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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JENNIFER GAYE LEVITT, Plaintiff and Appellant, v. STEPHEN C. ROSS, Defendant and Respondent.	B212907 (Los Angeles County Super. Ct. No. SC094422)

APPEAL from a judgment of the Superior Court of Los Angeles County. Terry B. Friedman, Judge. Affirmed.

Law Offices of Kathy B. Seuthe, Kathy B. Seuthe for Plaintiff and Appellant.

Taylor Blessey, N. Denise Taylor, Janice Lee; Greines, Martin, Stein & Richland, Martin Stein, Alison M. Burner, Lara M. Krieger for Defendant and Respondent.

Plaintiff Jennifer Gaye Levitt, a psychiatrist and a professor at the UCLA Medical School, sued for medical malpractice her family practice physician, defendant Stephen C. Ross. Plaintiff's unsuccessful claim of malpractice was based on the allegedly belated diagnosis of her breast cancer in June of 2006. Plaintiff's theory of liability was that if defendant had palpated (i.e., medically examined by touching) the lump in her breast in January of 2005, and had thus discovered more about the architectural distortion and calcification of the lump, she would have been treated sooner and in a less invasive manner. According to plaintiff, the cancer—which did *not* reveal itself in mammogram and ultrasound tests ordered by defendant in January of 2005—could probably have been diagnosed at that time by her radiologist through the use of more refined and extensive imaging studies, and her cancer would have been treated much sooner.

The trial court granted summary judgment in favor of defendant, but denied summary judgment as to plaintiff's radiologist, who is not a party to this appeal. The trial court found that plaintiff's expert medical witness, a radiologist specializing in breast cancer, was not qualified to testify that defendant had breached the standard of care for family practice physicians. Thus, the court found no triable issue of fact on the key issue of a breach of the standard of care required of a family practice physician.

We affirm, because the trial court did not abuse its broad discretion regarding its assessment of plaintiff's expert witness. A family medicine physician is not, in effect, bound by the same standard of care applicable to radiologists specializing in breast cancer with no recent family practice qualifications or relevant experience. Nor is there any merit to plaintiff's effort to preempt the issue of the radiologist's inability to qualify to testify by complaining about the testimony of defendant's own expert. Plaintiff urges that it was the opinion of defendant's expert that was inadmissible, and that therefore the burden to come forward with controverting evidence purportedly never shifted to the plaintiff. The issue, however, is waived because it was raised for the first time on appeal and, in any event, is without merit.

FACTUAL AND PROCEDURAL SUMMARY

In July of 1997, plaintiff had a screening mammogram at the UCLA Medical Center. The mammogram showed dense breasts but no evidence of any malignancy. Beginning in 1999, defendant was plaintiff's primary care physician through her UCLA Healthcare HMO. Defendant examined her in 1999 for an initial visit, in 2001 for a comprehensive examination, and in 2003 for an abnormal Pap smear and earache. During the 1999 examination, defendant referred plaintiff to an infertility specialist. During the 2001 examination, plaintiff advised defendant that her great grandmother had a history of breast cancer. Defendant referred plaintiff (then approximately 45 years old) for a mammogram if she was not pregnant. A mammogram taken on February 15, 2002, revealed "no radiographic signs of malignancy."

In December of 2004, plaintiff first noticed a lump, smaller than the size of a pea, in her left breast. She called defendant's office to report her finding and to make an appointment to see defendant. The receptionist advised plaintiff that she would arrange for an appointment with the UCLA radiology department, where a mammogram and a breast ultrasound would be performed. Shortly thereafter, the receptionist called plaintiff back, gave her the telephone number for the radiology department, and instructed her to make the authorized appointment. Pursuant to the procedures of the UCLA Healthcare HMO, defendant as the primary care physician was the only one authorized to refer plaintiff to a medical specialist.

Defendant did not examine plaintiff's breast before referring her for a mammogram and a breast ultrasound. Plaintiff was not asked or advised to come in to see defendant, and no one asked her to make a medical appointment with him. Nor did defendant examine plaintiff's breast after she underwent the mammogram and ultrasound tests.

On January 4, 2005, plaintiff had a diagnostic mammogram and breast ultrasound at the Santa Monica-UCLA Women's Imaging Center. Dr. Nazanin Yaghmai interpreted the results of the mammogram and ultrasound tests. She found no evidence of malignancy. Dr. Yaghmai compared these January 2005 tests with test results on "films

from 2/15/2002 and films from 7/25/1997." Her report noted as follows: "An area of asymmetric breast tissue is present in the upper outer quadrant, stable since prior mammograms dating back to 1997. There are benign appearing calcifications. There are no radiographic signs of malignancy."

