STATE OF MICHIGAN

COURT OF APPEALS

EMILY CROSSNOE, Personal Representative of the ESTATE OF JAMES DEE CROSSNOE,

Plaintiff-Appellant,

v

HENRY FORD HEALTH SYSTEM, HENRY FORD MACOMB HOSPITAL CORPORATION, and GARY REINHEIMER, MD

Defendants-Appellees.

UNPUBLISHED
October 19, 2023

No. 359650
Macomb Circuit Court
LC No. 2021-001331-NH

Before: CAVANAGH, P.J., and K. F. KELLY and GARRETT, JJ.

PER CURIAM.

This lawsuit arose from allegations of medical malpractice by defendant, Dr. Gary Reinheimer, a physician board-certified in allergy and immunology, in his treatment of the decedent, James Dee Crossnoe, at an urgent care clinic. The trial court ultimately dismissed the case after concluding that plaintiff's affidavit of merit (AOM) from Dr. Daniel Joseph Purcell, a board-certified emergency-medicine physician, did not satisfy the statutory requirements for a qualified expert witness. On appeal, plaintiff argues that the trial court erred by determining that allergy and immunology was the appropriate standard of care for reviewing the alleged malpractice because Dr. Reinheimer was practicing emergency medicine. Plaintiff also contends that, even if allergy and immunology were the appropriate standard of care, plaintiff's counsel reasonably believed that Dr. Purcell was qualified to sign the AOM. While we agree with the trial court that allergy and immunology is the appropriate standard of care in this case, we conclude that plaintiff's counsel's belief that Dr. Purcell was qualified to sign the AOM was reasonable given the information available to counsel at the time. For that reason, we reverse.[1]

[1] Throughout the opinion, we refer to the decedent as Crossnoe and to the personal representative of Crossnoe's estate as plaintiff.

I. FACTS

On February 18, 2017, Crossnoe arrived at Henry Ford Health System's Chesterfield urgent care clinic, complaining of sudden difficulty breathing. Dr. Reinheimer evaluated and treated Crossnoe. Dr. Reinheimer found that he suffered from a cough, shortness of breath, wheezing, and a runny nose. Dr. Reinheimer documented that Crossnoe was "in respiratory distress," with a history of pneumonia and chronic pulmonary obstructive disease (COPD), and diagnosed him with an acute exacerbation of COPD. Dr. Reinheimer then prescribed steroids and antibiotics before discharging him. Crossnoe returned home, and during the early hours of February 19, 2017, suffered from respiratory arrest and could not be awakened. He was taken to the hospital by ambulance and pronounced dead soon after.

Plaintiff, Crossnoe's wife and personal representative of his estate, brought this lawsuit, alleging that Dr. Reinheimer was professionally negligent in his treatment of Crossnoe, and that this negligence was a proximate cause of Crossnoe's death. Plaintiff also alleged that Dr. Reinheimer was acting as an agent of defendants Henry Ford Health System and Henry Ford Macomb Hospital, and that they were therefore vicariously liable for Dr. Reinheimer's professional negligence. The complaint specifically alleged that Dr. Reinheimer was "board certified in Allergy and Immunology and Pediatrics,[2] working in an Urgent Care setting, practicing emergency medicine . . . ." In support of her complaint, and in accordance with MCL 600.2912d, plaintiff filed an AOM signed by Dr. Purcell. Dr. Purcell's affidavit stated that "during the relevant time period at issue in this matter, I was a licensed and practicing physician, specializing in Emergency Medicine and devoting a majority of my professional time, for the preceding year, in an Emergency Medicine/Urgent Care setting . . . ."

