COMPARING APPLES TO APPLES: WHAT "SIMILARLY SITUATED" REALLY MEANS IN THE CONTEXT OF MEDICAL MALPRACTICE EXPERTS

BY
ANNIE J. DIKE

INTRODUCTION

Claims against healthcare providers in Alabama must be brought pursuant to the Alabama Medical Liability Act ("AMLA"). In order to prevail on a claim of medical negligence under AMLA, the plaintiff must prove the defendant healthcare provider "failed to exercise such reasonable care, skill, and diligence as other similarly situated health care providers *in the same general line of practice* ordinarily have and exercise in a like case."[1] What does that mean? This essentially sets up a "reasonable physician" standard in that the standard of care then becomes what would a reasonable healthcare provider do under the same set of circumstances. However, because healthcare is not a subject about which the average person is knowledgeable, the plaintiff must present *expert* testimony to prove the defendant healthcare provider breached the standard of care. In other words, the plaintiff must offer up a "similarly-situated" healthcare provider who will testify that the defendant healthcare provider did not act reasonably under the circumstances presented in the case, *i.e.*, that he breached the standard of care.

This begs the question: Who can testify against whom? Can a doctor testify against a nurse? Can an operating room technician testify against a surgeon? Although these examples are obvious and fairly easy to answer, the question is actually quite complex. Just as every different area of law requires a separate skill set and knowledge base, every different area of medicine requires specialized training and experience. For example, it is unlikely that an attorney who practices only medical malpractice defense will be knowledgeable enough to testify about the legal malpractice standard for, say, an attorney that handles complicated business

mergers, or labor and employment disputes or will contests. Hence, the "similarly situated" requirement.

Section 6-5-548 of AMLA sets forth the standard for "similarly situated" experts. It is broken down into two different subsections: one applying to healthcare providers who are specialists, *i.e.*, they are certified by an appropriate American board as a specialist and they hold themselves out as a specialist, and the other to non-specialists, *i.e.*, they are not certified by an American board as being a specialist and they do not hold themselves out as being a specialist. Although it would seem easy to determine whether a healthcare provider is certified and holds himself out as being a "specialist," this question is also deceivingly complicated because the question of whether a defendant healthcare provider was *practicing* as a specialist hinges on the most important question of any medical malpractice suit: What is the applicable standard of care?

I. WHAT IS THE APPLICABLE STANDARD OF CARE?

The first question any court must ask in determining whether a medical malpractice expert is "similarly situated" is: What is the standard of care alleged to have been breached?[2] The answer depends not only upon the area of medicine in which the defendant healthcare provider practices, but also the specific care he was providing at the time of the subject incident and the training or expertise that is required to render that care. For example, the defendant healthcare provider could be a world-renowned cardio-thoracic surgeon, but if the procedure he was performing when the alleged breach occurred was merely sutures to close a wound, the standard of care would be that of a general surgeon closing a wound and, thus, *not* that of a specialist. Accordingly, a defendant healthcare provider can technically *be* a specialist in that he is certified in a specialty by the appropriate American board and holds himself out as a specialist

in that area, but the care he was providing when the alleged breach occurred does not require specialized training. In that situation, the applicable standard of care would *not* be that of a specialist.

For instance, in *Medlin v. Crosby*, 583 So.2d 1290 (Ala. 1991), the defendant physician was board certified in family medicine but practicing emergency medicine at the time of the subject incident.[3] The plaintiff's expert was board certified in internal medicine and also practicing emergency medicine at the time of the subject incident.[4] Although the defendant doctor was board certified in family medicine and, thus, arguably a "specialist" in this area, the court found that the applicable standard of care in *Medlin* was that of only an emergency physician, not an emergency physician specializing in family medicine, because the treatment at issue did not require any special skills in family medicine.[5]

Similarly, in *Dempsey v. Phelps*, 700 So.2d 1340 (Ala. 1997), the defendant physician was a board certified orthopaedic surgeon providing care to a child after clubfoot surgery.[6] On its face, this would appear to require an expert board certified in orthopaedic surgery; however, the actual breach alleged by the plaintiff was the doctor's failure to properly treat the child's foot for circulatory and vascular problems during the post-surgery phase.[7] The court found these problems were not exclusive to the particular type of orthopaedic surgery the defendant physician had performed but, rather, involved only the treatment of infection following surgery.[8] Thus, despite his specialty training in orthopaedic surgery, the defendant was not deemed a "specialist" for purposes of the standard of care at issue. On this basis, the court allowed the plaintiff's expert, a board-certified cardiovascular surgeon, experienced in treating vascular post-operative problems, to testify as to the applicable standard of care.[9]

