

## Obstetrician Not Qualified to Testify About Midwifery Standards

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In a recent published opinion, the Michigan Court of Appeals held that an obstetrician is not statutorily qualified to testify about a nurse midwife's standard of care because obstetrics and nurse midwifery are not the same health profession.

In *McElhanev v Harper-Hutzel Hospital* (No. 254376, rel'd 1/19/06), the plaintiff claimed that the negligent actions of the defendant's nurse midwife caused her son's impairments, including mental retardation. The plaintiff filed a medical malpractice claim against the hospital for the actions of its "doctors, nurses, a nursing midwife and residents," and attached an affidavit of merit prepared by an obstetrician/gynecologist.

The affidavit of merit addressed the standard of care breached by the hospital staff; however, it did not specifically address the actions of the nurse midwife. The dispositive issue was whether, under MCL 600.2619, an obstetrician could testify about the standard of care applicable to a nurse midwife. The trial court determined that an obstetrician could not testify about midwifery standard of care and granted the defendant's motion for summary disposition because the plaintiff had failed to establish a genuine issue of material fact regarding the nurse midwife's standard of care. The Michigan Court of Appeals upheld the trial court's ruling.

The appellate court noted that although the plaintiff's attorney reasonably believed, at the time the complaint was filed, that the affidavit of merit was signed by a health professional that met the statutory requirements for an expert witness under MCL 600.2912(d), during discovery, the plaintiff had narrowed its claim to the actions of the nurse midwife. Therefore, in order to give expert testimony, the plaintiff's expert would have to meet the requirement of MCL 600.2619(1)(b), which applies to medical malpractice actions brought against non-physicians. This statute requires that the expert must devote "a majority of his or her professional time" to the "clinical practice of the same health profession" as the defendant.

The appellate court took special note of the fact that nurse midwives are licensed health professionals under MCL 333.17210; MCL 333.2701 (b), whereas the plaintiff's experts were

physicians licensed under MCL 333.17001(1)(c), a separate licensing requirement for physicians.

The appellate court reasoned that an obstetrician/gynecologist was not qualified to offer expert testimony about the standard of care of a nurse midwife because nurse midwives are registered professional nurses with special certification in the practice of nurse midwifery. Therefore, it was clear to the appellate court that the plain language of each licensing statute means that physicians practice medicine and nurses practice nursing, thus an obstetrician that devotes the majority of her professional time to the practice of medicine could not testify about the standard of care of a nurse that devotes the majority of her professional time to the practice of nursing, and in this case, the specialization of nurse midwifery.

For a complete copy of the Michigan Court of Appeals published decision on *McElhanev v. Harper-Hutzel Hospital* (No. 254376, rel'd 1/19/06), [click here](#).

Editor's note: Thank you to Kevin Barry for contributing to this Rapid Report.

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