscilla Smith, etc. v. The Laurels of Canton, et al., 5th Dist. Stark No. 2017CA217, 2018-Ohio-2369.



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