

DOCTOR WHO VOLUNTEERS STANDARD CARE TESTIMONY MUST MEET EXPERT DISCLOSURE REQUIREMENTS, THE VIOLATION OF WHICH CAN LEAD TO MISTRIAL AND SANCTIONS

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Solimeno v. Yonan et. al.

Ct. Appeals, Div. One, March 18, 2010

Authored by the [JSH Appellate Team](#)

Dr. Yonan treated patient for breathing difficulties. The patient later died of a cardiac arrest and Plaintiffs sued Dr. Yonan. During trial, Dr. Yonan took the stand and volunteered certain testimony as to why he thought his treatment of the patient was appropriate. Plaintiffs objected that certain words of testimony had not been disclosed, and moved for a mistrial. The trial court granted the mistrial and awarded sanctions against Dr. Yonan of \$125,000.00 in plaintiffs' attorneys' fees under A.R.S. § 12-349(3). The court reasoned that Defendant's failure to disclose expanded and delayed the proceedings.

The court of appeals affirmed. Even though Dr. Yonan was the defendant and a fact witness, because he had been listed as an expert witness in his pre-trial disclosure statement, he had to provide the "substance of the facts and opinion to which [he] was expected to testify or a summary of the grounds for each opinion" under Rule 26.1(a)(6). He could not disclose simply that he would testify consistently with the medical records and that he met the standard of care. The court also affirmed the award of sanctions. A mistrial causes significant delay of litigation and the statute was not narrowly drawn to preclude mistrials from its ambit. Finally, the amount awarded was not unreasonable considering that the trial court had reduced Plaintiffs' request by 30%. Dr. Yonan is filing a petition for review.