As stated in the declaration of plaintiff's expert, Dr. Nelson, at no time during the supervision of the ultrasound in January 2005 did Dr. Yaghmai palpate the lump in plaintiff's breast to ensure accuracy of the ultrasound target area. Nor did Dr. Yaghmai obtain a cone down compression view of plaintiff's breasts, which is typically helpful with a patient, such as plaintiff, who has dense breasts and requires compression views to help delineate any hidden tumor or mass.

In March or April of 2006, plaintiff again felt the lump in her left breast. This time, it appeared larger. Plaintiff again contacted defendant's office, and the receptionist advised plaintiff that she would be sent for another diagnostic mammogram and ultrasound. Again, defendant did not examine plaintiff's breasts. After plaintiff resolved some difficulty obtaining the proper forms, on June 1, 2006, she underwent a bilateral digital diagnostic mammogram and ultrasound. The results revealed evidence highly suggestive of a malignancy. A core needle biopsy and a pathology diagnosis revealed an invasive ductal carcinoma. Additionally, the cancer had metastasized to some of plaintiff's lymph nodes.

Plaintiff underwent intensive chemotherapy. She then had a lumpectomy, followed by a double mastectomy. Although there was no carcinoma on plaintiff's right side, plaintiff opted for a double mastectomy to diminish future risks and to assist in achieving symmetry of reconstruction.

In June of 2007, plaintiff filed the present lawsuit for medical malpractice against the Regents of the University of California and defendant Dr. Ross, as well as radiologist Dr. Yaghmai. The sole cause of action was for professional negligence. A motion for

summary judgment was granted only as to defendant Dr. Ross,[1] who plaintiff alleged had committed malpractice by not requiring an office visit to palpate her breast after she reported a lump in her breast in December of 2004.

In support of the motion for summary judgment, defendant submitted a declaration from Eduardo Anorga, M.D., regarding the standard of care of family practice physicians and the lack of causation. Dr. Anorga opined, in pertinent part, that defendant complied with the standard of care for a family practice physician in the community, and that he appropriately ordered a diagnostic mammogram and ultrasound. Also, Dr. Van Scoy-Mosher opined in his declaration that the requisite element of defendant's causation was lacking because, in pertinent part, plaintiff contributed to the delay in diagnosis and treatment by her failure to follow up with the recommendation of Dr. Yaghmai to return in one year for further radiological evaluation, and by her failure to report the breast lump she discovered in December of 2004 to her OB/GYN physician. Also, both Dr. Van Scoy-Mosher and Dr. Anorga faulted plaintiff for failing after January of 2005 to follow up with her primary care physician and for failing to return in January of 2006 for her yearly mammogram, as she had been instructed to do by Dr. Yaghmai.

Plaintiff opposed the motion for summary judgment, and submitted a declaration from Michael T. Nelson, M.D., asserting defendant's violation of the standard of care and defendant's causation. Dr. Nelson faulted defendant because he did not schedule an appointment, either before or after the January 2005 imaging studies, "so that he could palpate the involved lump" to assure appropriate imaging studies were conducted.

However, plaintiff submitted no written objections to defendant's evidence, nor did she object to such evidence at the hearing. Defendant filed a reply and written objections to Dr. Nelson's opinion on the ground, among others, that his radiology expertise did not qualify him to opine on the standard of care for family medicine

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[1] The trial court denied the motion for summary judgment brought by Dr. Yaghmai and the Regents of the University of California. They are not parties to this appeal.

practitioners, and that his opinion as to the probability of discovering the cancer in January 2005 was speculative.

At the hearing on the motion, the trial court agreed that Dr. Nelson was not qualified to offer an opinion on the standard of care applicable to family practice physicians in 2005. Because plaintiff had no other evidence regarding the standard of care, the trial court granted summary judgment as to defendant Dr. Ross and entered judgment in his favor.

Plaintiff appeals.

DISCUSSION

I. Dr. Anorga's expert opinion on the standard of care was sufficient to shift the burden to plaintiff to raise a triable issue of fact.

