Expert witnesses must practice same specialty as defendant physicians

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Michigan law is clear: An expert witness must spend the majority of their time practicing in the same specialty as the physician they are testifying against, physicians tell the Michigan Supreme Court.

In an amicus brief, the Litigation Center of the American Medical Association and State Medical Societies and the Michigan State Medical Society (MSMS) asked the state’s highest court to deny a plaintiff’s request to consider hearing a case that would challenge established legislative and case law, potentially opening the door for plaintiffs to call “experts for hire” witnesses to the stand.

Michigan’s legislature in 1993 rewrote a 1986 law to make it clear that an expert witness must practice in the same specialty as the defendant, be board-certified in the same specialty as the defendant and devote the majority of their professional time to that specialty in the year before the alleged malpractice occurred.

And nearly 15 years ago, the Michigan Supreme Court said an expert must pass the “one most relevant specialty test,” confirming that the expert’s specialty—the specialty they practice more than 50% of the time—must match the defendant’s specialty.

“There is nothing erroneous or inappropriate about this rule. It does not conflict with the statute; nor is it illogical,” says the brief that the AMA Litigation Center and MSMS filed in the case, Selliman v. Colton.

“This court cannot rewrite the statute or interpret the 1993 statute as if it were the same as the 1986 statute. If plaintiff whishes the law to return to former days, where an expert could be qualified if he or she devoted only a substantial portion of his or her professional time in the year preceding the alleged malpractice to a related relevant specialty, it must direct its argument to the legislature.”

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center’s case-selection criteria.
**Only one “most relevant” specialty**

Antonio Selliman has asked the court to consider whether the court of appeals properly applied Michigan law when it ruled that his expert witness did not satisfy the expert qualification.

Defendant physician Jeffrey J. Colton, MD, was practicing facial plastic and reconstructive surgery when he treated Selliman. The plaintiff’s expert testified that the procedure Selliman underwent was cosmetic and not performed for a medical purpose.

However, in the past year Selliman’s expert spent just 10% of his professional time practicing facial plastic and reconstructive surgery. The other 90% of his time was spent practicing otolaryngology, according to court documents.

The law “is specific; it requires that the proposed expert have devoted the majority of his professional time in the year preceding the alleged malpractice to the specialty the defendant was practicing at the time of the alleged malpractice. Nothing less will suffice,” the brief says.

**Why the specialty is important**

The AMA Litigation Center and MSMS explained what led the state legislature to change the 1986 law that governed expert witness testimony. Under the earlier law, an expert could be qualified to testify based on their “knowledge, skill, experience, training or education.”

“This standard gave Michigan courts free rein to determine whether a proffered expert had the requisite familiarity with the standard of care to pass evidentiary muster,” the brief explains. Under the 1986 law, experts were allowed to testify if they didn’t have credentials in the defendant’s specialty and even if the expert had not practiced medicine for decades.

“This led to the proliferation of circuit-riding ‘experts’ who ‘practiced’ only in the litigation arena, providing ‘pay for what you want testimony’ and compromising the integrity of the judicial process. The resulting ‘perfect storm’ contributed to the high cost of malpractice insurance, the reluctance of physicians to practice in high exposure specialties, and consequent deficiencies in the availability of health care,” the brief tells the court.

“This is the ‘logic’ plaintiff Selliman advocates in this case. But his analysis is behind the times. The 1986 statute no longer controls,” the brief urges the Michigan Supreme Court to not consider the case or, if it does consider the case, to uphold the appeals court decision rejecting Selliman’s argument.