Defendants moved for summary disposition, arguing that plaintiff's AOM was defective because Dr. Purcell's board certification in emergency medicine did not match Dr. Reinheimer's board certifications. Therefore, defendants contended, Dr. Purcell was not qualified to offer testimony on the applicable standard of care. Plaintiff responded that, while Dr. Reinheimer and Dr. Purcell did not have the same board certifications, the focus under *Woodard v Custer*, 476 Mich 545; 719 NW2d 842 (2006), was on the one most relevant specialty involved in the case. Plaintiff asserted that Dr. Reinheimer was practicing emergency medicine at the time of the alleged malpractice, therefore making emergency medicine the one most relevant specialty and qualifying Dr. Purcell to offer his expert opinion. Furthermore, noting that a plaintiff's attorney must only have a reasonable belief that the physician signing the AOM was qualified, plaintiff argued that it was reasonable to believe that Dr. Purcell was qualified to sign the AOM considering the circumstances of Crossnoe's treatment. Defendants asserted in reply that Dr. Reinheimer's evaluation and treatment of Crossnoe was within the scope of practice of his board certification because allergists and immunologists treat patients with COPD. Therefore, according to defendants, the one most relevant specialty was allergy and immunology, and plaintiff had to provide an AOM from a board-certified allergist and immunologist. Defendants also argued that

[2] Dr. Reinheimer's board certification in pediatrics is not relevant to this appeal.

plaintiff's counsel could not have reasonably believed that Dr. Reinheimer was practicing emergency medicine at the time of the alleged malpractice.

At a hearing on defendants' motion for summary disposition, the trial court concluded that emergency medicine was not the appropriate standard of care. The court never expressly determined whether plaintiff's counsel could have reasonably believed that Dr. Purcell was qualified to sign the AOM, but the court gave plaintiff 60 days to provide an amended AOM signed by a specialist in allergy and immunology. After plaintiff failed to do so, the trial court dismissed her claims with prejudice.

Plaintiff now appeals as of right.

II. STANDARD OF REVIEW

This case involves determining the correct standard of care, interpreting MCL 600.2912d and MCL 600.2169, and reviewing the trial court's decision on a motion for summary disposition. The applicable standard of care is determined as a matter of law, *Cox v Flint Bd of Hosp Managers*, 467 Mich 1, 16 n 16; 651 NW2d 356 (2002), meaning it is a legal question subject to de novo review, see *Crego v Edward W. Sparrow Hosp Assoc*, 327 Mich App 525, 531; 937 NW2d 380 (2019). We likewise review the trial court's decision on a motion for summary disposition and questions of statutory interpretation de novo. *Bates v Gilbert*, 479 Mich 451, 455; 736 NW2d 566 (2007). On de novo review, we evaluate the legal issue independently, giving "respectful consideration, but no deference" to the trial court's conclusion. *Wasik v Auto Club Ins Assoc*, 341 Mich App 691, 695; 992 NW2d 332 (2022). We review a trial court's ruling on the qualification of a proposed expert witness for an abuse of discretion. *Woodard*, 476 Mich at 557. "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Id.*

Defendants moved for summary disposition under MCR 2.116(C)(8) and (C)(10). We construe the trial court as having granted defendants' motion under MCR 2.116(C)(10) because the court relied on documentary evidence beyond the pleadings. See *Cuddington v United Health Servs, Inc*, 298 Mich App 264, 270; 826 NW2d 519 (2012). "A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law." *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Cuddington*, 298 Mich App at 270-271 (quotation marks and citation omitted).

III. ANALYSIS

Plaintiff argues that the trial court erred in finding her AOM insufficient because emergency medicine was the one most relevant specialty in this case, so Dr. Purcell was qualified to sign the AOM. Alternatively, plaintiff contends that even if this Court disagrees, plaintiff's counsel had a reasonable belief that Dr. Purcell was qualified to sign the AOM for purposes of MCL 600.2912d, and therefore reversal of the trial court's order is still warranted.

