

Needham v. Dreyer, 461 P.3d 1201 (Wash. 2020)

Topics Covered: Professional Liability

Outcome: Somewhat Unfavorable

Issue

The issue in this case was whether a trial court abused its discretion when it allowed testimony that the plaintiff's consumption of three shots of alcohol may have led to his passing out in the snow.

AMA Interest

The AMA opposes lawsuit abuse against physicians and will work with state medical societies to curb such abuse.

Case Summary

Dr. Sheryl Dreyer, a physician at Everett Clinic, had treated her patient, James Needham, since 2011. Since his first appointment, Dr. Dreyer informed Needham that he was at risk for pneumocystis pneumonia ("PCP") due to his low T cell count. In 2012, Needham was admitted to the emergency room twice—once for pneumonia and once for a *C. difficile* infection. After these emergency room visits, Needham saw Dr. Dreyer at the clinic several times over the next year for follow-up treatment. At his last visit, Needham complained of shortness of breath, which was noted in the medical record. Also, his pulse oximeter reading showed 93%, which fell below the normal reading of 95% to 100%.

A few hours after Needham left the clinic, another clinic doctor received a page from the medical laboratory stating that Needham's test results indicated a potentially serious infection. The doctor attempted to call Needham three times that day and left a voicemail, which was not returned. Clinic staff made several additional, but unsuccessful attempts to contact him. Four days after the clinic visit, Needham's friends found him unconscious outside of a cabin in rural Washington. He was transported to a nearby hospital and treated for pneumonia, pleural effusion, and frostbite. His emergency room blood tests showed barbiturate and opioid use but did not show alcohol. Needham's legs were amputated as a result of the frostbite.

Needham sued Dr. Dreyer and Everett Clinic for medical negligence. He claimed that the defendants should have known about and treated him for his infection, which led to his pneumonia. At trial, Needham testified that the day before he was found he had ingested about "three shots of alcohol" and the last thing he remembered was leaving the cabin to try to grab his friend's cat.

The defendants then presented expert evidence that Needham's alcohol consumption, while

under the influence of barbiturates and opioids, might have contributed to his collapse outside his friend's cabin. This opinion was not prefaced by an explanation that it was presented "to a reasonable degree of medical certainty" or a similar expression of testimonial foundation. The jury returned a verdict in favor of Dr. Dreyer and the clinic, and judgment was entered in their favor.

Needham appealed the decision to the Washington Court of Appeals, the intermediate appellate court. The Court of Appeals reversed the defense judgment and remanded for a new trial. It found that the trial court had abused its discretion by allowing expert testimony that the alcohol consumption may have contributed to Needham's collapse without prefacing the testimony with a foundational statement that the conclusion was founded on a reasonable degree of medical certainty.

Dr. Dreyer then sought an appeal to the Washington Supreme Court, but the Supreme Court declined to hear the case.

AMA Involvement

The Litigation Center, along with the Washington State Medical Association, filed an *amicus* brief, which urged the Washington Supreme Court to hear the appeal.

Washington Supreme Court Brief