

MED MAL STANDARD OF CARE STATUTE APPLIES TO CASES BROUGHT UNDER THE ADULT PROTECTIVE SERVICES ACT

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Cornerstone Hospital of Southeast Arizona v. Marnier
Ct. Appeals, Div. Two, December 7, 2012

Authored by the [JSH Appellate Team](#)

An estate sued multiple defendants, including Cornerstone, under the Adult Protective Services Act (APSA), alleging the decedent was deprived of proper nursing and medical services. The estate filed the certification required by A.R.S. § 12-2603 confirming that ". . .expert opinion testimony may be necessary to provide standard of care or liability for the claims in this case." The estate also filed the affidavit of its designated expert, Joyce Black, and attached her CV. Black was the estate's only standard-of-care witness. Cornerstone moved to preclude certain testimony by Black on the ground that she was not qualified under either A.R.S. § 12-2604 or Rule 702. The court granted Cornerstone's motion as to Black's proposed testimony regarding hospital administration, but rejected it as to other areas on which Black was expected to testify. The court held that A.R.S. § 12-2604 does not apply to claims asserted under APSA, but that Black was nevertheless qualified under Rule 702. Cornerstone challenged this ruling by special action.

The court of appeals held that A.R.S. § 12-2604 does apply to APSA cases alleging negligence. Had the legislature intended to limit the application of § 12-2604, it would have done expressly precluded APSA actions from its ambit. Because a claim under APSA may include allegations of medical negligence, A.R.S. § 12-2604 sets the requirements for those experts that provide standard-of-care testimony in an APSA action.