

MEDICAL EXPERT'S QUALIFICATIONS MUST MATCH ONLY THOSE OF THE DEFENDANT'S SPECIALTY RELATING TO THE INCIDENT

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Lo v. Lee, et al.

Ct. Appeals, Division Two, September 20, 2012

Authored by the [JSH Appellate Team](#)

Lo is a board-certified ophthalmologist. He claimed a subspecialty in oculoplastic surgery. Plaintiff sued Lo, claiming he negligently performed a "laser facial skin treatment" on her. Lo moved for summary judgment and to disqualify Plaintiff's standard of care expert, Dr. James Chao, a board-certified plastic surgeon. Lo argued that Chao was not qualified to testify because he was not a board-certified ophthalmologist. The trial court denied Lo's motions, reasoning that, aside from his board certification in ophthalmology, Lo was also a specialist in cosmetic plastic surgery, and the procedure Lo performed fell into that specialty. Lo sought special action review.

The court of appeals granted jurisdiction but denied relief. It held that A.R.S. § 12-2604 requires only that a testifying expert share the defendant's *relevant* specialty. While "specialty" is undefined in the statute, a testifying expert need not share every one of a defendant's specialties. This meets the purpose of Ariz. R. Evid. 702, which requires the expert to have requisite knowledge to "help the trier of fact to understand the evidence or to determine a fact in issue." Finally, requiring a testifying expert to share every one of the defendant's specialties would abrogate "the right of action to recover damages for injuries," in violation of the Arizona Constitution.