

Appellate Court Holds That MD Versus DO is Irrelevant in Determining Expert Qualifications

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Rapid Report

In a recent 2-1 decision, the Michigan Court of Appeals held that a physician's license as a medical doctor or a doctor of osteopathy is irrelevant to determining qualifications as an expert witness under MCL 600.2169(1)(a).

In *Crego v Edward W. Sparrow Hospital Ass'n, et. al.*, the plaintiff argued on appeal that the trial court erred in rejecting the plaintiff's affidavit of merit that was executed by a medical doctor, determining that the affidavit failed to satisfy the requirements of MCL 600.2160(1) because the defendant doctor was a doctor of osteopathy. The trial court concluded that the M.D. expert did not engage in the practice of the "same health profession" because of the different licensing boards, although both physicians were board certified in obstetrics and gynecology.

On April 16, the appellate court reversed the trial court's ruling. First applying an analysis of MCL 600.2169(1)(a), the appellate court held that whether a physician is licensed as a M.D. or a D.O. is not relevant when both physicians practice the same specialty of medicine (in this case, obstetrics and gynecology), and the expert and defendant have matching credentials in that specialty field. The appellate court reasoned that the only "specialty" implicated was that of obstetrics and gynecology. In *Crego*, both plaintiff's expert and the defendant physician were board certified in obstetrics and gynecology and, therefore, the plaintiff's affidavit met the statutory requirements.

Next, the appellate court held that if matching credentials in satisfaction of subsection (1)(a) are established, the same question is not reexamined when analyzing subsection (1)(b)(i)'s requirement that the expert must have devoted a majority of his or her time during the year immediately preceding the alleged malpractice to the "active clinical practice of the same health profession and, if that party is a specialist, the active clinical practice of that specialty." The appellate court did not make a determination as to whether a D.O. and a M.D. practice the "same health profession," and instead reasoned that this need only be resolved when a specialty is not implicated under the facts of a particular case.

If you have any questions regarding the appellate court's ruling in *Crego v Edward W. Sparrow Hospital Ass'n et. al.*, please contact any member of Plunkett Cooney's Medical Liability Practice Group.