

SUMMARY OF RECENT DECISIONS

Certificate of Merit Cases

1. Helfrick v. UPMC, C.P. Allegheny Co. No. GD03-010082

Opinions by J. Wettick holding:

(1) If Defendant files non pros under Rule 1042.6 on 61st day. Rule 237.1 requiring 10 day notice prior to non pros, and 237.3 allowing Plaintiff to open judgment automatically by filing petition 10 after non pros taken do **not** apply to Certificate of Merit rules.

(2) If Plaintiff beats Defendant to Courthouse by filing COM after the 60th day, but before Defendant files non pros, then non pros is **invalid**.

(3) If Statute of Limitations has not run, a case non prosed for failing to file a Certificate of Merit, **can be re-instituted** in a separate suit making the same allegations, before the Statute expires as long as it complies with COM rules

2. Frunzi v. Muller M.D. C.P Phila. Co. March Term 2003 No. 4067

Opinion by J. Bernstein; **No discovery** of qualifications of the physician providing Certificate of Merit is permitted while case is still pending.

3. Herrmann, Exec. of Estate of Tetrick v. Pristine Pines, C.P. Allegheny No. GD03-6835

Opinion by J. Wettick: Where Complaint does not allege “professional negligence”, defendant must file Preliminary Objection requiring Plaintiff to so allege, before filing a non pros for failure to file a COM within 60 days of filing the Complaint.

4. Budner v. Allegheny General, C.P. Allegheny NO: GD03-8160

No opinion, but order denying Defendant POs. Case involving ordinary premises liability claim (broken chair) is not “professional negligence” invoking COM rules, even if defendant is a hospital.

Expert Qualifications under M-Care Act, Sec. 512

1. Campbell v. Golden M.D. C.P. Phila. Jan. 2000 Term No. 1857

Opinion by J. Mazer Moss: A psychiatrist is **not qualified** to testify to standard of care of a resident in internal medicine using Ativan to treat pulmonary problems, rather than mental illness.

2. Callari v. Rossenwasser M.D. C.P.. Phila. March 1999 No 1056

Opinion by J. Tereshko: Excellent 14 page opinion holding infectious disease specialist **is qualified** to testify to standard of care as to post operative infection care given by neurosurgeon. Medical care at issue, not specialty controls.

3. Spotts v Small 61 D&C4th 225 (Lanc. Co. 2003)

Opinion by J. Cullen: The language in Section 512 disqualifying experts who have been retired for “five years” is to be calculated from the **time of the negligence**, not the date suit was started or the date of trial.

4. McLaughlin v. Gettysburg Hospital C.P. Adams Co No. 99-S-675

Opinions by J. George: Holds directly opposite to Spotts. **disqualified** if retired more than five years at time of suit.

Also rejects constitutional challenge- Section 512 is a rule of evidence which is within Legislative purview, not Rule of Procedure within Supreme Court’s exclusive jurisdiction.

Written by Terry Hyman with many thanks to Pat Loughren who compiled all the cases.