We review this matter de novo and determine the appeal in accordance with the customary rules of appellate review following summary judgment. (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1348; *Calemine v. Samuelson* (2009) 171 Cal.App.4th 153, 160-161.) A defendant moving for summary judgment meets the "burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action . . . cannot be established." (Code Civ. Proc., § 437c, subd. (p)(2).)[2] In the present case, defendant moved for summary judgment on the ground that he had complied with the standard of care and that plaintiff could not establish causation. Defendant's evidence included, in pertinent part, the declaration of Dr. Anorga on the standard of care and causation.

Plaintiff seeks, in essence, to preempt defendant's argument that her expert witness was not qualified to testify on the standard of care by contending that the declaration of Dr. Anorga was insufficient to shift the burden to her to come forward with any controverting evidence. Plaintiff urges, in pertinent part, that Dr. Anorga was purportedly not qualified to opine on the standard of care. Thus, according to plaintiff,

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[2] Unless otherwise indicated, all statutory references are to the Code of Civil Procedure.

even if she made a weak response or no response at all to the summary judgment motion, defendant was not entitled to summary judgment.

The most obvious and dispositive response to plaintiff's challenge to Dr. Anorga's expert opinion is that she waived that challenge by failing to raise any objections in the trial court. (§ 437c, subd. (b)(5); Evid. Code, § 353; subd. (a); see *People v. Farnam* (2002) 28 Cal.4th 107, 161-162 [appellate court's refusal to consider objection to expert's qualifications raised for the first time on appeal].) "Evidentiary objections not made at the [summary judgment] hearing shall be deemed waived." (§ 437c, subd. (b)(5).)

In any event, however, Dr. Anorga was qualified to render an expert opinion. As indicated by his declaration in support of the motion for summary judgment, he was board certified in family practice medicine since 1987, and was recertified in 1994 and 2001. He practiced family medicine since 1988, and currently practiced in Redondo Beach. Dr. Anorga's training and experience in family medicine amply showed that he was "familiar with the standards required of physicians under similar circumstances." (*Huffman v. Lindquist* (1951) 37 Cal.2d 465, 476.) He had the "special knowledge, skill, experience, training, or education sufficient to qualify him as an expert" to testify as to what a reasonably prudent family doctor in defendant's position would do when confronted by a patient reporting a lump in her breast. (Evid. Code, § 720, subd. (a); see *Landeros v. Flood* (1976) 17 Cal.3d 399, 410.)

Moreover, Dr. Anorga adequately articulated the applicable standard of care when he opined as follows: defendant acted "appropriately [when he] ordered a diagnostic mammogram and ultrasound, and requested [that plaintiff] make an appointment to see him. There is no evidence that [p]laintiff made an appointment with [defendant] following the January 4, 2005 mammogram and ultrasound." Dr. Anorga explained his opinion by specifying that the standard of care did *not* require that defendant contact plaintiff to make a follow-up appointment based on results of the mammogram and ultrasound. Nor did the standard of care require defendant to refer plaintiff to a surgeon based on those same test results.

Thus, Dr. Anorga's opinion as to the standard of care was more than merely a bare conclusory statement. (Compare *Kelley v. Trunk* (1998) 66 Cal.App.4th 519, 521, 524.) His opinion was sufficiently anchored to the facts of this particular case and adequately supported his conclusion that defendant acted appropriately when plaintiff informed him of the lump in her breast.

Plaintiff also asserts that there was a triable issue of fact as to whether she was asked to make an appointment with defendant. We note that a telephone record notation apparently annexed to a UCLA Medical Group Referral Tracking Form, dated December 13, 2004, contains the following comment: plaintiff "needs a ref[erral] for a mammogram—discovered a lump in left breast. Needs app't. also." Plaintiff argues that this handwritten remark is difficult to accurately decipher, and that it is also subject to dispute as to its meaning. Plaintiff further asserts that she, and *not* defendant, sought the appointment, and that defendant never asked her to make an appointment with him.

Contrary to plaintiff's theory, however, this was not a triable issue of *material* fact. (See § 437c, subd. (c).) Materiality depends on the issues in the case and is determined by the pleadings. (*Juge v. County of Sacramento* (1993) 12 Cal.App.4th 59, 65.) Here, the complaint focused on whether defendant breached the standard of care when he failed to recommend further diagnostic studies or follow-up treatment after the January 4, 2005, mammogram and ultrasound. Whether or not defendant told plaintiff to make an appointment with him is not sufficiently related to that core issue to be material. Vague claims of fault asserted in the complaint for other unspecified "acts, errors, and omissions" are not sufficient to frame an issue from which a defendant can present an intelligent defense by motion for summary judgment. (See *AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1064.)

