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**A PROPOSED EXPERT IN A MEDICAL MALPRACTICE ACTION
THAT DOES NOT HAVE BOARD CERTIFICATION OR
CREDENTIALING IN THE SAME SUB-SPECIALTY AS
THE DOCTOR BEING SUED CANNOT TESTIFY**

**By: Peter A. Marra, Esq.
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Citing the Patients First Act, N.J.S.A. 2A:53A-37 to 42, in Russell v. Denehy, the New Jersey Appellate Division held that a physician retained as an expert witness must have the same board certification and/or credentialing in the sub-specialty of the doctor who is being sued for malpractice in order to testify against a Board Certified physician.

Plaintiff alleged that Dr. Denehy, a physician board certified in obstetrics and gynecology and in gynecologic oncology, a subspecialty recognized by the American Board of Medical Specialties, negligently cut her ureter while performing a para-aortic lymphnode dissection and failed to repair it. Plaintiff retained Dr. Victor Borden, a physician board certified in obstetrics and gynecology but not the sub-specialty of gynecological oncology. Dr. Borden opined that Denehy failed to visualize the entire course of the right ureter during his dissection and assure, prior to his departure from the operating room, that both ureters were intact and unobstructed.

Dr. Borden had not performed a para-aortic dissection in twenty years and testified that he would not do a pelvic and para-aortic lymph node dissection, even if there was no available gynecological oncologist. Instead, he would refer the procedure to a general surgeon.

The appellate court affirmed the trial court's ruling that Dr. Borden was not qualified to offer expert testimony as to a standard of care applicable to a gynecologic oncologist, a recognized subspecialty of gynecology.

Dr. Borden did not meet the qualifications under the Act because he was a "generalist" without the required board certification or clinical experience.



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Practice Tip: Parties in medical negligence cases must pay special attention to the defendant physician’s qualifications and care and treatment at issue in retaining appropriate experts.

DISCLAIMER: This Article is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client. If someone you know would like to receive this Article, please send a message to Peter A. Marra, Esq., at ptm@spsk.com. Mr. Marra is a member of the Health Care Practice Group and the Professional Liability Practice Group at Schenck, Price, Smith & King, LLP.

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