

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KATHRYN PRATT	:
Plaintiff	: CV 2023-00720
v.	:
	:
TAMoor SHAHID M.D.	: CIVIL ACTION-LAW
GEISINGER MEDICAL CENTER	:
GEISINGER CLINIC	: Motion in Limine-Preclude Testimony of
Defendants	: D. Stewart MacIntyre, M.D.

OPINION AND ORDER

This matter came before this Court for oral argument on April 7, 2026, on Defendants’ Motion in Limine, filed March 16, 2026, to preclude Plaintiff from introducing the testimony of D. Stewart MacIntyre, M.D. (hereinafter “MacIntyre”), who Defendant characterizes as unqualified to offer the expert opinions set forth in his expert report. Defendants characterize MacIntyre as being “board certified in internal medicine with a subspecialty in infectious disease; he is not a gastroenterologist like Dr. Shahid.” (Defendant’s Motion, Paragraph 23).

Defendants earlier sought summary judgment under the same theory; that MacIntyre is not qualified to offer testimony consistent with his expert report. The Court denied Defendants’ Motion for Summary Judgment, “without prejudice to reassert the same claim, if it is later judicially determined, based upon an evidentiary record, that Plaintiff’s expert is unqualified under the MCARE Act.”

The Standard for Qualifications to Offer Expert Testimony:

The standard by which the Court must judge the qualifications of an expert witness in a matter alleging medical negligence is controlled by relevant provisions of the Medical Care Availability and Reduction of Error (hereinafter “MCARE”) Act. In the matter of *Vicari v. Spiegel*, 605 Pa. 381, 989 A.2d 1277 (Pa. 2010), our Supreme Court observed that:

With passage of the MCARE Act, the General Assembly created a more stringent standard for admissibility of medical expert testimony in a medical malpractice action by the imposition of specific additional requirements not present in the common law standard. *Gbur v. Golio*, 600 Pa. 57, 963 A.2d 443, 452 (2009) (Opinion Announcing the Judgment of the Court); *id.* at 464 (Greenspan, J., concurring) (agreeing that, with the MCARE Act, the General Assembly raised the standards for an expert witness testifying to a physician's standard of care, but also noting that the statute permitted waiver of certain requirements under appropriate circumstances); *Wexler v. Hecht*, 593 Pa. 118, 928 A.2d 973, 986 (2007) (Castille, J., dissenting). The MCARE Act's

provisions as to the requisite qualifications for an expert witness testifying in a medical malpractice action against a physician are found in Section 512, which provides, in relevant part, as follows:

(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.

(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.

* * *

(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).

* * *

(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. § 1303.512.

Thus, pursuant to Section 512, to testify on a medical matter in a medical malpractice action against a defendant physician, an expert witness must be a licensed and active, or a recently retired, physician. In addition, in order to render an opinion as to the applicable standard of care, the expert witness must be substantially familiar with the standard of care for the specific care in question. Furthermore, the expert witness must practice in the same subspecialty as the defendant physician, or in a subspecialty with a substantially similar standard of care for the specific care at issue (“same specialty requirement”). Finally, if the defendant physician is board certified, the expert witness must be board certified by the same or a similar board (“same board certification requirement”).

Importantly, the expert witness must meet all of these statutory requirements in order to be competent to testify. However, there is an exception to the same specialty and same board-certification requirements: if a court finds that an expert witness has sufficient training, experience, and knowledge to testify as to the applicable standard

of care, as a result of active involvement in the defendant physician's subspecialty or in a related field of medicine, then the court may waive the same specialty and same board certification requirements. This Court has directly addressed the requirements of Section 512 only infrequently. In *Wexler, supra*, we held that a podiatrist was not competent to testify as an expert witness in a medical malpractice action against an orthopedic surgeon because a podiatrist does not possess an unrestricted physician's license, as required under subsection 512(b)(1). *Wexler, supra* at 974, 981–82. More recently, in *Gbur, supra*, three of six participating members of this Court concluded that a radiation oncologist was competent to testify against a urologist regarding the standard of care for a prostate cancer patient. *Id.* at 463–65 (Greenspan, J., concurring). Relying on the exception set forth in subsection 512(e), the concurring justices concluded that the radiation oncologist was eminently qualified to testify in the action as a result of his active involvement in the diagnosis and treatment of numerous patients with prostate cancer. *Id.* at 464–65. The three other justices who participated in *Gbur* did not reach the merits of the expert witness's qualifications under the MCARE Act, but rather concluded that the issue had not been properly preserved and thus was waived. Nonetheless, the Court did express, albeit in *dicta*, its opinion concerning the application of subsection 512(e), particularly with regard to the meaning of the phrase “related field of medicine” as used in that subsection. *See* discussion in text, *infra*.⁸

Here, the legal issue presented is the same as the underlying legal issue in *Gbur*: how to interpret the limitations and exception set forth in Section 512 of the MCARE Act regarding medical expert testimony against a physician as to standard of care when the proffered or testifying expert practices in a different subspecialty and/or is board certified by a different board than the defendant physician. This is a question of law, and accordingly our standard of review is *de novo* and our scope of review is plenary. *Mazur v. Trinity Area School District*, 599 Pa. 232, 961 A.2d 96, 101 (2008). We must ascertain and effectuate the intent of the General Assembly based upon a reading of the entire statute. *Penn Jersey Advance, Inc. v. Grim*, 599 Pa. 534, 962 A.2d 632, 635–36 (2009).

