



Edwards v. The Sunrise Ophthalmology ASC, LLC, 160 So.3d 838 (Fla. 2015)

Topics Covered: Affidavit of Merit, Expert Witnesses and Professional Liability

Outcome: Very Favorable

Issue

The issue in this case was whether a specialist in infectious diseases was qualified under the Florida Malpractice Law, FL Stats. § 766.102, to testify as an expert witness in a suit brought against an ophthalmologist for medical negligence.

AMA Interest

The AMA believes that expert witnesses in medical liability cases should have education, training, and experience or board certification in the same field as a defendant specialist physician.

Case Summary

Marianne Edwards underwent plastic surgery on her eyelid. She subsequently contracted a bacterial infection in her eyelid, where the surgery had been performed. This resulted in her having to undergo additional surgery and suffering disfigurement.

Ms. Edwards filed a medical malpractice suit against, *inter alia*, her ophthalmologist, Gil A. Epstein, MD and The Sunrise Ophthalmology ASC, LLC. She contended that Dr. Epstein had breached the standard of care, because he had failed to use proper sterilization techniques during the surgery, and this caused the infection. Ms. Edwards proffered an affidavit from an infectious disease doctor to support her contention.

Dr. Epstein challenged the sufficiency of the affidavit through a motion to dismiss. He pointed out that § 766.102 requires that expert testimony offered against a specialist must be from an expert who either (a) specializes in a similar specialty as the defendant physician or (b) evaluates, diagnoses, or treats the medical condition that is the subject of the claim. Because he was an ophthalmologist, which is a distinct specialty from that of the infectious disease expert, Dr. Epstein argued that Ms. Edwards's affidavit was insufficient.

The trial court agreed with Dr. Epstein and the complaint was dismissed as to him. Ms. Edwards appealed to the Florida District Court of Appeal. By a split decision, the District Court of Appeal affirmed.

Edwards sought to appeal to the Florida Supreme Court. Initially, the Florida Supreme Court decided to hear the case, but on March 26, 2015 it held that its earlier decision was incorrect and the case did not merit review. Thus, the District Court of Appeal ruling stands.

Litigation Center Involvement

The Litigation Center, along with the Florida Medical Association filed an *amicus* brief, which will argue against allowing the expert witness testimony of the infectious disease physician.

Florida Supreme Court brief