



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**LAURA SEISINGER v. SCOTT SIEBEL, M.D.
CV-08-0224-PR**

PARTIES AND COUNSEL:

Petitioner: Scott Siebel, M.D., represented by J. Russell Skelton and Eileen Dennis GilBride, of Jones Skelton & Hochuli, PLC.

Respondent: Laura Seisinger, represented by James J. Syme, Jr.

Amici Curiae: (1) Arizona Medical Association, American Medical Association, Arizona Hospital and Healthcare Association, Maricopa County Medical Society, Pima County Medical Society, Arizona Osteopathic Medical Association, American Association of Orthopaedic Surgeons, The American College of Obstetricians and Gynecologists and its Arizona section, American College of Cardiology, Arizona Chapter of the American College of Cardiology, Arizona Society of Anesthesiologists, and Arizona Radiological Society, represented by: Barry D. Halpern, Scott A. Shuman and Rhonda Needham, of Snell & Wilmer L.L.P.; and (2) Mutual Insurance Company of Arizona, represented by John J. Egbert and Jay A. Fradkin, of Jennings, Strauss & Salmon, P.L.C.

FACTS:

In August 2004, Laura Seisinger (“Seisinger” or “plaintiff”) filed a complaint against Dr. Scott Siebel (“Siebel”) alleging he committed medical malpractice when he administered a spinal epidural to Seisinger while she was in labor. Seisinger disclosed Dr. J. Antonio Aldrete as an expert witness to testify that she suffered from arachnoiditis (a painful neurological condition of the lower extremities) as a result of the spinal epidural and subsequent blood patches performed by Siebel.

Dr. Aldrete, a retired anesthesiologist, had not practiced in that field since 1999 and did not have hospital privileges in the U.S. He had been suspended from practice for 90 days in Ohio, had surrendered his certificate to practice in Ohio, and had been reprimanded in Florida. At the time of trial, his practice was exclusively in the area of pain management and arachnoiditis. Though Dr. Aldrete had no specialized training in interpreting spinal X-rays, he had diagnosed arachnoiditis in plaintiff from her MRI, allegedly without examining plaintiff, having her X-rays reviewed by a radiologist or neuroradiologist or speaking to any of her treating providers. He was the only person who had diagnosed plaintiff with arachnoiditis, and the medications he recommended for her were allegedly not effective.

Siebel moved *in limine* to preclude Dr. Aldrete’s testimony because he did not have the qualifications of an expert witness required by A.R.S. § 12-2604(A), which in subparagraph (1) requires an expert witness in a medical malpractice case to be in the same specialty or claimed

specialty or be board certified in the same specialty (if the party claims to be board certified), as the party testified for or against. In addition, under subparagraph (2), the witness must have

[d]uring the year immediately preceding the occurrence giving rise to the lawsuit, devoted a majority of the person's professional time to either or both of the following:

- (a) The active clinical practice of the same health profession as the defendant and, if the defendant is or claims to be a specialist, in the same specialty or claimed specialty.
- (b) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession as the defendant, and if the defendant is or claims to be a specialist, in an accredited health professional school or accredited residency or clinical research program in the same specialty or claimed specialty.

In opposition to the motion, Seisinger conceded her expert's lack of the above qualifications but argued that the statute was unconstitutional because it was a procedural enactment in direct conflict with a procedural rule of court, Rule 702, Rules of Evidence.

In response, Dr. Siebel argued that the statute was constitutional as a procedural enactment consistent with the court rule. He did not argue that the statute was a substantive rather than procedural enactment. The trial court granted the defendant's motion and ruled the statute did not violate the separation of powers doctrine or detract from the court's ability to apply Rule 702. When Seisinger failed to locate a new expert after being given an extension of time to do so, the court granted Siebel's motion to dismiss. Seisinger appealed.

The Court of Appeals held that A.R.S. § 12-2604(A) was "unconstitutional because it violates the separation of powers provision of the Arizona Constitution" by setting "stricter limits than Rule 702 on qualifications for an expert witness in medical malpractice cases and thus is in direct conflict with Rule 702."

The Court further found the statute was procedural rather than substantive because it does not "establish any new rights or reflect considerations creating, defining or regulating the right to bring a medical malpractice case, but merely prescribes the method by which existing rights may be enforced – changing the qualifications necessary to testify as an expert in a medical malpractice claim." Therefore, the statute violated the constitutional separation of powers doctrine of the Arizona Constitution, the Court of Appeals held.

The judgment of the trial court was reversed and the case remanded for further proceedings. Dr. Siebel petitioned for review.

ISSUE:

“Did the Court of Appeals err in ruling A.R.S. §12-1604 unconstitutional?”

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