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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **JEAN BOYLE,**

3 Plaintiff-Appellant,

4 v.

5 **B-WELL, LLC, and**
6 **SHEILA BARDWELL,**

7 Defendants-Appellees.

8 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

9 **James Martin, District Court Judge**

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Court of Appeals of New Mexico
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Mark Reynolds

No. A-1-CA-41934

1 **MEMORANDUM OPINION**

2 **DUFFY, Judge.**

3 {1} The district court dismissed Plaintiff Jean Boyle’s complaint for medical
4 negligence against Defendants B-Well, LLC and Sheila Bardwell on summary
5 judgment after striking Plaintiff’s expert on the standard of care. On appeal, Plaintiff
6 challenges both rulings. We affirm.

7 **BACKGROUND**

8 {2} Plaintiff alleged that she suffered an infection and was hospitalized in the days
9 after she underwent a facial procedure known as a PDO thread lift. Defendant
10 Bardwell, who is a nurse practitioner, performed the procedure at B-Well Clinic.
11 Plaintiff filed a complaint for medical negligence in which she claimed that
12 Defendant Bardwell “fail[ed] to perform the required sanitary procedures, fail[ed] to
13 examine properly and diagnose her medical condition, . . . provide, recommend and
14 refer Plaintiff for appropriate diagnostic study, care, consultation, and treatment;
15 fail[ed] to properly recommend the appropriate follow-up with the patient, and
16 [failed] to monitor Plaintiff’s progress.” Plaintiff identified Gaylene Chartier, a
17 registered nurse, as her standard of care expert. Plaintiff’s expert disclosure stated
18 Ms. Chartier would offer the following opinions at trial:

- 19 1. A PDO [t]hread lift is a sterile procedure and care should be
20 taken to provide a sterile environment. There is no
21 documentation to support this standard was met.

1 2. According to [Plaintiff], Sheila Bardwell did not change gloves
2 after handing her a Tylenol, leaving the room for a cup of water
3 or taking before and after pictures with her cell phone.

4 3. No prep to the area is documented in the nurses' notes.

5 4. Sheila Bardwell did not perform an assessment when [Plaintiff]
6 returned to B-Well with complaints of pain and swelling (more
7 so on the left than the right).¹

8 5. According to pubmed.ncbi.nlm.nih.gov site, PDO [t]hread can
9 cause severe infections.

10 6. According to [Plaintiff], she did not receive a text message from
11 Sheila Bardwell with post care instructions.

12 7. An assessment should have been completed with labs to rule out
13 infection before administering a steroid injection. According to
14 [Plaintiff], she returned to B-Well Clinic on [November 4, 2021,]
15 and was treated with a pain and steroid injection from Sheila
16 Bardwell. [Plaintiff] returned to B-Well Clinic the following day,
17 [November 5, 2021,] with increased pain and swelling and was
18 given the same treatment from Sheila Bardwell. According to
19 Sheila Bardwell, she did not perform a physical or lab
20 assessment, stating [Plaintiff] did not have an infection. There is
21 no documentation to support that another employee treated
22 [Plaintiff] as stated by Sheila Bardwell.

23 An infection begins when a microorganism enters the body and
24 incubation occurs immediately after exposure. Symptoms can
25 appear within 24 hours of exposure.

26 {3} Defendants filed a "motion to preclude" Ms. Chartier from offering expert
27 opinion testimony at trial, including testimony about the standard of care or

¹During her deposition, Ms. Chartier revised this opinion to recognize that the B-Well Clinic chart for November 4, 2021, included a note of "assessment performed" regarding Plaintiff's visit.

1 causation. Defendants argued Ms. Chartier, a registered nurse, was not qualified to
2 offer testimony regarding the standard of care applicable to Defendant Bardwell, a
3 nurse practitioner. Defendants further argued that Ms. Chartier lacked direct
4 experience with the PDO thread lift procedure and had not worked in an aesthetic
5 medicine setting like B-Well Clinic.

