

COURT DISCUSSES EXPERT QUALIFICATIONS IN MEDICAL MALPRACTICE CASES; UPHOLDS CONSTITUTIONALITY OF EXPERT QUALIFICATION STATUTE

February 22, 2012 | Law Alerts

Baker v. University Health Physicians, et. al.,
Ct. Appeals, Div. Two, February 22, 2012

Authored by the [JSH Appellate Team](#)

Plaintiff's daughter, Tara, consulted with Dr. Wittman after being hospitalized for blood clots. Dr. Wittman was a certified specialist in pediatrics with a subspecialty in pediatric hematology/oncology. Tara later died and plaintiff sued for malpractice.

Prior to trial, plaintiff disclosed a medical expert, who was a certified internist specialist with subspecialties in oncology and hematology. Defendants moved for summary judgment, arguing the expert was not qualified under A.R.S. § 12-2604 because he did not have the same specialty and subspecialties as Dr. Wittman. The trial court granted summary judgment and plaintiff appealed.

The court of appeals affirmed. A testifying expert must be of the same specialty, but not the same subspecialty as the treating physician to testify to the appropriate standard of care. Specialists are categorized according to the twenty-four boards established by the American Board of Medical Specialties. Among the twenty-four boards are specialties in pediatrics and internal medicine. Therefore, plaintiff's expert was not qualified to testify to the standard of care of the treating physician. But because courts generally favor a resolution on the merits, the court allowed plaintiff the opportunity to present a qualified expert.

The court also rejected plaintiff's argument that A.R.S. § 12-2604 violates the Anti-Abrogation Clause of the Arizona Constitution. The Legislature may regulate a cause of action as long as it does not completely abolish it.