

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
December 11, 2001 Session

**MARY HENRY, et al. V. OBSTETRICS AND GYNECOLOGY  
CONSULTANTS, P.C., et al.**

**Appeal from the Circuit Court for Knox County  
No. 1-185-98 Hon. Dale C. Workman, Judge**

**FILED FEBRUARY 8, 2002**

**No. E2001-01246-COA-R3-CV**

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**CONCURRING OPINION**

The expert witness whose testimony was excluded because we found he was not competent to testify pursuant to Tenn. Code Ann. §29-26-115, and case law interpreting the statute, nevertheless is a specialist in his field of medical practice and competent to treat patients. A review of the case law dealing with the mentioned statute, reveals tortured analyses in determining whether the physician is competent to testify as an expert witness.

As Judge Goddard's Opinion notes, this witness testified there is a national standard of care for training purposes in the medical schools, and he was of the further opinion that health care provided by medical specialists "does not vary from community to community".

In my view, the General Assembly should revise Tenn. Code Ann. §29-26-115, and bring it in compliance with how physicians are being trained and how health care is being administered to patients in this State.

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HERSCHEL PICKENS FRANKS, J.