Overall, whether a defendant healthcare provider is certified as a specialist and holds himself out to be a specialist is not exclusively determinative of the applicable standard of care. Even though the defendant healthcare provider may qualify as a specialist, the "similarly situated," specialist versus non-specialist requirement is not determined solely by the *status* of the defendant healthcare provider but, rather, also by the specific *care* he was providing at the time of the incident and whether he was exercising his specialized training and experience at that time. As demonstrated by *Medlin* and *Dempsey*, it is entirely possible for a specialist to breach the standard of care while practicing general medicine, thereby making the applicable standard of care that of a non-specialist, even though the defendant healthcare provider is technically a specialist.

II. WAS THE DEFENDANT PRACTICING AS A SPECIALIST?

Once the court determines the applicable standard of care, the next question it must answer is whether the expert is "similarly situated" pursuant to Section 6-5-548. ALA. CODE § 6-5-548, section (c) establishes the applicable standard of care for specialists as follows:

> (c) Notwithstanding any provision of the Alabama Rules of Evidence to the contrary, if the health care provider whose breach of the standard of care is claimed to have created the cause of action is certified by an appropriate American board as a specialist, is trained and experienced in a medical specialty, and holds himself or herself out as a specialist, a "similarly situated health care provider" is one who meets all of the following requirements:
>
> (1) Is licensed by the appropriate regulatory board or agency of this or some other state.
>
> (2) Is trained and experienced in the same specialty.
>
> (3) Is certified by an appropriate American board in the same specialty.
>
> (4) Has practiced in this specialty during the year preceding the date that the alleged breach of the standard of care occurred.[10]

These statutory requirements and their interpretation have been the subject of frequent debate. In *Chapman v. Smith*, 893 So.2d 293 (Ala. 2004), the plaintiff alleged the defendant physician breached the standard of care of an anesthesiologist, practicing in chronic pain management and administering a cervical epidural injection to a patient.[11] It was undisputed that the defendant physician was a specialist in anesthesiology and in pain management.[12] The defense argued that the plaintiff's expert was not qualified to testify against the defendant doctor because he was not certified by the appropriate board *during the year* preceding the date of the subject incident.[13] This was essentially an attempt to require the expert not only *practice* in the specialty but also be *certified* in that specialty in the year preceding the subject incident. The court disagreed and concluded that a plain reading of the statute required only that the proffered expert have *practiced* in the specialty in the year preceding the incident.[14]

Similarly, in *Panayiotou v. Johnson*, 995 So. 2d 871 (Ala. 2008), the defendant physician was certified in internal medicine, cardiovascular disease *and* interventional cardiology by the American Board of Internal Medicine ("ABIM").[15] The plaintiff's expert, however, was only certified by the ABIM in internal medicine and cardiovascular disease, *not* interventional cardiology.[16] Defense counsel argued that the plaintiff's expert was not "similarly situated" because he was not certified in the same specialty as the defendant doctor.[17] The plaintiff countered by claiming the defendant doctor was *not* a specialist because his declared "specialty" of interventional cardiology was classified only as a "subspecialty" by the American Board of Medical Specialists ("ABMS").[18] The court concluded that if any board offers certification in an area of medicine, to consider that area of medicine a specialty.[19]

The *Panayiotou* court pointed out the logic of the plaintiff's argument as follows:

> [I]f we were to adopt [the plaintiff's] argument relying on the taxonomic designations used by ABIM and ABMS, it would pave the way for a gastroenterologist, an endocrinologist, or a nephrologist, all of whom practice in an area recognized as a 'subspecialty' by ABIM, to testify as a similarly situated health-care provider against a cardiologist merely because they were all certified by ABIM in the 'specialty' of internal medicine-regardless of the fact that their expertise is in the digestive system, the endocrine system, and the kidneys, respectively, and that they might have had minimal experience with medical issues related to the heart. This is precisely the situation § 6-5-548 was enacted to prevent. Thus, we now explicitly hold that if an appropriate American medical board recognizes an area of medicine as a distinct field and certifies health-care providers in that field, that area is a specialty for purposes of § 6-5-548.[20]

Thus, the proffered expert in *Panayiotou* did not qualify as a "similarly situated" healthcare provider under Section 6-5-548 because he did not have the same specialty certification from the same American board as did the defendant physician.[21]