A. APPROPRIATE STANDARD OF CARE

In a medical malpractice action, the plaintiff's attorney must "file with the complaint an affidavit of merit signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under section 2169." MCL 600.2912d(1). Section 2169, in turn, provides in pertinent part:

> (1) In an action alleging medical malpractice, a person shall not give expert testimony on the appropriate standard of practice or care unless the person is licensed as a health professional in this state or another state and meets the following criteria:
>
> (a) If the party against whom or on whose behalf the testimony is offered is a specialist, specializes at the time of the occurrence that is the basis for the action in the same specialty as the party against whom or on whose behalf the testimony is offered. However, if the party against whom or on whose behalf the testimony is offered is a specialist who is board certified, the expert witness must be a specialist who is board certified in that specialty. [MCL 600.2169.]

"Because the plaintiff's expert will be providing expert testimony on the appropriate or relevant standard of practice or care, not an inappropriate or irrelevant standard of practice or care, it follows that the plaintiff's expert witness must match the one most relevant standard of practice or care—the specialty engaged in by the defendant physician during the course of the alleged malpractice, and, if the defendant physician is board certified in that specialty, the plaintiff's expert must also be board certified in that specialty." *Woodard*, 476 Mich at 560. Taken together, MCL 600.2912d(1) and MCL 600.2169(1)(a) "require the plaintiff's counsel to file an affidavit of merit signed by a physician who counsel reasonably believes specializes in the same specialty as the defendant physician." *Grossman v Brown*, 470 Mich 593, 596; 685 NW2d 198 (2004).

According to plaintiff, Dr. Reinheimer was practicing emergency medicine, and not allergy and immunology, at the time of the alleged malpractice, and thus the one most relevant specialty here is emergency medicine. For several reasons, we disagree.

First, defendants sufficiently established that allergy and immunology was the specialty engaged in by Dr. Reinheimer at the time of the alleged malpractice. Besides the undisputed fact that Dr. Reinheimer is board-certified in that specialty, defendants also presented evidence that he was practicing within the scope of that specialty when he evaluated and treated Crossnoe. Defendants referenced information from the American Academy of Allergy, Asthma, and Immunology, as well as the American College of Allergy, Asthma, and Immunology, to demonstrate that allergists treat patients with COPD. Crossnoe suffered from COPD and was diagnosed by Dr. Reinheimer with an acute exacerbation of COPD after receiving treatment at the urgent care clinic. This evidence supports the conclusion that Dr. Reinheimer was practicing allergy and immunology during the course of the alleged malpractice. Plaintiff also failed to produce evidence creating a genuine issue of material fact that allergy and immunology was not the most relevant specialty in this case.

Second, our Supreme Court, although in uncertain terms, has implicitly rejected plaintiff's argument that emergency medicine was the appropriate standard of care. By way of background, in *Jilek v Stockson*, 289 Mich App 291, 294, 300-302; 796 NW2d 267 (2010) (*Jilek I*), rev'd 490 Mich 961 (2011) (*Jilek II*), recon den 491 Mich 870 (2012) (*Jilek III*), this Court addressed a dispute over the standard of care that applied to the defendant physician's treatment of the decedent at an urgent care center. The defendant physician was board-certified in family medicine, but the plaintiff argued that the standard of care for emergency medicine applied because the defendant physician was practicing emergency medicine at the time of the alleged malpractice. *Id*. at 296. The trial court employed a hybrid standard of care, instructing the jury that the applicable standard of care was that of a " 'physician specializing in family practice and working in an urgent care center . . . .' " *Id*. at 300-301. Relying on *Woodard*, 476 Mich at 560, this Court reversed and held that there was "overwhelming support for the conclusion that the controlling standard in this case [was] that of emergency medicine, not family practice." *Id*. at 301-302. To reach this conclusion, this Court partly focused on the definition of "urgent" to hold that urgent care was more akin to emergency medicine than family practice. *Id*. at 303. In a two-paragraph order,[3] our Supreme Court reversed *Jilek I* and held:

> The trial court correctly determined as a matter of law that the appropriate standard of care was "family practice" because the defendant physician is board-certified solely in family medicine. Further, pursuant to MCL 600.2912a,[4] the trial court properly allowed the jury to consider that standard of care in light of the facilities available to the defendant physician—an urgent care center, not an emergency medical facility. The trial court did not abuse its discretion in ruling that defendants' two experts were qualified to provide "standard of care" testimony under MCL 600.2169 because they satisfied the specific qualifications of MCL 600.2169(1)(a) and (b). [*Jilek II*, 490 Mich at 961.]

