



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**ANTOINETTE WINDHURST v ADOC et al  
CV-21-0288-PR**

**PARTIES:**

*Petitioners:* Arizona Department of Corrections, Charles Ryan (in his individual capacity as Director of Arizona Department of Corrections), State of Arizona, and Corizon Health, Inc.

*Respondent:* Antoinette Windhurst

*Amicus Curiae:* Banner Health, Dignity Health, HonorHealth, Mutual Insurance Company of Arizona, Phoenix Children’s Hospital, and Arizona Association for Justice/Arizona Trial Lawyers Association

**FACTS:**

In December 2015, David Windhurst (“David”) was incarcerated in the Florence state prison while suffering from numerous chronic medical conditions. David was housed in the prison’s infirmary where his health care was provided by the Arizona Department of Corrections through its contractor, Corizon Health, Inc.

In February 2016, David was transferred to a hospital in a state of septic shock and remained there for over a month. Upon his release from the hospital, David was transferred to the Arizona State Prison Complex in Tucson, where he was housed in the infirmary under Corizon’s care. David was again admitted to the hospital in November 2016 with septic shock. On December 25, 2016, he died in the hospital of infectious complications of diabetes mellitus.

David’s widow, Antoinette Windhurst (“Windhurst”), filed suit against Corizon, the Arizona Department of Corrections and its director Charles Ryan, and the State of Arizona, alleging claims for wrongful death/medical malpractice, violation of the Adult Protective Service Act (“APSA”) (A.R.S. §§ 46-451 to 46-461), and punitive damages. Windhurst did not name any individual Corizon health care providers as defendants. Instead, she alleged that Defendants are vicariously liable for the purported negligence of their employed health care providers. Windhurst further alleged that Defendants breached institutional standards of care and were independently liable for “systematic repetitive negligent care” in treating her husband.

In support of her claims, Windhurst produced testimony from three expert witnesses to establish the standards of care for the physicians, nurse practitioners, and registered nurses who treated David, as well as the standard of care applicable to Corizon as an institution.

Defendants moved for summary judgment, arguing that no evidence existed to demonstrate that Defendants violated the standard of care or caused David's death. The superior court granted summary judgment in favor of Defendants on Windhurst's medical negligence and negligence per se claims, leaving her APSA claim intact. The superior court found that Windhurst failed to make a prima facie showing on the statutory elements for medical malpractice.

The Court of Appeals vacated the superior court's grant of summary judgment, finding that a jury could reasonably infer that Corizon and its health care providers fell below the applicable standards of care, thereby increasing the risk of David's death. The court recognized that A.R.S. § 12-2604(A) sets forth expert witness requirements for establishing the appropriate standard of care in a medical malpractice action. The court also recognized that while a health care institution is subject to a standard of care independent from the medical professionals it employs, § 12-2604(A) "make little sense when applied to an institution itself." Therefore, the court concluded that the only requirement § 12-2604(A) imposes on experts who testify about an institutional standard of care is that the expert be "licensed as a health professional in this state or another state." However, the expert must still satisfy Rule 702 of the Arizona Rules of Evidence, which requires that the expert have "specialized knowledge [that] will help the trier of fact to understand the evidence or to determine a fact in issue."

The Court of Appeals also found that causation experts in a medical malpractice case need only meet the requirements of Rule 702. The court determined that Windhurst's experts sufficiently established causation and that a registered nurse was qualified to give an opinion as to cause of death. The court did not address *Sampson v. Surgery Center of Peoria, LLC*, 251 Ariz. 308 (2021), in which the Arizona Supreme Court set forth the standard for establishing causation in a medical malpractice case.

## **ISSUES:**

As presented by Windhurst:

1. Did the Court of Appeals err as a matter of law in declaring that, in this case alleging medical negligence against Corizon Health, Inc., the Plaintiff could avoid the expert medical testimony required by A.R.S. § 12-2604 by alleging that "classes" of providers were negligent, thus implicating negligence against the institution?
2. This Court recently held in *Sampson v. Surgery Center of Peoria, LLC*, 251 Ariz. 308, 491 P.2d 1115 (2021) that a jury in a wrongful death medical negligence case "may not be left to infer causation" without expert guidance where the cause of death is disputed and not obvious. Did the court of appeals err in reversing summary judgment for Corizon on the ground that the jury could "infer" causation in this case, when the cause of death is highly disputed and medically complicated?
3. While a certified wound nurse may link negligent nursing care to wound development, *Rasor v. Northwest Hospital LLC*, 244 Ariz. 423 (App. 2018), did the court of appeals err in holding that a nurse may opine on cause of death?

**STATUTE:**

A.R.S. § 12-2604 states in pertinent part as follows:

A. In an action alleging medical malpractice, a person shall not give expert testimony on the appropriate standard of practice or care unless the person is licensed as a health professional in this state or another state and the person meets the following criteria:

1. If the party against whom or on whose behalf the testimony is offered is or claims to be a specialist, specializes at the time of the occurrence that is the basis for the action in the same specialty or claimed specialty as the party against whom or on whose behalf the testimony is offered. If the party against whom or on whose behalf the testimony is offered is or claims to be a specialist who is board certified, the expert witness shall be a specialist who is board certified in that specialty or claimed specialty.

2. During the year immediately preceding the occurrence giving rise to the lawsuit, devoted a majority of the person's professional time to either or both of the following:

(a) The active clinical practice of the same health profession as the defendant and, if the defendant is or claims to be a specialist, in the same specialty or claimed specialty.

(b) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession as the defendant and, if the defendant is or claims to be a specialist, in an accredited health professional school or accredited residency or clinical research program in the same specialty or claimed specialty.

3. If the defendant is a general practitioner, the witness has devoted a majority of the witness's professional time in the year preceding the occurrence giving rise to the lawsuit to either or both of the following:

(a) Active clinical practice as a general practitioner.

(b) Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession as the defendant.

B. If the defendant is a health care institution that employs a health professional against whom or on whose behalf the testimony is offered, the provisions of subsection A apply as if the health professional were the party or defendant against whom or on whose behalf the testimony is offered.

***This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.***