Accordingly, the trial court did not abuse its discretion in implicitly finding that Dr. Anorga was qualified as an expert, and that he had adequately expressed his opinion as to the standard of care. Defendant met his burden of showing that plaintiff's cause of action against him had no merit because she could not establish he breached the standard of care. This shifted the burden to plaintiff to raise a material issue of fact with

admissible conflicting evidence from an expert witness (see *Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984-985), which plaintiff failed to do, as indicated below.

II. Because plaintiff's expert witness, radiologist Dr. Nelson, was not qualified to opine on the standard of care for family practice doctors, the trial court properly granted summary judgment.

The trial court determined that Dr. Nelson was not qualified to offer an opinion on the standard of care for family practice doctors. "'The qualification of a witness to testify as an expert is a matter within the sound discretion of the trial court, and where there is no showing of a manifest abuse of such discretion the ruling of that court will not be disturbed upon appeal.'" (*Pfingsten v. Westenhaver* (1952) 39 Cal.2d 12, 20.) An abuse of discretion implies an "'arbitrary determination, capricious disposition or whimsical thinking.'" (*In re Cortez* (1971) 6 Cal.3d 78, 85.) To prevail on appeal with a claim of abuse of discretion, plaintiff must establish that the trial court's ruling "exceeded the bounds of reason." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.) That was not the case here.

Dr. Nelson's declaration established that although he may well have been qualified to testify about the standard of care for radiologists, the trial court did not abuse its discretion in determining he was not qualified to testify about the standard of care for family practice doctors. Dr. Nelson declared that after lengthy service on the radiology staffs of private hospitals, for the past 14 years he had been on the faculty of the University of Minnesota Medical School, where he was currently a Professor of Medicine in the Department of Radiology. He further declared that he had examined 70 to 80 women per week for complaints about breast lumps, had conducted breast imaging and breast cancer research, and had chaired a clinical working group that developed imaging and practice guidelines for treating breast cancer patients.

As acknowledged by plaintiff, one gauge of a proposed expert's qualifications is the "practical knowledge of what is usually and customarily done by physicians under circumstances similar to those which confronted the defendant charged with

malpractice." (*Sinz v. Owens* (1949) 33 Cal.2d 749, 753.) However, Dr. Nelson did not indicate that he had any practical personal knowledge of what is customarily done by family medicine practitioners under circumstances such as in the present case. Specifically, Dr. Nelson never indicated he had ever practiced as a family doctor, although he had been board certified in that field in 1975. He did not assert that he had maintained his board certification in family practice, or that he had kept abreast of family practice training or developments in that field. Also, Dr. Nelson did not state he had ever worked with or consulted with any family doctors. (Compare *Cline v. Lund* (1973) 31 Cal.App.3d 755, 766-767.) Significantly, he never specifically claimed any familiarity with the standard of care for family practice doctors.

Nor does Dr. Nelson's expertise in radiology qualify him to testify about the standard of care in family medicine. Dr. Nelson's declaration did not address a matter of shared medical ability or basic knowledge common to all physicians such as, for example, the role of prophylactic antibiotics for patients with prior surgery complications (see *Miller v. Silver* (1986) 181 Cal.App.3d 652, 661), or the importance of cleanliness and sterilization for surgery (see *Hutter v. Hommel* (1931) 213 Cal. 677, 681-682). Dr. Nelson opined not about a matter of common medical knowledge, but rather about the additional and more sophisticated radiological tests defendant purportedly would have seen the need for had he palpated plaintiff's breast.

Moreover, a fair reading of Dr. Nelson's declaration indicates that he did not address the standard of care for family practice doctors at all. Rather, he addressed the standard of care regarding specialists, such as radiologists, to whom family doctors refer their patients. Dr. Nelson opined that defendant's conduct fell below the "appropriate" standard of care "because he failed to schedule an appointment to see [p]laintiff (either before or after the January 4, 2005 imaging studies) so that he could palpate the involved lump" and order additional diagnostic tests. Dr. Nelson explained that palpating the lump "can provide the physician with much useful information concerning the size, location, and consistency of the lump, all of which is useful in making sure the appropriate imaging studies are conducted." He described the additional tests, which in his opinion

were required for plaintiff because of her "very dense breasts," but he described additional tests (i.e., "cone down compression views" and a larger ultrasound area) only in the context of describing the care that should have been provided by a radiologist.

