

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 97-60293  
Summary Calendar

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BARBARA GOLDSTEIN,

Plaintiff-Appellant,

versus

P.G. CARNESALE, Dr; CAMPBELL CLINIC, INC.,

Defendants-Appellees.

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Appeal from the United States District Court  
For the Northern District of Mississippi  
(1:96-CV-156-LB-A)

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January 8, 1998

Before POLITZ, Chief Judge, DUHÉ and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Barbara Goldstein appeals an adverse jury verdict on her medical malpractice claim against Dr. P.G. Carnesale and the Campbell Clinic, Inc. For the reasons assigned we affirm.

Background

In 1978 Goldstein fractured her right tibia and ankle in a motorcycle

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\*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

accident, which ultimately healed in a malposition, leaving her with a bowed and painful right leg. In 1987 Goldstein consulted Dr. Carnesale, a board-certified orthopedic surgeon at the Campbell Clinic in Memphis, Tennessee, to inquire about the possibility of having her leg straightened. Dr. Carnesale suggested a surgical procedure called an osteotomy; Goldstein elected not to have surgery at that time. In April 1993 Goldstein saw Dr. Earl Whitwell at the Tupelo Orthopedic Clinic in Tupelo, Mississippi, complaining of increasing problems with her right knee and ankle. Surgery was discussed but she again opted against same. In October 1994 Goldstein returned to Dr. Carnesale and requested that he undertake the surgery.<sup>1</sup>

On November 9, 1994 Dr. Carnesale operated on Goldstein's right leg and she developed a low-grade wound infection in the surgical incision. Dr. Carnesale treated Goldstein for this infection until April 1995 when she sought the care of another physician, Dr. Thomas Russell. Dr. Russell attempted conservative treatment to heal or arrest the infection. These efforts were unsuccessful and ultimately Goldstein's right leg was amputated.

In November 1995 Goldstein filed suit in state court against Dr. Carnesale and the Campbell Clinic alleging medical malpractice and lack of informed consent. Defendants removed the case to federal court where trial to a jury resulted in a verdict for the defendants. Goldstein timely appealed.

### Analysis

Goldstein contends that the district court erred in granting Dr. Carnesale's

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<sup>1</sup> Goldstein had visited Dr. Carnesale in May 1993 and, after that visit, had again decided against surgery.

motion to exclude her expert's testimony and in admitting her medical records from the Tupelo Clinic. We review these evidentiary rulings for an abuse of discretion.<sup>2</sup>

Goldstein sought to introduce the opinion testimony of Patricia Dubard, a certified family nurse practitioner, relative to the relevant standard of care in the diagnosing and treatment of Goldstein's post-surgical infection. The district court properly disallowed this testimony as Dubard was not qualified to render such an opinion.<sup>3</sup>

Goldstein also contends that the district court erred in admitting her medical records from the Tupelo Clinic. Goldstein stipulated to the authenticity of the records prior to trial, and the records do not constitute inadmissible hearsay. Thus, the records were properly admitted. Finding no abuse of discretion, the judgment appealed is AFFIRMED.

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<sup>2</sup> **First United Financial Corp. v. U.S. Fidelity & Guaranty Co.**, 96 F.3d 135 (5th Cir. 1996).

<sup>3</sup> **Daubert v. Merrill-Dow Pharmaceuticals, Inc.**, 509 U.S. 579 (1993).