The trial court here appears to have based its ruling that Dr. Blum was incompetent to testify as to standard of care against Drs. Spiegel and Anne on the misconception that the MCARE Act mandates that, if the defendant physician is board certified, then the testifying expert must be board certified by the same board. There was no dispute that Dr. Blum, Dr. Spiegel, and Dr. Anne were all board certified by different boards. *See infra*. There is also no dispute that certification by the same or a similar board is the general rule promulgated in subsection 512(c)(3); however, the final phrase of this subsection provides for an exception, set forth in subsection 512(e), which the trial court did not appear to recognize. Under the exception, a court may waive the same board certification and same specialty requirements if the court determines that the expert possesses “sufficient training, experience and knowledge” to testify as to standard of care “as a result of active involvement in ... medicine in the applicable subspecialty or a related field of medicine.” 40 P.S. § 1303.512(e).

Pursuant to the exception set forth in subsection 512(e), Dr. Blum's unchallenged and undisputed professional qualifications and activities established that he was competent to testify against Drs. Spiegel and Anne as to the specific care at issue. It is of utmost importance to stress that such a competency determination can be made only after

delineation of precisely what is the specific care at issue and after consideration of what testimony the expert will render. With this caveat in mind, and to be absolutely clear, we reiterate what this case is not about: There is no allegation that Dr. Spiegel breached the applicable standard of care in his performance of Mrs. Vicari's surgery to resect the tumor, nor is there any allegation that Dr. Anne breached the applicable standard of care in her administration of radiation therapy to Mrs. Vicari. The sole issue is whether the standard of care applicable to Drs. Spiegel and Anne included the requirement to offer Mrs. Vicari the option of follow-up chemotherapy and to refer her to a medical oncologist for this purpose. Concerning this narrow question, we conclude that Dr. Blum was well qualified, under Section 512 of the MCARE Act, to testify as to his opinion even though he was board certified by a different board and practiced in a different subspecialty than the defendant physicians.

The exception set forth in subsection 512(e) provides that the court may waive same board and same specialty requirements if the proposed expert has sufficient training, experience, and knowledge to testify as a result of active involvement in a field of medicine "related" to the subspecialty of the defendant physician. The statute does not define the term "related field of medicine." However, in the Opinion Announcing the Judgment of the Court in *Gbur*, Justice Saylor did consider, albeit in *dicta*, the meaning of this phrase in the context of subsection 512(e), and suggested that it "must mean more than fields of medicine which are 'related' in the most generic sense of the word, since Section 512(e) serves as a component of reform legislation designed to meaningfully enhance the standards governing the admissibility of expert testimony in medical professional liability cases." *Gbur, supra* at 459 (Opinion Announcing the Judgment of the Court). Justice Saylor continued his interpretation as follows: "[T]he statute should be read to require a close enough relation between the overall training, experience, and practices of the expert and that of the defendant-physician to assure the witness's expertise would necessarily extend to standards of care pertaining in the defendant-physician's field." *Id.* Here, we expressly adopt the above two statements from *Gbur's* opinion announcing the judgment of the court as explicative of subsection 512(e).

In addition, we further explicitly hold that the "relatedness" of one field of medicine to another for purposes of subsection 512(e) cannot be established in a broad and general sense that will henceforth be applicable to all situations and all claims. Rather, the "relatedness" of one field of medicine to another, under subsection 512(e), can only be assessed with regard to the specific care at issue. Two fields of medicine may be "related" with respect to certain specific issues of care, but unrelated with respect to other specific issues of care. Determining whether one field of medicine is "related" to another with respect to a specific issue of care is likely to require a supporting evidentiary record and questioning of the proffered expert during *voir dire*. This interpretation of "related field of medicine" is most compatible with the text of subsection 512(e) as a whole, which sets forth an exception to the formal same specialty and same board certification rules for experts otherwise qualified to testify.⁹

Vicari v. Spiegel, 605 Pa. 381, 386-392, 989 A.2d 1277, 1280-1284 (Pa. 2010).