On issues within the area of expertise of a medical specialist, a general practitioner may not be held to the same standard of care as a specialist. (*Allen v. Leonard* (1969) 270 Cal.App.2d 209, 215-216.) Dr. Nelson's declaration did not indicate that the standard of care he addressed required a family physician to know that additional and more refined radiological testing was required. Nor did Dr. Nelson indicate that the standard of care required that a family physician even know the nature and type of such additional radiological testing.

Thus, not only did Dr. Nelson's declaration reveal he was not qualified to testify about the standard of care for a family practice doctor, but he essentially attempted to impose on a family practice doctor the standard of care required of a radiologist specializing in breast cancer. As established by the admissible declarations, defendant did exactly what he should have done as a family practice doctor—defendant referred plaintiff to a specialist for a diagnostic mammogram and ultrasound.

Accordingly, the trial court did not abuse its broad discretion in determining the preliminary, threshold issue (see Evid. Code, §§ 405, subd. (a), 720, subd. (a)) of Dr. Nelson's lack of qualification to testify regarding the standard of care for a family practice doctor. The trial court properly granted summary judgment in favor of defendant because plaintiff presented no admissible, conflicting expert evidence on the standard of care issue. (See *Barragan v. Lopez* (2007) 156 Cal.App.4th 997, 1007, 1008.)

III. Additionally, Dr. Nelson's declaration failed to establish that any alleged omission by Dr. Ross caused harm to plaintiff, further supporting the summary judgment.

In a lawsuit for medical malpractice, "'causation must be proven within a reasonable medical probability based [on] competent expert testimony. Mere possibility alone is insufficient to establish a prima facie case.'" (*Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1118.) Although, here, the trial court

granted summary judgment because plaintiff lacked admissible evidence on the issue of the standard of care, plaintiff's lack of evidence on the critical issue of causation is an additional ground which supports affirmance of the summary judgment. (See *Jimenez v. County of Los Angeles* (2005) 130 Cal.App.4th 133, 140.)

Dr. Nelson asserted in his declaration that if Dr. Ross had palpated plaintiff's lump in January of 2005 (either before or after the imaging studies), he would have discovered the lump to be in the area from 2 to 6 o'clock and would have ordered additional tests that probably would have led to a cancer diagnosis. The tests ordered by Dr. Ross without having palpated plaintiff's breast—the mammogram and ultrasound—identified findings in a somewhat different area, at the upper outer quadrant, and revealed "no sonographic abnormality at the site of clinically palpable mass from 2 to 3 o'clock." Dr. Nelson asserted that because Dr. Ross's palpation findings would have been in a somewhat different area than the test results, Dr. Ross would have ordered unspecified additional diagnostic tests[3] from which it could have been "concluded that plaintiff's cancer would have been diagnosed in January, 2005."

Thus, Dr. Nelson's opinion assumes the cancer discovered in 2006 was there to be discovered in 2005. However, this assumption is mere speculation and unsupported by evidentiary facts in the record, and thus does not constitute substantial evidence that could support a jury verdict. (See *Stephen v. Ford Motor Co.* (2005) 134 Cal.App.4th 1363, 1371, 1373.) Dr. Nelson's assumption is inconsistent with the following: (1) plaintiff's complaints in December 2004 and January 2005 that located the lump in the area between 2 and 3 o'clock; (2) according to the radiology report in 2005, although there was an area of asymmetric breast tissue, it had not changed since a 1997 mammogram; (3) according to the radiology report in 2006 when plaintiff's cancer was diagnosed, a comparison with the 2005 studies found a "new" abnormality in a

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3 We note that in discussing the conduct of Dr. Yaghmai, the radiologist, Dr. Nelson described imaging studies he faulted Dr. Yaghmai for not performing, but Dr. Nelson did not fault Dr. Ross regarding such additional studies.

"different" location; and (4) plaintiff acknowledged that the lump that had concerned her in December of 2004 had subsequently "disappeared." Therefore, nothing in Dr. Nelson's declaration reconciled his theory of causation with any of the above uncontradicted and seemingly inconsistent evidence, rendering his unreasoned declaration insufficient to raise a triable issue of fact. (See *Jennings v. Palomar Pomerado Health Systems, Inc.*, *supra*, 114 Cal.App.4th at p. 1121.)

