
MEDICAL EXPERT TESTIFYING AGAINST A BOARD-CERTIFIED SPECIALIST NEED NOT BE BOARD-CERTIFIED AT THE TIME OF THE UNDERLYING TREATMENT

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Awsienko v. Cohen

Ct. Appeals, Div. One, May 12, 2011

Authored by the [JSH Appellate Team](#)

Awsienko suffered a cardiac arrest and died. Dr. Cohen, board-certified in internal medicine and nephrology, treated Awsienko. Dr. Hoelzinger, boardcertified in cardiovascular disease and interventional cardiology, also treated him. The family sued Drs. Cohen and Hoelzinger, disclosing Dr. Wilson as their expert, who was not board certified at the time of the incident. Defendants moved for summary judgment, arguing that Dr. Wilson did not meet the requirements of A.R.S. § 12-2604(A)(1) and was not board certified in the same specialty as Dr. Hoelzinger. The trial court granted summary judgment.

The court of appeals affirmed for Dr. Hoelzinger but reversed summary judgment for Dr. Cohen. Dr. Wilson did not meet the requirements of A.R.S. § 12-2604 because he was not board certified in the same specialties as Dr. Hoelzinger, and he did not offer any testimony that Dr. Hoelzinger violated the standard of care. As to Dr. Cohen, however, A.R.S. §12-2604 does not require that the expert be board certified at the time of the occurrence. The Legislature attached this temporal requirement to the specialization language, but chose not to include the same language as to board certification.