The legislature further clarified subsection (c) of Section 6-5-548 in 1997 by substituting the word "and" for the word "or" when identifying the three criteria the defendant healthcare provider must meet in order to qualify as a "specialist."[22] Previously, the statute required the defendant healthcare provider only be certified by an appropriate board in a specialty, have been trained or experienced *or* hold himself out as a specialist.[23] However, the 1997 amendment clarified that the defendant healthcare provider must meet all requirements in order to qualify as a specialist.[24] If he is not certified, trained and experienced in the particular specialty *and* does not hold himself out as a specialist in that specialty, he is not a specialist for purposes of Section 6-5-548. The Alabama Supreme Court has defined "holding himself out" to mean the defendant healthcare provider "has taken affirmative steps to present himself to the public as a specialist."[25] If the record is devoid of such evidence, the defendant healthcare provider will be considered a non-specialist.

To summarize, if the standard of care alleged to have been breached involves specialized training and experience and the defendant healthcare provider, in treating the plaintiff, was

certified by an appropriate board as that type of specialist, was trained or experienced in that specialty, held himself out as a specialist in that area and was utilizing his specialized training when treating the plaintiff, he will be considered a specialist for purposes of Section 6-5-548. This will require the plaintiff to put forth an expert: (1) licensed by the appropriate regulatory board or agency, (2) trained and experienced in the same specialty, (3) certified by an appropriate American board in the same specialty, and (4) who has practiced in the same specialty during the year preceding the subject incident.[26] However, if this is not the case, and the care at issue involves only general medicine, the proffered expert need only meet the requirements of Section 6-5-548 subsection (b) for non-specialists.

III. WAS THE DEFENDANT PRACTICING AS A NON-SPECIALIST?

ALA. CODE § 6-5-548 subsection (b) governs the standard for non-specialists and provides as follows:

> (b) Notwithstanding any provision of the Alabama Rules of Evidence to the contrary, if the health care provider whose breach of the standard of care is claimed to have created the cause of action is not certified by an appropriate American board as being a specialist, is not trained and experienced in a medical specialty, or does not hold himself or herself out as a specialist, a "similarly situated health care provider" is one who meets all of the following qualifications:
>
> (1) Is licensed by the appropriate regulatory board or agency of this or some other state.
>
> (2) Is trained and experienced in the same discipline or school of practice.
>
> (3) Has practiced in the same discipline or school of practice during the year preceding the date that the alleged breach of the standard of care occurred.[27]

A. Physicians

Medlin v. Crosby is the seminal case concerning a non-specialist physician expert. In *Medlin*, the Alabama Supreme Court found the defendant healthcare provider did not qualify as a specialist because the standard of care at issue involved emergency medicine and the defendant doctor was not board certified and did not hold himself out as a specialist in emergency medicine. [28] The Court reached a similar conclusion in *Ex parte Waddail*, 827 So.2d 789 (Ala. 2001), in which the defendant was an osteopathic physician, certified by the American Osteopathic Board of Family Physicians, but was practicing emergency medicine at the time of the subject incident.[29] The court found the applicable standard of care was that of an emergency room physician stabilizing a diabetic patient before transporting her to another facility.[30] While emergency medicine can be a specialty, the court found the defendant physician was not certified in that specialty and did not hold himself out as a specialist in emergency medicine; thus, he did not qualify as a specialist under Section 6-5-548(c).[31] Because the proffered expert in *Waddail* met the requirements of Section 6-5-548(b), *i.e.*, he was: (1) licensed to practice medicine by a state licensing board, (2) trained and experienced in the practice of emergency medicine (he had 24 years' experience in emergency medicine) and (3) practiced in emergency medicine in the year before the subject incident (he was serving as the director of emergency services in the year before the incident), the court found he qualified as a "similarly situated" expert.[32]

Medlin and *Waddail* present fairly easy examples of a plaintiff presenting testimony from a non-specialist expert against a non-specialist defendant healthcare provider. The situation becomes more complicated, however, when the defendant healthcare provider is a non-specialist but plaintiff's proffered expert is a specialist, albeit trained in the same discipline. For example, in *Rodgers v. Adams*, 657 So.2d 838 (Ala. 1995), the Alabama Supreme Court found the defendant healthcare provider was not a specialist because he practiced only as a general dentist

