

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LOUISE KLING,	:	NO. 09 - 02,033
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
JOHN L. WACIUMA, M.D.,	:	
Defendant	:	Motion in Limine

OPINION AND ORDER

Before the court is Defendant's Motion in Limine, filed July 11, 2012, in which he seeks to preclude Plaintiff's expert witness from testifying in this medical malpractice action,¹ based on an alleged lack of qualifications. Argument on the motion was heard August 29, 2012, at which time the court directed a deposition of the expert witness regarding his qualifications, with a further directive that Defendant notify the court whether, after the deposition, he wished to pursue a ruling on the motion. The deposition was held September 27, 2012, and Defendant has indicated in a letter to the court dated September 28, 2012, that he does wish to pursue that ruling and has provided the court with a copy of the deposition transcript.²

Defendant's assertion that Plaintiff's expert, Dr. Michael Golding, lacks the necessary qualifications is based on Section 512 of the Medical Care Availability and Reduction of Error Act, 40 P.S. Sections 1303.101 et seq., which provides as follows:

§ 1303.512. Expert qualifications

(a) GENERAL RULE.-- No person shall be competent to offer an expert medical opinion in a medical professional liability action against a physician unless that person possesses sufficient education, training, knowledge and experience to provide credible, competent testimony and fulfills the additional qualifications set forth in this section as applicable.

¹ Plaintiff alleges that during a coronary artery bypass surgery on August 31, 2007, Defendant negligently caused a dissection of the aorta.

² Although the Order of August 29, 2012, indicates that if Defendant pursued a ruling on the motion the court would schedule further argument, at a settlement conference on September 26, 2012, counsel agreed the ruling could be made without further argument.

(b) MEDICAL TESTIMONY.-- An expert testifying on a medical matter, including the standard of care, risks and alternatives, causation and the nature and extent of the injury, must meet the following qualifications:

- (1) Possess an unrestricted physician's license to practice medicine in any state or the District of Columbia.
- (2) Be engaged in or retired within the previous five years from active clinical practice or teaching.

Provided, however, the court may waive the requirements of this subsection for an expert on a matter other than the standard of care if the court determines that the expert is otherwise competent to testify about medical or scientific issues by virtue of education, training or experience.

(c) STANDARD OF CARE.-- In addition to the requirements set forth in subsections (a) and (b), an expert testifying as to a physician's standard of care also must meet the following qualifications:

- (1) Be substantially familiar with the applicable standard of care for the specific care at issue as of the time of the alleged breach of the standard of care.
- (2) Practice in the same subspecialty as the defendant physician or in a subspecialty which has a substantially similar standard of care for the specific care at issue, except as provided in subsection (d) or (e).
- (3) In the event the defendant physician is certified by an approved board, be board certified by the same or a similar approved board, except as provided in subsection (e).

(d) CARE OUTSIDE SPECIALTY.-- A court may waive the same subspecialty requirement for an expert testifying on the standard of care for the diagnosis or treatment of a condition if the court determines that:

- (1) the expert is trained in the diagnosis or treatment of the condition, as applicable; and
- (2) the defendant physician provided care for that condition and such care was not within the physician's specialty or competence.

(e) OTHERWISE ADEQUATE TRAINING, EXPERIENCE AND KNOWLEDGE.-- A court may waive the same specialty and board certification requirements for an expert testifying as to a standard of care if the court determines that the expert possesses sufficient training, experience and knowledge to provide the testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or a related field of medicine within the previous five-year time period.

40 P.S. Section 1303.512. Defendant contends that Dr. Golding does not meet the requirement of sub-section (b)(2) that he “be engaged in or retired within the previous five years from active clinical practice or teaching.” After a review of the deposition transcript, the court is constrained to agree.

According to Dr. Golding, he last performed surgery in 1986, and although he is currently a professor emeritus on the faculty of the Downstate Medical Center at State University of New York, his position as a full-time instructor there ended in 1998. His recent “teaching” consists of occasional lectures on various subjects, about half of which were regarding the Board for Professional Medical Conduct, of which he is a member. Dr. Golding was able to cite to one lecture in 2007 addressing the eye as a mirror to the cardiovascular system, one or two in 2008 about the Board, one in 2009 regarding surgical complications, a three-day conference in 2010 where he lectured on pulmonary emboli, vascular surgical complications and professional discipline, and two in 2012, one on the mission of the Board and one in which he participated on a panel discussion of percutaneous implantation of aortic valves. Dr. Golding admitted that he does not maintain an office at the university.

As far as “clinical practice”, although Dr. Golding stated that he still “sees patients”, he admitted that he does not “treat” patients, that he only provides “second opinions” for former patients or their family members as to whether they should have surgery or not. Dr. Golding stated that he has not provided treatment for at least the last ten years or more, and that he provided consultations for about twelve patients from February through September of this year, and saw about 24 patients in 2011. He shares office space with other medical providers in Long Beach, New York, and is not there on a regular basis, only “whenever there is a need to see a patient”.

It is clear to the court that Dr. Golding is not actively engaged in either clinical practice or teaching, and that his retirement from such was more than five years ago. Plaintiff points to Dr. Golding's lectures, and while the court certainly finds such activity admirable, it is constrained to classify them as "a *de minimus* level of teaching", See Weiner v. Fisher, 871 A.2d 1283, 1290 (Pa. Super. 2009),³ and thus not sufficient to satisfy the requirements of the statute.

ORDER

AND NOW, this 28th day of September 2012, for the foregoing reasons, Defendant's Motion in Limine is hereby GRANTED. Dr. Golding is precluded from testifying as an expert against Defendant.

BY THE COURT,

Dudley N. Anderson, Judge

cc: John C. Evans, Esq., Specter Specter Evans & Manogue, P.C.
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Robert A. Seiferth, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

³ In remanding the matter for a hearing to determine whether the expert in that case was actively teaching, the Superior Court held that "a *de minimis* level of teaching is not sufficient to satisfy the statute. The level of teaching must be sufficient to establish the general requirement of the statute that the witness possesses 'sufficient education, training, knowledge and experience to provide credible, competent testimony . . . ' 40 P.S. § 1303.512(a)." The Court noted that "there is little guidance in statutory or case law to assist the trial court in determining what level and involvement in teaching *does* satisfy the statute." It then went on to suggest the trial court inquire into "whether his students are interns, residents, fellows, or others; the subject matter he teaches; the amount of time per week he teaches; the academic level of his students; the settings where he teaches; and the compensation he receives for teaching." Such inquiry suggests a level of teaching significantly higher than that in which Dr. Golding is engaged.