6 {4} Plaintiff responded that Ms. Chartier’s opinions concern Defendant
7 Bardwell’s failures to adhere to basic nursing standards of care, not standards
8 exclusive to nurse practitioners. Moreover, Plaintiff argued that Ms. Chartier is
9 qualified to offer expert testimony based on her experience, which included twenty
10 years in the field and experience working with plastic surgeons who performed the
11 PDO thread lift procedure. Finally, Plaintiff claimed that any perceived deficiencies
12 in Ms. Chartier’s qualifications should go toward the weight of her testimony, not
13 its admissibility, and are best remedied by cross-examination. At the hearing on the
14 motion, Plaintiff’s counsel narrowed the scope of Ms. Chartier’s proposed
15 testimony, stating “the only thing that Nurse Chartier [would] testify[] to is that there
16 was no documentation of a sterile environment,” which in and of itself falls below
17 the standard of care for a basic nurse.

18 {5} The district court granted Defendant’s motion to preclude, explaining that
19 “Nurse Chartier is not a nurse practitioner” and “[t]he issues the jury will be required
20 to decide require the expert testimony of a nurse practitioner because this involves a

1 differential diagnosis and treatment of a patient.” The district court’s order stated,
2 “Ms. Chartier, a registered nurse, is not qualified to opine on the standard of care
3 applicable to Nurse Practitioner Sheila Bardwell under the facts and circumstances
4 of this case.”

5 {6} Shortly after the hearing, Defendants filed a motion for summary judgment,
6 arguing that Plaintiff did not have a qualified expert to establish the standard of care
7 for her medical negligence claim. The district court granted Defendants’ motion for
8 summary judgment, and this appeal timely followed.

9 **DISCUSSION**

10 {7} Plaintiff challenges the district court’s ruling on the motion to preclude Ms.
11 Chartier, arguing that (1) Ms. Chartier is qualified to testify as an expert because the
12 issues in the case “are within the realm of the general medical knowledge possessed
13 by a registered nurse,” (2) Ms. Chartier has extensive training and experience, and
14 (3) any perceived deficiencies in Ms. Chartier’s qualifications should go toward the
15 weight of her testimony and not its admissibility.

16 {8} “The admissibility of expert testimony in New Mexico is guided by Rule 11-
17 702 NMRA, which sets out three requirements: (1) that the expert be qualified; (2)
18 that the testimony be of assistance to the trier of fact; and (3) that the expert’s
19 testimony be about scientific, technical, or other specialized knowledge with a
20 reliable basis.” *Acosta v. Shell W. Expl. & Prod., Inc.*, 2016-NMSC-012, ¶ 22, 370

1 P.3d 761 (internal quotation marks and citation omitted). To satisfy the first
2 requirement, a witness must be qualified as an expert in the field for which their
3 testimony is offered by means of “knowledge, skill, experience, training, or
4 education.” *See* Rule 11-702; *State v. Torres*, 1999-NMSC-010, ¶ 45, 127 N.M. 20,
5 976 P.2d 20. “In determining whether an expert witness is competent or qualified to
6 testify, the district court has wide discretion, and the court’s determination of this
7 question will not be disturbed on appeal, unless there has been an abuse of this
8 discretion.” *Holzem v. Presbyterian Healthcare Servs.*, 2013-NMCA-100, ¶ 14, 311
9 P.3d 1198 (alternations, omission, internal quotation marks, and citation omitted);
10 *see Lopez v. Reddy*, 2005-NMCA-054, ¶ 14, 137 N.M. 554, 113 P.3d 377 (“The
11 ruling [on a witness’s qualifications] will not be disturbed, unless it is manifestly
12 wrong or the trial court has applied wrong legal standards in the determination.”
13 (alterations, omission, internal quotation marks, and citation omitted)).