and he was not board-certified in any dental specialty.[33] The plaintiff's proffered expert was board certified in prosthodontics.[34] The court assessed the plaintiff's expert's qualifications under each prong of Section 6-5-548(b), for non-specialists and found that he was: (1) licensed to practice dentistry in the State of Alabama and (2) trained and experienced in general dentistry because he received such training as part of his dental degree and had practiced general dentistry throughout his career as a dental school instructor.[35] With respect to the third prong of Section 6-5-548(b) and whether the proffered expert practiced in the "same discipline or school of practice" in the year preceding the subject incident, the court found that AMLA does not require the defendant healthcare provider and the expert have "identical training, experience or types of practice" to be "similarly situated."[36] Rather, where the applicable standard of care is that of a general practice, a specialist can testify regarding the applicable standard of care if his practice in the year preceding the incident involved that general practice and he is familiar with the applicable general standard of care for that practice.[37] The *Rodgers* court concluded that both a general dentist and a prosthodontist are qualified to perform the procedure made the basis of the action; thus, the plaintiff's expert, albeit a specialist, was qualified to testify against the defendant healthcare provider, a generalist, because he was familiar with the applicable general standard of care.[38]

The court explained in *Rodgers* that the opposite could be true as well, *i.e.*, a general dentist would be permitted to testify against a prosthodontist specialist in that case because where, as here, the procedure at issue did not involve specialized training, the applicable standard of care was not that of a specialist but, rather, a generalist.[39] Specifically, the court explained:

> For example, if the parties were reversed in this case, so that the prosthodontist . . . was the defendant and the general dentist . . . was the expert, we would reach the

> same result. [The general dentist] would be allowed to testify because the standard of care alleged to have been breached involved *general dentistry* and not prosthodontics; section 6-5-548(b) would apply in that reversed situation. Also, a general surgeon would be qualified to testify that an orthopedic surgeon breached the standard of care if the procedure was common to both disciplines, as is the case here. Specifically, if the incident involved an alleged negligent suturing of an incision, a general surgeon would be qualified to testify that an orthopedic surgeon had breached the standard.[40]

Under this standard, because the plaintiff's proffered expert's practice, while devoted primarily to prosthodontics, did incorporate some aspects of general dentistry, he qualified as a "similarly situated" healthcare provider under Section 6-5-548(b).[41] The court noted that the legislature did not specify the amount of time the proffered expert must have spent practicing in the subject discipline or the nature or quality of the practice.[42] As long as the expert's practice in the year preceding the subject incident included some element of the general discipline or practice at issue, he will meet the third prong of the test under Section 6-5-548(b).

B. <u>Nurses</u>

Although a nurse will never be considered a specialist under Section 6-5-548(c) because the Alabama Board of Nursing does not offer specialty certifications for nurses, Alabama courts have analyzed nurses in the same manner as physicians in requiring "similarly situated" nurses be trained and skilled in the same school or discipline as the defendant nurse. In order for a proffered nursing expert to be considered "similarly situated" to render expert testimony against a defendant nurse, he or she must be: (1) licensed by the Alabama Board of Nursing or the equivalent nursing regulatory board of another state, (2) trained and experienced in the same field of nursing as the defendant nurse and (3) have practiced in the same field of nursing as the defendant nurse during the year preceding the subject incident. *Id.*

A nursing expert is permitted to testify as to the standard of care applicable to the defendant nurse if she can demonstrate sufficient training, experience and knowledge in the

defendant nurse's area of practice. In *Healthtrust, Inc. v. Cantrell*, 689 So.2d 822 (Ala. 1997), the healthcare provider at issue was an operating room technician. Plaintiff's expert had not worked directly as an operating room technician in the year preceding the subject incident.[43] In analyzing the prongs of Section 6-5-548(b), the court found the plaintiff's expert had sufficient training because she had previously worked as an operating room technician in her career.[44] With respect to her practice in the year preceding the subject incident, although the plaintiff's expert had not practiced directly as an operating room technician, she had served as the director of medical services for a hospital and had given testimony on the applicable standards and guidelines for operating room technicians and demonstrated a "knowledgeable familiarity with surgical procedure and hospital practice" that the court felt qualified her as a "similarly situated" healthcare provider pursuant to ALA. CODE § 6-5-548(b).[45]

The Alabama Supreme Court has also made an exception for nursing educators with respect to the third prong of Section 6-5-548(b) concerning practice of the discipline in the year preceding the subject incident. In *Dowdy v. Lewis*, 612 So.2d 1149 (Ala. 1992), the plaintiff's nursing experts had not performed direct, independent patient care in the year preceding the incident but they had devoted their full efforts to the teaching of nursing.[46] The court found that because the nursing educators had extensive experience and still worked in the nursing field as teachers with direct supervision over nursing students as they actually performed nursing case on patients, they met the requirements of Section 6-5-548(b).[47]

