

## Avivi v Centro Medico Ugente

1/29/08

### **Medical Malpractice; Expert Qualifications; Similar Circumstances Test**

Avivi was visiting from Israel when she injured her right hand and arm in a fall. She was treated at the Centro Medico Urgente Med Center. Her arm was set in a splint and she was given pain medication. In followup exams she complained the splint was too tight but was told to keep wearing it.

Eighteen days after the fall, she returned to Israel and was examined by Dr. Arielli, an orthopedist. He removed the cast and discovered injuries, especially to the fingers and hand. He concluded the splint had been applied too tightly, thereby restricting the circulation. He removed the splint and replaced it with a full cast. She was diagnosed with a number of permanent injuries.

Avivi filed suit for medical malpractice. The medical center moved for summary judgment. The motion was supported with a declaration from a local surgeon who had practiced in the area and taught surgery in a nearby medical school. The expert opined the treatment was reasonable and within the standard of care of the local community.

In opposition, Avivi submitted the declaration of Dr. Arielli. In addition to having treated thousands of similar fractures, his declaration stated he had reviewed American publications regarding the treatment of fractures in the U.S. He did not state, however, that he was familiar with the standard of care in Southern California.

At the hearing, the trial court ruled Dr. Arielli's declaration was not admissible because of his lack of familiarity with the standard of care locally. Because it was the only declaration submitted in opposition, the trial court found no triable issues and summary judgment was found for the defendant medical clinic.

*In order to testify as an expert in a medical malpractice case, a person must have enough knowledge, learning and skill with the relevant subject to speak with authority and he or she must be familiar with the standard of care to which the defendant was held. (Evidence Code section 720 (a))*

In 1949, the California Supreme Court held that the essential factor in determining the qualification of an expert witness in medical malpractice cases is knowledge of similarity of conditions; geographical proximity is only one factor to be considered. (*Sinz v Owens* (1949) 33 Cal. 2d 749, 756.) The standard of care is physicians in similar circumstances rather than similar locations. (*Barris v County of Los Angeles* (1999) 20 Cal. 4<sup>th</sup> 101).

By statute, in medical malpractice actions against physicians who provide emergency medical services in general acute care hospital emergency departments, the standard of care includes a same or similar locality requirement. (Health & Safety Code section 1799.110 (a)). Except in such cases, the standard of care for physicians is the reasonable degree of skill, knowledge and care ordinarily possessed and exercised by members of the medical profession under similar circumstances. (*Mann v Cracchiolo* (1985) 38 Cal 3d 18. The test for determining familiarity with the standard of care is knowledge of similar conditions.

Here, Dr. Arielli's statements demonstrate that he was generally familiar with the standard of care for treating fractures in the U.S., and with treating fractures in circumstances similar to the plaintiff's. *There is no requirement an expert have practiced in a particular locality before he or she can render an opinion in an ordinary medical malpractice case.*

Thus, exclusion of Dr. Arielli's declaration was in error and requires reversal of the summary judgment ruling.

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