



AlaFile E-Notice

01-CV-2010-002691.00

Judge: ROBERT S. VANCE

To: EDWARDS RICHARD RANDOLPH
randy@cochranedwardsllaw.com

NOTICE OF COURT ACTION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ANNA SALTER V BLOUNT COUNTY FIRE PROTECTION & EMS
01-CV-2010-002691.00

A court action was entered in the above case on 8/27/2013 9:48:09 AM

ORDER

[Filer:]

Disposition: GRANTED
Judge: RSV
Notice Date: 8/27/2013 9:48:09 AM

ANNE-MARIE ADAMS
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
JEFFERSON COUNTY, ALABAMA
716 N. RICHARD ARRINGTON BLVD.
BIRMINGHAM, AL 35203

205-325-5355
anne-marie.adams@alacourt.gov



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION**

SALTER ANNA,)	
Plaintiff,)	
)	
V.)	Case No.: CV-2010-002691.00
)	
BLOUNT COUNTY FIRE)	
PROTECTION & EMS,)	
ADDICTION & MENTAL HEALTH)	
SVC INC,)	
ALLEY TERRENCE,)	
Defendants.)	

ORDER

The following supersedes this Court's order of August 7, 2013. That order is vacated and set aside. The Court regards any deadlines imposed by Rule 5(a) of the Alabama Rules of Appellate Procedure as accruing with the entry of this order.

Pending is a motion for summary judgment, as supplemented, by defendant Terrence Alley. The Court will not here recount the involved history regarding this motion; suffice it to say, this order comes after a review of all filings made in support of, and in opposition to, this defendant's motion.

In an affidavit filed in support of his summary judgment motion, Dr. Alley testifies that at all material times, he has been board-certified in the field of addiction medicine by the American Board of Addiction Medicine (hereafter "ABAM"). Dr. Alley goes on to testify that he did not breach the relevant standard of care in his treatment of Larry Salter.

In opposition to the defendant's motion, the plaintiff offers, *inter alia*, testimony from Dr. Dave Davis and from Dr. Martha Brown to the effect that Dr. Alley did breach the applicable standard of care in his treatment of Mr. Salter. Neither Dr. Davis nor Dr. Brown is board-certified by ABAM. The defendant now argues that the testimony of the plaintiff's experts should be stricken because they are not "similarly situated health care providers" who may testify against him.

The premise of Dr. Alley's argument is that his ABAM certification makes him a specialist as referenced in *Ala. Code* §6-5-548. Scrutiny of that statute is required to

resolve this matter. The Court turns first to sub-section (c) of that statute, which provides the following:

Notwithstanding any provision of the Alabama Rules of Evidence to the contrary, if the health care provider whose breach of the standard of care is claimed to have created the cause of action is certified by an ***appropriate American board*** as a specialist, is trained and experienced in a medical specialty, and holds himself or herself out as a specialist, a “similarly situated health care provider” is one who meets all of the following requirements:

- (1) Is licensed by the appropriate regulatory board or agency of this or some other state.
- (2) Is trained and experienced in the same specialty.
- (3) Is certified by an appropriate American board in the same specialty.
- (4) Has practiced in this specialty during the year preceding the date that the alleged breach of the standard of care occurred.

(Emphasis added). Sub-section (e) then expounds on this issue as follows:

The purpose of this section is to establish a relative standard of care for health care providers. A health care provider may testify as an expert witness in any action for injury or damages against another health care provider based on a breach of the standard of care only if he or she is a “similarly situated health care provider” as defined above. It is the intent of the Legislature that in the event the defendant health care provider is certified by ***an appropriate American board*** or in a particular specialty and is practicing that specialty at the time of the alleged breach of the standard of care, a health care provider may testify as an expert witness with respect to an alleged breach of the standard of care in any action for injury, damages, or wrongful death against another health care provider only if he or she is certified by the same American board in the same specialty.

(Emphasis added).

The crux of this dispute is what does the phrase “appropriate American board” mean. This Court has carefully scrutinized the materials submitted by the parties, the case law on which they rely, and the arguments of counsel. Having done so, this Court here recognizes a presumption that to fall within the protection of the above-quoted sub-sections of *Ala. Code* §6-5-548, a physician’s certification must be by a board recognized by either the American Board of Medical Specialties or the American Osteopath Association. ABAM is recognized by neither.

This presumption is not irrefutable, *i.e.*, this Court does not hold that certification from a board recognized by either the ABMS or the AOA is always a prerequisite to fall within *Ala. Code* §6-5-548(c) & (e). A defendant may rebut the presumption with other evidence suggesting that a board can reasonably be deemed “appropriate” in the modern practice of medicine. Here, however, there has been an insufficient showing by the defendant to refute this presumption. To the contrary, the undisputed testimony of Dr.

Brown adds to the skepticism that ABAM can currently be regarded as “appropriate.” She specifically testified that ABAM certification does not require the completion of a formal residency in addiction medicine. ABAM certification does not depend on a uniform, established curriculum. Instead, many physicians practicing in “addiction medicine” rely on their personal experiences, having themselves gone through treatment for alcohol or other chemical dependencies.

Dr. Alley therefore may not properly be regarded as a specialist because of his ABAM certification. We thus fall back to sub-section (b) of *Ala. Code* §6-5-548, which provides the following:

Notwithstanding any provision of the Alabama Rules of Evidence to the contrary, if the health care provider whose breach of the standard of care is claimed to have created the cause of action is not certified by an appropriate American board as being a specialist, is not trained and experienced in a medical specialty, or does not hold himself or herself out as a specialist, a “similarly situated health care provider” is one who meets all of the following qualifications:

- (1) Is licensed by the appropriate regulatory board or agency of this or some other state.
- (2) Is trained and experienced in the same discipline or school of practice.
- (3) Has practiced in the same discipline or school of practice during the year preceding the date that the alleged breach of the standard of care occurred.

Under this standard, Dr. Davis and Dr. Brown are qualified to testify against Dr. Alley. Having considered their testimony, moreover, this Court cannot conclude that Dr. Alley is entitled to a judgment as a matter of law. His pending summary judgment motion is therefore DENIED.

DONE this 27th day of August, 2013.

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/s/ ROBERT S. VANCE
CIRCUIT JUDGE