Despite these seemingly loose standards for nurses, the courts have made it clear that if the proffered nurse expert does not have the necessary training or experience in the appropriate discipline, he or she will not qualify as similarly situated under Section 6-5-548(b). In *Jordan v. Brantley*, 589 So.2d 680 (Ala. 1991) the defendant nurse was an emergency room nurse who had

placed identifying tags on the bodies of two teenage boys who were killed that night in a car accident based on information provided by the state troopers.[48] The identifications later proved to be incorrect and both the troopers and the nurse were sued.[49] To establish their case for medical negligence against the defendant nurse, the plaintiffs presented evidence from a registered nurse who testified that, in her opinion, the nurse had deviated from the standard of care in placing the identifying tags on the bodies.[50] The plaintiffs' expert, however, admitted on cross-examination that she had not worked in an emergency room setting in the three years prior to the date of trial, that she had never been assigned to work full time in an emergency room and that she was not an expert on emergency room procedures.[51] On this basis, the court found the plaintiffs' nursing expert did not qualify as a "similarly situated" expert under ALA. CODE § 6-5-548 because she was not sufficiently familiar with the defendant nurse's area of practice.[52]

The court recently took a similar stance in *Springhill Hospitals, Inc. v. Dimitrios Critopoulos*, 2011 WL 5607816 (Ala. 2011). In *Critopoulos*, the plaintiff developed pressure ulcers while recovering in the cardiac intervention unit following a cardiac-artery-bypass graft ("CABG") surgery.[53] The plaintiff filed suit, claiming the nurses caring for him in the cardiac intervention unit breached the standard of care in allowing him to develop ulcers, and he offered the expert testimony of a wound care nurse in support of his claims for medical negligence.[54] The Alabama Supreme Court analyzed the purported expert's qualifications under each of the three prongs of Section 6-5-548(b).

With respect to the first prong, the court found the plaintiff's nurse had the requisite licensure to render testimony against the defendant nurses because she was licensed to practice as a nurse in North Carolina.[55] However, in order to be considered "similarly situated" under Section 6-5-548, the proffered expert must also be: (a) trained in the same field of discipline as

the defendant nurse and (b) have practiced in that discipline in the year preceding the subject incident.[56] The court narrowly defined the standard of care at issue as that of a cardiac-recovery nurse treating post–CABG patients to prevent pressure ulcers.[57] Although the plaintiff's expert, as a wound care nurse, did perform some of the clinical services as the defendant, cardiac-recovery nurses had provided, such as checking the vitals and blood pressure of a patient, she had admittedly never provided direct, hands-on care as a staff nurse to patients such as the plaintiff, who were in immediate post-recovery in the cardiac-recovery unit.[58] Accordingly, the court found the plaintiff's nursing expert did not qualify as a "similarly situated healthcare provider" under Section 6-5-548 of AMLA.[59] The court instructed the trial court on remand to enter judgment as a matter of law in favor of the defendant nurse and hospital.[60]

The *Critopoulos* decision is a perfect example of the rigid requirements of Section 6-5-548 and the "similarly situated" standard when the applicable standard of care is narrowly defined to a precise, unique school or discipline of medicine. The proffered experts must have experience and training in the specific school or practice, however narrowly defined, and must have practiced or directly supervised the practice of that discipline in the year preceding the subject incident; otherwise, they will not be considered "similarly situated" and will not be qualified to render expert testimony against the defendant healthcare provider.

IV. PRACTICE POINTS

A. Narrowly Define the Standard of Care

In order to benefit from the "similarly situated" requirements of Section 6-5-548, defense counsel should first seek to narrowly define the standard of care at issue. This is the most important question and will work to either narrow or broaden the potential range of other healthcare providers that will be qualified to offer expert testimony against the defendant

healthcare provider. The more narrowly defined the standard of care is (*i.e.* a cardiac recovery nurse treating post–CABG patients to prevent pressure ulcers) the smaller the world of potential experts that will qualify as "similarly situated." Thus, defense counsel should try to determine whether the care at issue required any specialized training or skill. The patient may have also had a unique condition, whether temporary or permanent (for example, did the patient have a heart condition, was he diabetic, etc.) that would require specialized treatment. Or, perhaps he had other special considerations, *i.e.*, mobility constraints, allergies or certain medication contraindications, that made his situation unique, necessitating specialized care to meet his particular needs. Explore this possibility to try to narrow the world of potential experts for the plaintiff.