Moreover, Dr. Nelson's reliance on a June 2006 biopsy led merely to his conjecture and not to a valid and admissible opinion on causation. Dr. Nelson's opinion that plaintiff's cancer would have been diagnosed in January of 2005 was premised on, as he stated, "the pathological features of [p]laintiff's cancer as found by biopsies in June, 2006. These features are architectural distortion and abnormal calcification . . . . And . . . both the mammography and ultrasound [in 2005] showed abnormal areas including architectural distortion, calcifications, and multiple masses" in the left breast. However, Dr. Nelson's declaration did not specifically link the particular characteristics discovered in 2006 with those found in 2005, and most significantly did not reconcile the 2006 findings with the evidence that the abnormal area found in 2005 (asymmetric breast tissue) was unchanged from a 1997 mammogram, and that the 2005 radiology report found the calcifications "benign appearing" and reported "no radiographic signs of malignancy."

Finally, Dr. Nelson's declaration is devoid of any explanation of how a family physician, such as Dr. Ross, would have been able to recognize through palpation these abnormalities, later identified through biopsy, so that he would have known to order more tests, despite the negative results of the tests he did order. Indeed, Dr. Nelson remarked that plaintiff had very dense breast tissue, thus apparently making detection of abnormalities difficult even by mammography. Although Dr. Nelson opined generally that palpation can provide a physician with "useful information concerning the size, location, and consistency of the lump," that broad statement does not establish the requisite link between the failure to palpate in 2005 and the pathology of the cancer

evident 18 months later in 2006. Merely asserting "as a probability" that Dr. Ross would have determined the location of the lump and ordered additional tests does not make it so.

Accordingly, the notion that if Dr. Ross had palpated plaintiff's left breast in 2005, he would have ordered additional and presumably more sophisticated tests that would have detected a malignancy, is pure speculation as to causation and without evidentiary value. For this additional reason, and apart from the lack of admissible evidence on the issue of the standard of care, the trial court properly granted summary judgment.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS.

BOREN, P.J.

I concur:

ASHMANN-GERST, J.

CHAVEZ, J., Concurring and Dissenting

While I concur in the result and with the majority opinion in its discussion of causation (part III), I disagree with the conclusion that Dr. Nelson was not qualified to give an opinion as a medical expert witness regarding the actions of the family practice defendant, Dr. Ross, and dissent from that portion of the opinion.

The majority correctly notes that the determination of an expert's qualifications as an expert witness is within the sound discretion of the trial court and will not be disturbed without an abuse thereof. However, here the witness has disclosed sufficient knowledge of the subject to entitle his opinion to be considered in opposition to summary judgment. Exclusion of that witness's declaration, because of an erroneous view of his qualifications, is an abuse of discretion. (*Brown v Colm* (1974) 11 Cal.3d 639, 647 (*Brown*).)

Dr. Nelson's declaration established that not only had he been board certified by the American Board of Family Practice in 1975, but that he had knowledge of the "uniform national standards of care applicable to the treatment provided to patients in Plaintiff's circumstances." The duty of the trial court is to determine the somewhat low threshold of whether the potential expert witness has sufficient skill or experience in the field to provide assistance to the fact finder in its search for the truth. (*Brown, supra*, 11 Cal.3d at p 645.) Indeed our Supreme Court in *Brown* acknowledged the "unmistakable general trend" toward liberalizing the requirements of qualification for medical experts, noting that there are sound and persuasive reasons supporting this trend over a more rigid test, including a party's potential inability of being able to secure an expert witness at all. (*Id*. at pp. 645-646.)

The majority contend that Dr. Nelson "did not address the standard of care for family practice doctors at all. Rather, he addressed the standard of care regarding specialists, such as radiologists, to whom family doctors refer their patients." A similar argument was rejected by the Supreme Court in *Mann v Cracchiolo* (1985) 38 Cal.3d 18.

There the court determined that a neurosurgeon was qualified to testify to the standard of care in reading X-rays, in submitting X-ray reports, and in diagnosing injury therefrom under the theory that as a neurosurgeon he is aware not only of the practice of his own specialty but also the symptomatology which leads others to refer patients to neurosurgeons. Just because a patient's symptomatology does not arise from the area of practice of a particular physician, that does not exclude the need for a consultation with another specialist in a different field in the proper treatment of that patient. (*Id.* at p 39.) Here is a similar situation. Dr. Nelson is a Professor of Medicine in the Department of Radiology with a "clinical interest" in breast imaging and breast cancer research. He arguably possesses superior knowledge of the treatment of patients in plaintiff's position than a family practice physician. That does not disqualify him from offering an expert opinion of the standard of care when there is evidence that he is familiar with the family practice standard.

_____, J.

CHAVEZ