14 {9} Expert testimony as to the standard of care is required in medical negligence
15 cases “if the alleged negligence is in an area peculiarly within the knowledge of
16 physicians.” *Sewell v. Wilson*, 1982-NMCA-017, ¶ 23, 97 N.M. 523, 641 P.2d 1070,
17 *superseded by rule on other grounds as stated in Rodriguez v. Sanchez*, 2019-
18 NMCA-065, ¶ 14, 451 P.3d 105 (noting that *Sewell* predates the 1990 amendment
19 to Rule 1-041(E) NMRA). “Where expert testimony is required, the mere fact that a
20 medical witness is not a specialist goes to the weight, not to admissibility, of the

1 witness' expert testimony." *Sewell*, 1982-NMCA-017, ¶ 23. "Nevertheless, to give
2 scientific or specialized opinion testimony, an expert witness must be qualified to do
3 so by knowledge, skill, training or education." *Id.* "Thus, a nonspecialist can testify
4 as to the standards of care owed by a defendant specialist, *but only if* the non-
5 specialist is qualified and competent to do so." *Id.* (emphasis added).

6 **I. Ms. Chartier's Proposed Opinion Testimony Exceeds the "Realm of the**
7 **General Medical Knowledge Possessed by a Registered Nurse"**

8 {10} We turn first to Plaintiff's contention that "[t]he issues involved are within the
9 realm of the general medical knowledge possessed by a registered nurse." The
10 issues, as identified by Plaintiff, involve Defendants' post-operative care, including
11 Defendant Bardwell's post-procedural differential diagnosis and treatment. These
12 issues require, at minimum, the expert testimony of a nurse practitioner.

13 {11} Plaintiff states in her briefing that "[her] medical negligence claims . . . are
14 based on her position that upon her return to the clinic on November 4, 2021, she
15 was exhibiting what Mrs. Bardwell should have recognized as signs of infection, but
16 that Mrs. Bardwell failed to both recognize those signs and offer appropriate
17 treatment." The negligent conduct identified by Plaintiff is diagnostic and
18 prescriptive—conduct Ms. Chartier herself acknowledged is outside the scope of
19 practice of a registered nurse:

20 Q. [A]s a nurse, you would not be the one to order further workup
21 for that patient; correct?

1 A. I would not, no.

2 Q. And you would not be the one to evaluate the symptoms to reach
3 a diagnosis for that patient; correct?

4 A. Correct.

5 Q. And you would not be the one to determine the suitability of any
6 further treatment for that patient; correct?

7 A. Correct. I would, however . . . [, w]hen she came back on the
8 second day, I would have let the physician know.

9 This distinction in the scope of practice is codified by statute: “[c]ertified nurse
10 practitioners may . . . perform an advanced practice that is beyond the scope of
11 practice of professional registered nursing [and] practice independently and make
12 decisions regarding health care needs of the individual.” NMSA 1978, § 61-3-
13 23.2(B)-(D) (2014, amended 2025). Ms. Chartier’s qualifications as a registered
14 nurse do not qualify her to offer expert testimony as to Defendant Bardwell’s failure
15 to diagnose Plaintiff’s post-procedure infection or Defendant Bardwell’s post-
16 procedure treatment and care, including her decision to treat Plaintiff’s concerns
17 with pain medication and steroid injection.

18 {12} Plaintiff attempts to avoid these limitations by characterizing Ms. Chartier’s
19 proposed testimony as opinions about Defendant Bardwell’s failure to adhere to
20 basic nursing principles, such as documenting whether Defendants provided a sterile
21 environment during the procedure. But even if Ms. Chartier’s opinions concerning
22 whether Defendant Bardwell changed gloves or failed to document whether the

1 procedure was performed in a sterile environment could be said to relate to general
2 nursing principles, they appear only to concern conduct related to the performance
3 of the procedure itself—something Plaintiff expressly disclaimed as a basis of
4 liability in this case. Plaintiff made clear at the hearing on Defendants’ motion that
5 “there is nothing about the procedure itself that we’re alleging was done wrong,”
6 and in her briefing on appeal, Plaintiff states, “There is nothing about Plaintiff’s case
7 that hinges upon how the PDO thread-lift was performed; rather *liability rests upon*
8 *the post-procedure infection and why Defendant Bardwell should have identified it.*”
9 Given this, the matters upon which Ms. Chartier was arguably qualified to testify—
10 Defendants’ failure to document whether the environment was sterile before
11 performing the procedure and whether Defendant Bardwell changed gloves during
12 the procedure—do not appear to be relevant to Plaintiff’s theory of liability, much
13 less sufficient to establish a standard of care for the alleged post-procedure
14 negligence. *See Sewell*, 1982-NMCA-017, ¶ 23.

