

A.R.S. § 12-2604, THE MEDICAL EXPERT REQUIREMENT STATUTE IS NOT UNCONSTITUTIONAL

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Governale v. Lieberman

Ct. Appeals, Div. One, March 10, 2011

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Governale filed a medical malpractice suit against Lieberman, a neurosurgeon. In his initial disclosure, Governale listed, as an expert witness, an anesthesiologist and pain management specialist. Defendants moved for summary judgment, arguing that Governale's expert was not qualified under A.R.S. § 12-2604. Governale crossmoved for summary judgment and challenged the statute under the anti-abrogation, equal protection, due process, special legislation, and jury trial provisions of the Arizona Constitution. The trial court granted Defendants' motion and denied Governale's cross-motion. Governale appealed.

The court of appeals held that A.R.S. § 12-2604 does not violate the anti-abrogation clause, due process, or equal protection. While the right to bring a negligence action is a fundamental right, and the statute might have prevented Governale from using his chosen expert, the statute does not abolish the right to bring a medical malpractice action, did not limit Governale's theory of liability, and did not prevent Governale from finding a qualified expert witness. The statute does not impose a burden upon a plaintiff at filing, nor does it unduly limit whom the plaintiff can employ as an expert. The statute is also rationally related to the legislative goal of discouraging the rise of medical malpractice insurance rates.

The statute also is not an unconstitutional special law. It (1) protects the public health by addressing rising medical malpractice insurance rates; (2) applies uniformly to all members of the classes of health care providers and to persons suing them; and (3) the classification is sufficiently elastic to admit entry of additional persons or to allow others to exit the class. Finally, the court rejected Governale's argument that the statute infringes on the right to a jury trial by compromising his ability to present a persuasive, well-prepared case. The statute does not eliminate a medical malpractice plaintiff's right to have a claim fully and finally determined by a jury.