Thus, our Supreme Court has counselled that “determining whether one field of medicine is “related” to another with respect to a specific issue of care is likely to require a supporting evidentiary record and questioning of the proffered expert during *voir dire*.” *Vicari v. Spiegel*, 605 Pa. 381, 386-392, 989 A.2d 1277, 1280-1284 (Pa. 2010). For that reason, the Court required Plaintiff to make MacIntyre available to testify at the hearing conducted on April 7, 2026. MacIntyre attended via Zoom, and testified for well in excess of one hour.

Question Presented:

WHETHER THE COURT SHOULD PRECLUDE THE TESTIMONY AT TRIAL OF PLAINTIFF’S EXPERT WITNESS, D. STEWART MACINTYRE, M.D., AN INFECTIOUS DISEASE SPECIALIST, BASED UPON THE FACT THAT DEFENDANT TAMOOR SHAHID, M.D., IS A BOARD-CERTIFIED GASTROENTEROLOGIST.

Answer to Question Presented:

THE COURT WILL NOT PRECLUDE THE TESTIMONY AT TRIAL OF D. STEWART MACINTYRE, M.D.

Discussion:

The Court personally attended the testimony of MacIntyre during the hearing conducted on April 7, 2026. The Court has considered that testimony in light of the limitations set forth in 40 P.S. Section 1303.512, and in light of the standards discussed in *Vicari v. Spiegel*, 605 Pa. 381, 392, 989 A.2d 1277, 1284 (Pa. 2010). Based upon the testimony of MacIntyre at that hearing, the Court finds as follows:

1. MacIntyre holds an unrestricted license to practice medicine in Florida, and is actively engaged in the practice of medicine.
2. MacIntyre has been board certified in the treatment of infectious disease.
3. Based upon his training, certifications, and experience, MacIntyre is familiar with the standard of care for diagnosis and treatment of *Clostridioides difficile* (hereinafter “C.diff”) infection. Further, he has at least fifty (50) years of experience in treating patients with that condition.
4. During the course of his testimony, MacIntyre demonstrated significant familiarity with the nature of the C.diff infection, appropriate treatment, and treatment challenges.

5. MacIntyre testified that he is not a gastroenterologist, which he regards as a subspecialty which includes some surgical procedures. It does not appear to the Court that MacIntyre is familiar with the applicable standard of care for surgical procedures routinely performed by gastroenterologist.
6. The treatment provided by Dr. Shahid to the Plaintiff appears to be in the nature of treatment which is routinely provided by gastroenterologists. Nevertheless, at the time that Dr. Shahid treated the Plaintiff, it appears that Dr. Shahid was not yet a board-certified gastroenterologist. Further, MacIntyre testified that, over the course of his long career, he frequently treated patients with C.diff. Thus, it does not appear to the Court that the treatment provided by Dr. Shahid to the Plaintiff is treatment provided only within the subspecialty of gastroenterology.
7. The Court finds that the standard of care applicable to the treatment of C.diff. by MacIntyre over his career and the standard of care applicable to the treatment rendered by Dr. Shahid to the Plaintiff are substantially the same. It does not appear to the Court that the treatment provided by Dr. Shahid to the Plaintiff was surgical in nature.
8. The treatment provided by Dr. Shahid to Plaintiff is arguably treatment within the same subspecialty as the treatment rendered by MacIntyre to patients for C.diff. To the extent that there is any variation between their subspecialties, the Court will waive the “same subspecialty” requirement, based upon MacIntyre’s training, certifications, and experience.
9. Based upon his long career of treating patients with C.diff, MacIntyre possesses sufficient training, experience, and knowledge to provide testimony regarding the standard of care applicable to the treatment provided by Dr. Shahid to Plaintiff. To the extent that there is any variation between his subspecialty and that of Dr. Shahid, the Court will waive the “same subspecialty” requirement and the board certification requirement.

10. The issue which will be presented to the jury is whether Dr. Shahid departed from the appropriate standard of care by failing to ensure that Plaintiff was timely provided effective antibiotic therapy. Defendant's expert, Steven R. Peikin, M.D., has opined that Plaintiff's "recurrent diarrhea was not due to ineffective treatment with Flagyl but rather the known incidence of relapse after treatment (about 25% with any treatment for C. difficile)." MacIntyre has opined that Flagyl is a weak medication for treating C. diff, and that "once a patient recently had C. diff., providers should presume that patient will continue to be colonized and you do not do follow up tests or discontinue antibiotics based on negative follow up tests." Given his long career of treating patients with C.diff., MacIntyre possesses significant training, experience, and knowledge regarding the standard of care applicable to the treatment provided by Dr. Shahid to Plaintiff.

ORDER

AND NOW, this 14th day of April, 2026, Defendants' Motion in Limine, filed March 16, 2026, seeking to preclude Plaintiff from introducing the testimony of D. Stewart MacIntyre, M.D., is **DENIED**.

BY THE COURT:

Hon. William P. Carlucci, Judge

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