15 **II. Ms. Chartier’s Experience Does Not Qualify Her to Offer Expert**
16 **Opinions in This Case**

17 {13} We also understand Plaintiff to contend that Ms. Chartier was qualified based
18 on her experience. Plaintiff claims that Ms. Chartier’s work as an operating room
19 nurse and work with plastic surgeons who have performed a PDO thread lift
20 procedure “makes her familiar with the process or the procedure that should be used
21 when they’re doing the PDO thread-lift.” Plaintiff also claims Ms. Chartier, as a

1 clinical nurse educator and member of the Association of periOperative Registered
2 Nurses, understands the importance of maintaining a sterile environment in
3 procedures like a PDO thread lift. Finally, Plaintiff maintains that Ms. Chartier “is
4 qualified to perform PDO thread-lifts by virtue of her license”—*if* she completes a
5 two-day course.

6 {14} As an initial matter, Plaintiff has not explained how these qualifications relate
7 to post-procedure diagnosis and treatment of a patient’s condition following a PDO
8 thread lift procedure and, as explained above, that is the conduct at issue in this case.
9 *See Lopez, 2005-NMCA-054, ¶ 16* (“The qualifications of an expert are dependent
10 on the type of negligence claimed and the medical complexity involved.”). Putting
11 that point aside, we cannot agree that Ms. Chartier was qualified based on her
12 experience. Ms. Chartier’s deposition makes clear that she has never performed a
13 PDO thread lift procedure or even been present for the performance of a PDO thread
14 lift procedure; she is merely “familiar with what it is” and “why you would have it.”
15 And while Ms. Chartier could perform the procedure if she takes a two-day course,
16 there is nothing in the record indicating that she has done so.

17 {15} For all of these reasons, the district court did not err in concluding that Ms.
18 Chartier is not qualified to opine on the standard of care under the facts and
19 circumstances of this case, and in striking Ms. Chartier as an expert witness on that
20 basis.

1 **III. Issues Concerning Ms. Chartier’s Qualifications Cannot Be Resolved in**
2 **Favor of Admission**

3 {16} We briefly address Plaintiff’s final argument that any perceived deficiencies
4 in Ms. Chartier’s qualifications should go toward the weight of her testimony and
5 not its admissibility. In support, Plaintiff cites to the proposition in *Sewell* that
6 “[w]here expert testimony is required, the mere fact that a medical witness is not a
7 specialist goes to the weight, not to admissibility, of the witness’ expert testimony.”
8 1982-NMCA-017, ¶ 23. But this proposition applies “*only if the non-specialist is*
9 *qualified and competent to do so.*” *Lopez*, 2005-NMCA-054, ¶ 19 (internal quotation
10 marks and citation omitted). Consequently, the fact that Ms. Chartier is not qualified
11 is dispositive on this point. *See id.*

12 {17} Finally, because the district’s court’s summary judgment decision rested upon
13 its decision to strike Plaintiff’s expert, and we have affirmed that decision, we also
14 affirm the district court’s grant of summary judgment on that basis.

15 **CONCLUSION**

16 {18} We affirm.

17 {19} **IT IS SO ORDERED.**

18 
19 MEGAN P. DUFFY, Judge

1 **WE CONCUR:**

2 *Jacqueline R. Medina*
3 _____
4 **JACQUELINE R. MEDINA, Chief Judge**

4 *Jane B. Yohalem*
5 _____
6 **JANE B. YOHALEM, Judge**