Jilek II did not provide any additional analysis on why family practice was the applicable standard of care.

In this case, Crossnoe presented to the urgent care with difficulty breathing. Dr. Reinheimer evaluated Crossnoe, diagnosed him with acute exacerbation of COPD, and discharged

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[3] An order of our Supreme Court constitutes binding precedent "if it constitutes a final disposition of an application and contains a concise statement of the applicable facts and reasons for the decision." *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 369; 817 NW2d 504 (2012). Although the Court provided minimal analysis in *Jilek II*, neither party contests that we are bound by the order. We agree that *Jilek II* constitutes binding precedent on this Court, although, for reasons we will discuss further, its terse reasoning has rendered the order difficult to apply and reconcile with *Woodard*.

[4] MCL 600.2912a(1)(b) provides that the plaintiff has the burden to establish that the defendant, "if a specialist, failed to provide the recognized standard of practice or care within that specialty as reasonably applied in light of the facilities available in the community or other facilities reasonably available under the circumstances, and as a proximate result of the defendant failing to provide that standard, the plaintiff suffered an injury."

him with a prescription for steroids and antibiotics. As best we interpret *Jilek II*, the Supreme Court recognized a fundamental difference between an urgent care center and an emergency room and implicitly suggested that providing medical care at an urgent care clinic, at least without more, does not generate the conclusion that a physician was practicing emergency medicine. That is necessarily the case if the defendant physician was board-certified in a particular specialty and was practicing within that specialty while rendering care at the urgent care clinic. Because defendants established that Dr. Reinheimer was practicing within his board-certified specialty of allergy and immunology during the course of the alleged malpractice, the trial court did not err by determining that emergency medicine was not the appropriate standard of care. The fact that Dr. Reinheimer was providing urgent treatment to Crossnoe does not alter that conclusion. See *Jilek II*, 490 Mich at 961. Plaintiff attempts to sidestep *Jilek II* by arguing that defendants' position negates *Woodard*'s guidance that the "one most relevant specialty" is the specialty that the defendant was practicing at the time of the alleged malpractice. See *Woodard*, 476 Mich at 560. As we have already explained, however, defendants established that Dr. Reinheimer was practicing within the field of allergy and immunology, and thus that specialty provided the applicable standard of care.

Plaintiff's reliance on *Reeves v Carson City Hosp*, 274 Mich App 622; 736 NW2d 284 (2007), and *Horn Estate v Swofford*, 334 Mich App 281; 964 NW2d 904 (2020),[5] is also unpersuasive. In *Reeves*, 274 Mich App at 628-630, this Court held that the plaintiffs appropriately obtained an emergency room physician as an expert witness when the defendant physician was practicing in the emergency department at the time of the alleged malpractice, even though the defendant physician was board-certified in family medicine. This Court concluded that the family-medicine doctor was practicing outside the scope of that specialty and was, in fact, practicing emergency medicine. *Id*. at 628. Therefore, emergency medicine provided the appropriate standard of care because the defendant physician was practicing emergency medicine at the time of the alleged malpractice and could have potentially obtained board certification in emergency medicine. *Id.* at 630. This case is easily distinguishable from *Reeves*, as Dr. Reinheimer was not working in an emergency department, nor was he practicing outside of his board certification.