B. Explore the Expert's Credentials, Training and Experience

In deposition and discovery, thoroughly explore the plaintiff's expert's credentials, degrees, certifications and licensures. If the defendant healthcare provider qualifies as a specialist under the circumstances, ensure that the proffered expert similarly qualifies as a specialist in that particular area of medicine. Independently research and verify the expert's certifications and licensures and search for disciplinary actions or other negative history. Thoroughly examine the expert's training and experience. Inquire about the job duties and responsibilities he had in each position he held throughout his career and, in particular, the year preceding the subject incident. Ask whether he has ever held a position, narrowly defined, identical to that of the defendant healthcare provider and what all that position entailed at his facility. This also requires defense counsel be intimately familiar with his own client's credentials, training and the specific area of medicine in which he or she practices.

Any particular nuances or circumstances specific to the treatment at issue may also be helpful. Try to determine whether the proffered expert has ever treated a patient identical to the plaintiff/decedent (assuming identical conditions, diseases, allergies, temperaments, proclivities, etc., narrowly-defined). In other words, narrowly define the treatment at issue and ask whether the expert has ever encountered that exact situation and, if so, how often and when was the last time. Remember, the plaintiff *must* put forth qualified expert testimony to support his claims for medical negligence or they fail as a matter of law. Time spent exploring his credentials, training and experience is well spent if defense counsel can successfully exclude the plaintiff's expert under Section 6-5-548.

---

[1] ALA. CODE § 6-5-548(b) (emphasis added).
[2] *See Medlin v. Crosby*, 583 So.2d 1290, 1293 (Ala. 1991).
[3] *Medlin*, 583 So.2d at 1293.
[4] *Id.*
[5] *Id.*
[6] *Dempsey*, 700 So.2d at 1344.
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] ALA. CODE § 6-5-548.
[11] *Chapman*, 893 So.2d at 296.
[12] *Id.*
[13] *Id.*at 297.
[14] *Id.*at 297-98
[15] *Panayiotou*, 995 So.2d at 873.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*at 877.
[21] *Id.* at 880.
[22] ALA. CODE § 6-5-548(c) (1975) (amended 1996).
[23] *Id.*
[24] *Id.*
[25] *Medlin*, 583 So.2d at 1295.
[26] ALA. CODE § 6-5-548(c).
[27] ALA. CODE § 6-5-548(b).
[28] *Medlin*, 583 So.2d at 1293.

[29] *Waddail*, 827 So.2d at 792.
[30] *Id.*.
[31] *Id.*at 793-94.
[32] *Id.*
[33] *Rodgers*, 657 So.2d at 841.
[34] *Id.*
[35] *Id.*
[36] *Id.* at 842.
[37] *Rodgers*, 657 So.2d at 842.
[38] *Id.*
[39] *Id.*
[40] *Id.* (internal citations omitted).
[41] *Id.*at 843.
[42] *Id.*
[43] *Cantrell*, 689 So.2d at 826-27.
[44] *Id.* at 827.
[45] *Id.*
[46] *Dowdy*, 612 So.2d at 1151.
[47] *Id.* at 1151-52.
[48] *Jordan*, 589 So.2d 680.
[49] *Id.*
[50] *Id.* at 683.
[51] *Id.*
[52] *Id.*
[53] *Critopoulos*, 2011 WL 5607816, *1.
[54] *Id.*
[55] *Id.* at *9.
[56] ALA. CODE § 6-5-548(b).
[57] *Critopoulos*, 2011 WL 5607816, *9.
[58] *Id.* at *10.
[59] *Id.* at *10-11.
[60] *Id.* at *11.

Annie J. Dike is an associate with the Helmsing, Leach, Herlong, Newman & Rouse, P.C. law firm. Ms. Dike obtained her undergraduate degree *summa cum laude* from the University of Alabama in 2004 and her Juris Doctorate *cum laude* from the University of Alabama School of Law in 2007. Ms. Dike's main practice focus is medical malpractice defense, products liability, and creditor's rights. She is admitted to practice in the State of Alabama and the Middle, Northern, and Southern Districts of Alabama as well as the Northern District of Florida. Ms. Dike also serves on the Defense Research Institute Medical Liability Steering Committee, the Board of Directors for the Alabama Defense Lawyers Association and the Mobile Bar Association Young Lawyers Executive Committee. She was named as an Alabama Rising Star and one of Benchmark Litigation's Top 250 Women in Litigation in 2012.