
Civil Practice Update

All the Law That's Fit to Print

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What Qualifications Are Required For Experts in Medical Malpractice Cases? For those of you who said, huh, I understand the reaction. As many of you know, medical malpractice is a very difficult field of practice riddled with land mines. This update attempts to clarify one land mine. N.J.S.A. 2A:53A-41 of the Medical Care Access and Responsibility and Patients First Act provides the credentials that an expert must have to provide testimony in a medical malpractice case. Specifically, an expert must “have specialized at the time of the occurrence that is the basis of the action in the same specialty or subspecialty” as the defendant doctor. This seems simple enough until you get into an area of medicine where multiple specialties can render treatment. In Nicholas v. Mynster, 2013 N.J. Lexis 359 (2013), the Supremes explained that N.J.S.A. 2A:53A-41 is very specific, and does not permit a doctor who does not specialize in the same area as the defendant doctor to provide testimony in the case even if the doctor treats the same condition. Moreover, if the specialist is board certified and the care or treatment at issue involves the board certified specialty, an

expert must specialize in that area and either be board certified or credentialed by a hospital to perform the treatment. These requirements apply equally to experts for plaintiffs and defendants. In Nicholas, the Supremes ultimately ruled that plaintiff’s expert was barred from testifying against the defendant doctors because plaintiff’s expert was a specialist in treating carbon monoxide, the disease at issue, whereas defendants were specialists in family and emergency medicine. The Supremes correctly interpreted the statute, but the broader problem is that the statute is not well conceived as it ignores the reality that multiple specialties treat similar conditions. As determining who the appropriate experts are and the cases themselves can be extremely difficult, the practice tip is if you do not handle medical malpractice cases on a regular basis, refer them to a certified civil trial lawyer who handles them.

Contributions. If you have an interesting case, rule interpretation, ethics issue, or civil-related story, please contact me at (201) 845-5962, (f) (201) 845-5973, or e-mail mjepstein@theepsteinlawfirm.com.

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