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[5] After hearing oral argument, our Supreme Court granted the application for leave to appeal in *Horn Estate* to consider

> (1) whether *Woodard v Custer*, 476 Mich 545; 719 NW2d 842 (2006), was correctly decided and is consistent with the requirements of MCL 600.2169(1); (2) if not, whether it should nonetheless be retained under principles of stare decisis, *Robinson v City of Detroit*, 462 Mich 439, 463-468; 613 NW2d 307 (2000); (3) if *Woodard* should be retained, whether a defendant's practice of only a single medical specialty affects the application of *Woodard*'s "one most relevant specialty" requirement, 476 Mich at 560, 719 NW2d 842; (4) if *Woodard* was not correctly decided and should not be retained, the test that should be applied under MCL 600.2169(1); and (5) whether the Court of Appeals reached the right result under the proper application of the requirements of MCL 600.2169 in this case. [*Horn Estate v Swofford*, 982 NW2d 397 (Mich, 2022).]

The Court heard additional oral argument on these matters on October 4, 2023.

Additionally, in *Horn Estate*, 334 Mich App at 293-298, this Court determined that the defendant physician was acting within the scope of a specialty, neuroradiology, in which he was not board-certified. Although the defendant physician in *Horn Estate* was not board-certified in neuroradiology at the time of the alleged malpractice, he had been board-certified in neuroradiology in the past. *Id.* at 295. That is not true for Dr. Reinheimer, who has never been board-certified in emergency medicine.

In sum, Dr. Reinheimer was board-certified in allergy and immunology and practicing within that specialty at the time of the alleged malpractice, so allergy and immunology was the one most relevant standard of care. See *Woodard*, 476 Mich at 560. Accordingly, the trial court did not err when it concluded that Dr. Purcell was not qualified to offer expert testimony on the applicable standard of care.

B. REASONABLE BELIEF OF EXPERT QUALIFICATION

Plaintiff next argues that, even if allergy and immunology is the one most relevant standard of care, counsel reasonably believed that Dr. Purcell was qualified to sign the AOM. Plaintiff therefore contends that dismissal of her claim is unwarranted at this stage.

A plaintiff in a medical malpractice action "must obtain a medical expert at two different stages of the litigation—at the time the complaint is filed and at the time of trial." *Grossman*, 470 Mich at 598. At the first stage, the plaintiff's attorney must file "an affidavit of merit signed by a health professional who the plaintiff's attorney *reasonably believes* meets the requirements for an expert witness under section 2169." MCL 600.2912d(1) (emphasis added). The second stage—trial—is more demanding: a health professional " '*shall not* give expert testimony . . . unless the person' " meets several enumerated requirements. *Grossman*, 470 Mich at 599, quoting MCL 600.2169(1).

> The Legislature's rationale for this disparity is, without doubt, traceable to the fact that until a civil action is underway, no discovery is available. Thus, the Legislature apparently chose to recognize that at the first stage, in which the lawsuit is about to be filed, the plaintiff's attorney only has available publicly accessible resources to determine the defendant's board certifications and specialization. At this stage, the plaintiff's attorney need only have a *reasonable belief* that the expert satisfies the requirements of MCL 600.2169. However, by the time the plaintiff's expert witness testifies at trial, the plaintiff's attorney has had the benefit of discovery to better ascertain the qualifications of the defendant physician, and, thus, the plaintiff's attorney's reasonable belief regarding the requirements of MCL 600.2169 does not control whether the expert may testify. [*Grossman*, 470 Mich at 599 (citations omitted).]

Considering these differing standards, there will be cases in which the plaintiff's counsel reasonably believed that the affiant was qualified under MCL 600.2169 even though the affiant is ultimately found unqualified to testify at trial. See *Jones v Botsford Continuing Care Corp*, 310 Mich App 192, 200; 871 NW2d 15 (2015).

At the AOM stage, we must consider whether plaintiff's attorney could have reasonably believed that Dr. Purcell was a qualified expert witness under MCL 600.2169. When determining the reasonableness of an attorney's belief at this stage, the reviewing court looks to the resources available to that attorney at the time the affidavit was prepared. *Sturgis Bank & Trust v Hillsdale Community Health Ctr*, 268 Mich App 484, 494; 708 NW2d 453 (2005). Although a plaintiff's attorney is "allowed considerable leeway in identifying an expert affiant" at the AOM stage, "such leeway cannot be unbounded" and must remain within reason. *Bates*, 479 Mich at 459.

