

## MSC Order List: April 2, 2010

---

[3. April 2010](#)

On Friday, April 2, 2010, the Michigan Supreme Court ordered oral argument on the application (or miniature oral argument (“MOA”)) in three medical malpractice cases and remanded one case to the Court of Appeals to address the reporting requirements under the child protection law. The Court also denied leave to appeal in five cases, denied reconsideration in two cases, and dismissed one case on the stipulation of the parties.

The ordered MOAs are to be heard on the same day in *Ykimoff v. W.A. Foote Memorial Hospital*, No. 139561, and *Martin v. Ledingham*, No. 138636. Both cases involve the standard of proving causation in a medical malpractice action arising from the purported failure of nurses to promptly report patients’ worsening conditions to the treating physicians. In *Martin*, the Court of Appeals [concluded](#) that the trial court properly granted summary disposition against the plaintiff’s claims because the evidence showed that the doctors would not have changed the patient’s treatment even if they had received earlier notice of the patient’s worsening condition. In *Ykimoff*, the Court of Appeals affirmed the trial court’s denial of a motion for JNOV in [three separate opinions](#), concluding that the doctor’s testimony that earlier notice of the patient’s worsening condition would not have affected treatment was speculative and therefore the issue of causation was appropriate for submission to a jury. Our earlier post on *Ykimoff* is [here](#). The Michigan Association of Justice submitted an amicus brief in support of the application in *Ykimoff*.

In *Robelin v. Spectrum Health Hospitals*, No. 139860, the Court ordered a MOA to address whether the testimony of Dr. Gabriel, plaintiff’s causation expert, met the *Daubert/Gilbert* standard embodied in MRE 702 and MCL § 600.2955. The Court of Appeals [concluded](#) that although Dr. Gabriel’s theory is novel and not widely accepted within the scientific community, it was sufficiently reliable as an application of the “Sherlock Holmes methodology,” i.e. “once all impossibilities are filtered out, whatever remains, irrespective of its improbability, must be the truth.” The Michigan Supreme Court invited the Michigan Association for Justice, the Michigan Defense Trial Counsel, and the Michigan State Medical Society to submit amicus briefs.

Finally, in *Doe v. Doe*, No. 139896, the Michigan Supreme Court partially vacated the decision of the Court of Appeals and remanded the case for the Court of Appeals to reconsider the application of the reporting requirements under the child protection law, MCL § 722.623(1)(a). The Court of Appeals [concluded](#) that the trial court correctly concluded that a genuine issue of material fact existed regarding whether defendants fulfilled their statutory obligation to “immediately” report child abuse.