

STATE OF MICHIGAN
COURT OF APPEALS

EILEEN HALLORAN, Temporary Personal
Representative of the ESTATE of DENNIS J.
HALLORAN, Deceased,

UNPUBLISHED
March 8, 2002

Plaintiff-Appellant,

v

RAAKESH C. BHAN, M.D., CRITICAL CARE
PULMONARY MEDICINE, P.C., and BATTLE
CREEK HEALTH SYSTEMS,

No. 224548
Calhoun Circuit Court
LC No. 98-003953-NH

Defendant-Appellees.

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

HOEKSTRA, J. (*dissenting*).

I respectfully dissent.

In this case, it is undisputed that defendant Bahn was board certified by the American Board of Internal Medicine (ABIM) and held a certificate of added qualification in critical care medicine from the ABIM and that plaintiff offered as her expert witness Dr. Thomas Gallagher, who is board certified by the American Board of Anesthesiology (ABA) and holds a certificate of special qualification in critical care medicine from the ABA.

On these facts, I respectfully disagree with the conclusion of the majority that the second sentence of MCL 600.2169(1)(a) does not apply in this case. Defendant Bahn's board certification plainly invoked the board certification provision of section 2169(1)(a) relative to physicians who testify either on his behalf or against him. Unlike the majority, I view the board certification itself, not the certificate of added or special qualification, to be the defining credential for purposes of analyzing the applicability of the second sentence of section 2169(1)(a)¹.

¹ Although not dispositive, in my opinion, I also question whether the critical care certifications are comparable in this case. I find no evidence in the record upon which to conclude whether critical care certification by the ABIM and the ABA require the same or even similar training and expertise.

I also believe that the majority's reliance upon *Tate v Detroit Receiving Hosp*, ___ Mich App ___, ___ NW2d ___ (Docket No. 225833, issued 1/15/2002) is misplaced. *Tate* is distinguishable because, ultimately, the operative board certifications of the two doctors at issue in *Tate* were the same. Here, they are different.

/s/ Joel P. Hoekstra