Considering the resources available to plaintiff's counsel when Dr. Purcell's AOM was prepared, we conclude that counsel could have reasonably believed that Dr. Purcell met the requirements for an expert witness under MCL 600.2169. When Dr. Purcell prepared his affidavit, the resources available to plaintiff's counsel included the facts surrounding Crossnoe's visit to the urgent care clinic and relevant Michigan case law, such as *Woodard* and *Jilek II*. We are persuaded that counsel's belief was reasonable because *Woodard* and *Jilek II* are difficult to reconcile and because the facts of Crossnoe's urgent care visit reasonably relate to the practice of an emergency medicine specialist.

First, as noted, we are bound by *Jilek II*. But *Jilek II*'s analysis, or the absence thereof, has rendered its impact unclear and subject to multiple reasonable interpretations. *Jilek II* held that "the appropriate standard of care was 'family practice' because the defendant physician [was] board-certified solely in family medicine." 490 Mich at 961. Because the order offered no additional reasoning on that point, "[i]t is unclear if the holding of *Jilek II* was based in part on a determination that the defendant physician in *Jilek* was not practicing outside her board certification of 'family practice' when she provided medical services at an urgent care facility, which rendered only her actual board certification relevant." *Higgins v Traill*, unpublished per curiam opinion of the Court of Appeals, issued July 30, 2019 (Docket No. 343664), p 6.[6] Without this information, one reasonable interpretation of *Jilek II* is that, when the plaintiff's expert does not match the board certification of the defendant physician, the plaintiff's expert is necessarily unqualified to offer standard-of-care testimony, even if the defendant physician was practicing in a specialty *outside* of their board certification at the time of the alleged malpractice. But that reasonable interpretation of *Jilek II* conflicts with *Woodard*, 476 Mich at 560, which held that "the plaintiff's expert witness must match the one most relevant standard of practice or care—the specialty engaged in by the defendant physician during the course of the alleged malpractice . . . ."[7] Thus, under *Woodard*, the analysis under MCL 600.2169 does not stop at a

[6] Although unpublished opinions are not precedentially binding, we may consider them for their instructive or persuasive value. *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017).

[7] In a concurrence to the Supreme Court's order denying reconsideration of *Jilek II*, Justice MARKMAN dismissed any confusion resulting from *Jilek II* and explained why, in his view, the order was consistent with *Woodard*. *Jilek III*, 491 Mich at 870-872 (MARKMAN, J., concurring). Justice MARKMAN claimed that *Woodard*'s "one-most-relevant-specialty" test was "only applicable if the defendant has more than one specialty." *Id.* at 872. Because the defendant physician in *Jilek* only practiced the specialty of family medicine, Justice MARKMAN concluded that family medicine necessarily determined the defendant's standard of care. *Id.* Justice

simple side-by-side comparison of the physicians' board certifications. Rather, if the defendant physician was practicing outside of their board-certified specialty, the relevant comparator is the specialty that the physician was actually engaged in during the alleged malpractice. See, e.g., *Reeves*, 274 Mich App at 628-630 (holding under *Woodard* that emergency medicine was the one most relevant standard of care applicable to alleged malpractice by a board-certified family medicine doctor who was working in the emergency room and practicing outside of her board certification). Nor do we read *Jilek II* as having silently imposed a bright-line rule that the appropriate standard of care for a physician practicing in an urgent care clinic can *never* be emergency medicine when the physician is board-certified in another specialty. Again, consistent with *Woodard*, determining the appropriate standard of care depends on the one most relevant specialty at issue, which in turn requires consideration of the specialty that the defendant physician was actually practicing at the time of the alleged malpractice.

