

**IN THE COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE**

JANICE M. FRAKES, )  
surviving spouses of )  
GARY D. FRAKES, )

Plaintiff/Appellant, )

VS. )

CARDIOLOGY CONSULTANTS, )  
P.C., and )  
HARRY L. PAGE, JR., M.D., )

Defendants/Appellees. )

Davidson Circuit  
No. 94C-2155

Appeal No.  
01A01-9702-CV-00069

**FILED**

August 29, 1997

Cecil W. Crowson  
Appellate Court Clerk

**CONCURRING OPINION**

This case presents this court’s first occasion to confront questions concerning the use of clinical practice guidelines in a medical malpractice case. While I concur with the court’s conclusion that the trial court did not commit reversible error by admitting the “Exercise Test Parameters Associated With Poor Prognosis and /or Increased Severity of CAD” guidelines into evidence, we must at some point address the procedural and substantive aspects of using guidelines such as these.

Clinical practice guidelines have emerged within the past few years as one of the medical profession’s responses to the perceived shortcomings in medical practice. Clark C. Havighurst, *Practice Guidelines as Legal Standards Governing Physician Liability*, 54 Law & Contemp. Probs. 87, 88 (1991) (“Havighurst”). They consist of systematically developed statements designed to assist the practitioner and patient in making decisions about appropriate health care in specific clinical circumstances. Rather than being a mere sampling of professional opinion, these guidelines provide consensus standards of conduct that are both clearer and more rational than those currently used to identify professional negligence.

Legislatures and courts have yet to determine how triers-of-fact should use practice guidelines. They can be extremely helpful in cases calling into question whether a physician chose the wrong course of diagnosis or treatment or should have gone further in attempting to understand or correct the situation. *See* Havighurst, *supra*, 54 Law & Contemp. Probs. at 95. However, they should not necessarily be viewed as conclusive evidence of the standard of care. Proof of compliance with practice guidelines should not necessarily establish due care; just as proof of non-compliance should not establish negligence per se.

Clinical practice guidelines can materially assist the triers-of-fact in medical malpractice cases. Properly authenticated clinical practice guidelines are relevant to the question of the proper standard of care and should be admitted as substantive evidence if introduced through a witness who can lay a proper foundation. They should not be equated with learned treatises that can only be used for impeachment under Tenn. R. Evid. 618.

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WILLIAM C. KOCH, JR., JUDGE