



# Reyes v. Yakima Health District, 2018 Wash. LEXIS 423 (Wash. 2018)

Topics Covered: Abusive Litigation Against Physicians

## Outcome: Very Favorable

### Issue

The issue in this case was whether a plaintiff in a medical malpractice action proffered sufficient expert testimony to establish both the applicable physician standard of care and a violation of that standard.

### AMA interest

The AMA opposes abusive litigation against physicians.

### Case summary

Several physicians, some of whom were connected with Yakima Health District (YHD), diagnosed Jose Reyes (Jose) as suffering from tuberculosis. This was based on their personal observations as well as multiple laboratory tests. The Washington State Public Health Laboratory performed some of these tests. YHD sought to monitor Jose's liver function, but Jose failed to appear for these tests.

YHD and his physicians prescribed medications for what they believed to be Jose's tuberculosis. Jose took these medications. After ingesting the prescribed drugs, he complained of nausea, vomiting, dizziness, lack of energy, and loss of appetite. His skin changed to a reddish-yellow shade.

Jose wanted to discontinue the tuberculosis medications because of the side effects. YHD, however, insisted that he continue taking them and threatened to incarcerate him if he stopped. He continued taking the medication, and his condition worsened.

Shortly thereafter, YHD discovered "serious deviations in [Jose's] laboratory results." The discovery, whatever it was, came too late, and Jose died of liver failure.

After Jose's death, one of the YHD physicians, Christopher Spitters, MD met with Jose's widow, Judith Reyes (Judith). Dr. Spitters told Judith that YHD should have stopped prescribing the anti-tuberculosis drugs. He also said that YHD should have tested Jose's liver periodically, and YHD "accepted responsibility." Further, he said, the prescribed medication had damaged Jose's liver and kidneys.

Judith sued YHD and Dr. Spitters for medical malpractice (among other causes of action). She claimed that Jose had not suffered from tuberculosis. YHD and Dr. Spitters moved for summary judgment, asserting, inter alia, that Judith had no evidence of medical malpractice.

In response, Judith tendered a declaration from Rosa Martinez, MD, an internist from the State of Washington who specialized in treating complex medical conditions with chronic pain symptoms. Her declaration stated:

“I am well-qualified to identify liver disease problems, diagnosis of tuberculosis, and the proper care and treatment of these diseases, including the proper pharmaceutical protocol to avoid adverse side effects.”

The declaration further stated that Dr. Martinez had reviewed Jose’s medical records. Based on her review, Dr. Martinez opined that Jose had suffered from chronic liver disease. He did not suffer from or have symptoms of tuberculosis. YHD and Dr. Spitters should have known that Jose did not have tuberculosis, and the medications they gave him were contraindicated. Their treatment of Jose fell below the standard of care and was the direct and proximate cause of Jose’s death.

The trial court found that Judith had “failed to provide competent expert testimony on the issues of standard of care, causation, and damages.” It granted summary judgment to the defendants.

Judith appealed the summary judgment to the Washington Court of Appeals. The Court of Appeals observed that “a conclusory affidavit does not defeat a summary judgment motion.” It found that the Martinez declaration failed to identify the “discrete conduct” of YHD or Dr. Spitters that violated the standard of care, and it affirmed the summary judgment.

Judith appealed to the Washington Supreme Court.

On June 26, 2018, the Supreme Court affirmed in a split decision. The court held that Dr. Martinez’s affidavit was too conclusory. Both the majority and the dissent agreed that it was a close question whether the affidavit set forth specific facts, as opposed to unsupported conclusions.

### **Litigation Center involvement**

The Litigation Center, along with the Washington State Medical Association filed an amicus brief to support Dr. Spitters.

Washington Supreme Court brief