In this case, plaintiff argues that her attorney reasonably believed that Dr. Reinheimer was practicing emergency medicine—and not allergy and immunology—during the alleged malpractice. While defendants presented evidence on summary disposition that Dr. Reinheimer was practicing allergy and immunology, it was not unreasonable, at the time plaintiff's counsel obtained the AOM, to believe that Dr. Reinheimer was engaged in the specialty of emergency medicine. An emergency medicine specialist

> focuses on the immediate decision making and action necessary to prevent death or any further disability both in the pre-hospital setting by directing emergency medical technicians and in the emergency department. This specialist provides immediate recognition, evaluation, care, stabilization and disposition of a generally diversified population of adult and pediatric patients in response to acute illness and injury.[8]

MARKMAN also opined that *Jilek II* necessarily overruled *Reeves* to the extent it was inconsistent with his interpretation of the "one-most-relevant-specialty" test. *Id*. Justice MARKMAN's position was his alone and never garnered an additional vote, let alone a majority vote of the Court. *Reeves* has never been expressly overruled, and this Court has continued to rely upon it as good law. See, e.g., *Horn Estate*, 334 Mich App at 294 n 5 ("The whole point of *Reeves* is that if a defendant physician was practicing a particular branch of medicine when the malpractice allegedly occurred, and board certification was available for the practice of that branch of medicine, then the physician was engaged in a "specialty" for purposes of MCL 600.2169, and the plaintiff's expert must have practical or teaching experience in that specialty.").

[8] American Board of Medical Specialties, *Emergency Medicine*, <https://www.abms.org/board/american-board-of-emergency-medicine/#abem-em> (accessed September 20, 2023). Plaintiff cites an identical description from the American Medical Association in her appellate brief. Defendants ask us to ignore this description on procedural grounds, deeming it "new evidence" and an improper expansion of the record. While it is true that "[e]nlargement of the record on appeal is generally not permitted," *Mich AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143, 146; 809 NW2d 444 (2011), we do not

Plaintiff alleged in her complaint that Crossnoe complained of sudden difficulty breathing at the urgent care clinic, that Dr. Reinheimer documented Crossnoe as "in respiratory distress," that Crossnoe was diagnosed with an acute exarcerbation of COPD, and that "[d]espite [Crossnoe's] emergent condition, he was only prescribed steroids and a z-pak and discharged home." Under these circumstances, where plaintiff has alleged that Crossnoe presented to a pre-hospital setting with an acute injury in need of immediate evaluation and care, it was reasonable for plaintiff's counsel to believe that Dr. Purcell—as an emergency-medicine specialist with a background working in urgent care centers—was qualified to sign the AOM. With the limited information that plaintiff's counsel possessed at the time, the decision to enlist Dr. Purcell to sign the AOM was a reasonable one that fell within the "considerable leeway" given to selecting an expert witness upon the filing of a complaint. See *Bates*, 479 Mich at 459. Because plaintiff's counsel had a reasonable belief that Dr. Purcell was qualified to sign the AOM, plaintiff was not required to file an amended AOM from an allergy and immunology specialist at this early stage of litigation. See *Grossman*, 470 Mich at 598-599. Accordingly, the trial court erred by dismissing plaintiff's case for failure to file an AOM that complied with MCL 600.2912d.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ Kristina Robinson Garrett

find merit with defendant's procedural objection. For starters, we do not necessarily agree that citing a definition from a publicly-accessible website constitutes new evidence subject to the general rules limiting record expansion. See MCR 7.210(A) ("Appeals to the Court of Appeals are heard on the original record."); MCR 7.216(A)(4) (permitting additions to the record in the discretion of this Court). As an analogy, we would not say that a party referencing a dictionary definition for the first time in its appellate brief to make a point about statutory interpretation renders consideration of that definition off limits. That is, this Court's ability to turn to dictionary definitions for interpretative guidance does not turn on whether a party raised a particular definition in the lower court or in its briefing. We also have the ability to take judicial notice of facts "not subject to reasonable dispute" that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." MRE 201(b). That provides another permissible means for our consideration of the "emergency medicine" description.