



# Shallow v. Follwell (Mo. S.Ct.)

Topics Covered: Abusive Litigation Against Physicians

## Issue

The issue in this case is whether the trial court abused its discretion in permitting a defendant physician in a medical negligence case to introduce four different expert witnesses whose testimony was challenged as repetitive.

## AMA interest

The AMA opposes lawsuit abuse against physicians.

## Case summary

Richard Follwell, DO performed a hernia repair surgery on his patient, Sandra Beaver. Six hours after her discharge, Sandra began experiencing severe post-operative symptoms. She was re-admitted to the hospital, examined by Dr. Follwell, and discharged again. Sandra's condition worsened, and upon her third visit to the hospital she was diagnosed with sepsis—an infection related complication caused by a hole in her bowel. Sandra later died from complications due to the infection.

Sandra's estate sued Dr. Follwell for medical negligence. The estate claimed that he had caused the hole in Sandra's bowel and then failed to treat it when she later presented to the hospital with complications. The estate called two expert witnesses to support its theory of causation.

Dr. Follwell himself testified and, over objection, called four other expert witnesses to support his theory of causation. He asserted that the hole in Sandra's bowel was caused by a previously undiagnosed blood clot which had restricted blood flow to her bladder. His experts practiced in different fields of medicine—cardiology, internal medicine, critical care, vascular medicine, and gastroenterology. He contended that each expert's testimony was necessary to describe a distinct aspect of overall causation. Each expert also proffered evidence affirming Dr. Follwell's general theory of causation. The trial judge agreed with Dr. Follwell and allowed all of his experts to testify. The jury found in Dr. Follwell's favor, and judgment was entered on the verdict.

The estate appealed to the Missouri Court of Appeals. It argued that the trial court had abused its discretion by allowing Dr. Follwell to present four expert witnesses to the jury.

The Court of Appeals reversed and remanded the case for a new trial. The court found that the trial court had abused its discretion by allowing Dr. Follwell to proffer unfairly cumulative and repetitious expert witness testimony.

Dr. Follwell has now appealed to the Missouri Supreme Court.

### **Litigation Center involvement**

The Litigation Center, along with the Missouri State Medical Association, filed an *amicus* brief on behalf of Dr. Follwell.

Supreme Court of Missouri brief