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Huie, Fernambucq & Stewart, LLP

**2013 ALABAMA
MEDICAL MALPRACTICE DECISIONS
YEAR IN REVIEW**

**Similarly Situated Expert Witness
Need for Expert Testimony**

2013 ALABAMA MEDICAL MALPRACTICE DECISIONS

Similarly Situated Expert Witness

Hegarty v. Hudson, 2013 WL 1364686 (Ala.)

The Alabama Medical Liability Act requires that testifying expert witnesses be “similarly situated” to the providers whose conduct is at issue. In the case of specialists, the Act provides that, among other things, the expert witness be certified by an appropriate American board in the same specialty. Here, Dr. Hegarty was certified by the American board of Family Medicine. However, the case involved Dr. Hegarty’s alleged failure to remove the placenta from his patient at the time of delivering her child by caesarian section. Plaintiff asserted that a board-certified obstetrician could offer testimony as the obstetrician asserted that Dr. Hegarty was practicing obstetrics when he delivered Hudson’s baby and because Dr. Hegarty had allegedly held himself out as a specialist in obstetrics given an entry on Dr. Hegarty’s curriculum vitae in which he reported practicing “complete obstetrics and pediatrics and family medicine.”

The Alabama Supreme Court reversed a verdict in favor of Hudson finding that the obstetrician should not have been allowed to testify. Because Dr. Hegarty was certified by an American board as a specialist in family practice, only another physician certified as a specialist in family practice could offer testimony. In reaching this conclusion, the court noted that the fact that there is “some overlap or commonality” in these practices “is irrelevant.”

Smith v. Fisher, 2013 WL 4618723 (Ala.)

In another case addressing who is similarly situated to a specialist, the Alabama Supreme Court held that an expert witness practicing in internal medicine and neurology could not offer opinions regarding the care provided by a board-certified neurosurgeon. The case involved postoperative care provided to a patient following a craniotomy to repair an intracranial aneurysm. The plaintiff contended that the applicable standard of care was that of internal medicine as the claims involved monitoring electrolyte and fluid balance. Even though plaintiff asserted that there was an overlap in practice area, the court confirmed, consistent with *Hegarty*, that such was irrelevant in the case of specialists.

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Morgan v. Publix Supermarkets, Inc., 2013 WL 4294149 (Ala.)

In this prescription mis-fill case, the Supreme Court of Alabama reversed summary judgment in favor of Publix finding that the plaintiff was not required to establish a breach of the standard of care through expert testimony. Generally, in Alabama expert testimony is required to prove both a breach of the standard of care and causation. There are, however, rare exceptions. One is where the “want of skill or lack of care is so apparent” so as to be understood by a layman. In *Morgan*, the court held that a claim based on a pharmacy’s filling a prescription with the incorrect medication falls within this exception.

Boyles v. Dougherty, 2013 WL 5394326 (Ala.)

As indicated above, expert testimony is generally required to prove both a breach of the standard of care and causation. Here, the court addressed a claim in which the plaintiff asserted that an arterial stick to the right arm of a newborn child caused poor perfusion to the child’s fingers and auto-amputation of the fingertips of that hand. Plaintiff identified a registered nurse as an expert witness and the trial court granted the defendants’ motion for summary judgment on the basis that the nurse could not provide causation testimony. The Alabama Supreme Court reversed finding that certified medical records, which noted that the injury occurred “following arterial stick” and that the child had “poor perfusion of the right hand and thrombotic fingertips develop while at [the prior hospital]” were sufficient to create a question of fact regarding medical causation.

McGathey v. Brookwood Health Services, Inc., 2013 WL 3958299 (Ala.)

McGathey also involved the issue of whether expert testimony was required to establish a breach of the standard of care. The plaintiff underwent shoulder surgery and a metal bar was to be used in stabilizing her shoulder during the procedure. Shortly before surgery the metal bar was sterilized. Plaintiff asserted that she was burned when the device was used during the procedure. In reversing summary judgment in part, the Alabama Supreme Court held that the plaintiff did not need to present expert testimony to address whether there was a breach of the standard of care in failing to sufficiently cool the bar after sterilization.