

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

HOLLY AND KEITH MULROONEY,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No.: N10C-10-200 ALR
)	
CHRISTIANA CARE HEALTH SYSTEM,)	
INC., ALL ABOUT WOMEN OF)	
CHRISTIANA CARE, INC., A. DIANE)	
MCCRACKEN, M.D., and CLARE)	
SZYMANSKI,)	
Defendants.)	

Date Submitted: November 8, 2013
Date Decided: January 27, 2014

Upon Plaintiffs' Motions *in limine*:

Plaintiffs' Motion to Partially Exclude DR. STEPHEN J. SONDHEIMER – GRANTED in part and DENIED in part

Plaintiffs' Motion to Partially Exclude DR. STEPHEN J. ADASHEK – DENIED

Plaintiffs' Motion to Partially Exclude JESSICA JORDAN – DENIED

Plaintiffs' Motion to Exclude KAREN BRAYBOY – DENIED

Plaintiffs' Motion to Exclude DR. RICHARD H. BENNETT – DENIED

Plaintiffs' Motion to Exclude DR. KIM KLANCKE – DENIED

Plaintiffs' Motion to Partially Exclude DR. BRUCE COULL – DENIED

Plaintiffs' motion to exclude DR. PAUL H. AXELSON – GRANTED in part DENIED in part.

Lisa C. McLaughlin, Esquire, Phillips Goldman & Spence, P.A., Attorney for Plaintiffs.

Joshua H. Meyeroff, Esquire, Wharton Levin Ehrmantraut & Klein, Attorney for Defendants.

Rocanelli, J.

This matter arises from alleged injuries sustained by Holly Mulrooney (“Plaintiff Holly”) as a result of alleged negligence by All About Women of Christiana Care (“AAW”). Plaintiff Holly was a patient of AAW. On October 15, 2008, Plaintiff Holly contacted AAW regarding questions about having missed her menstrual cycle since May 2008. Plaintiff Holly had an appointment with AAW on October 20, 2008 and met with Claire Szymanski (“Szymanski”), a certified nursing midwife, during this visit.

On October 24, 2008, Plaintiff Holly returned to AAW to undergo an ultrasound of her uterus. On October 28, 2008, Plaintiff Holly received a call from AAW informing her that two prescriptions had been called into her pharmacy and that she should take those medications as prescribed. On November 6, 2011, Plaintiff Holly began to feel ill and complained of a migraine headache. On November 8, 2011, Plaintiff Holly complained of right-sided numbness and was taken to Christiana Hospital. She was diagnosed as having suffered a stroke.

Plaintiffs allege that AAW failed to properly screen Plaintiff Holly for contraindications to the medications prescribed, failed to discuss the risk factors involved in taking the prescribed medications, failed to provide adequate information regarding the medications and side effects, and failed to discuss alternative treatment options. Plaintiffs further allege that Defendants’ actions were the actual and proximate cause Plaintiff Holly’s stroke.

The Plaintiffs have filed the following motions *in limine* to limit or exclude the testimony of the Defendants’ experts. At the trial level, it is the role of the Court to

perform a gatekeeping function with expert testimony.¹ The admissibility of such testimony is governed by Delaware Rule of Evidence 702, which provides:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.²

Delaware has adopted the *Daubert* standard to determine whether an expert has a reliable basis in the knowledge and experience of the relevant discipline. Under this standard, the trial judge may consider the following factors: 1) whether the theory or technique has been tested; 2) whether it has been subjected to peer review and publication; 3) whether a technique has a high known or potential rate of error and whether there are standards controlling its operation; and 4) whether the theory or technique enjoys acceptance within a relevant scientific community.³

In addition to the *Daubert* factors, Delaware requires the trial judge to consider an additional 5-step test to determine admissibility of expert testimony.⁴ The trial judge must determine that:

- (1) the witness is qualified as an expert by knowledge, skill, experience, training or education;
- (2) the evidence is relevant;
- (3) the expert's opinion is based upon information reasonably relied upon by experts in that particular field;
- (4) the expert testimony will assist the trier of fact to understand the evidence or determine a material fact in issue; and

¹ *Sturgis v. Bayside Health Ass'n*, 942 A.2d 579, 583 (Del. 2007).

² D.R.E. 702

³ *Sturgis*, 942 A.2d at 584 (citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)).

⁴ *Id.*

(5) the expert testimony will not create unfair prejudice or confuse or mislead the jury.⁵

Testimony by an expert that is founded on assumptions that have no basis in fact is not merely subject to refutation by cross-examination or by counter experts; it is inadmissible.⁶ An expert's qualifications alone do not grant the witness the ability to express *ipse dixit* rather than a properly supported expert opinion.⁷ An expert's failure to explain an important inference requires the exclusion of that opinion.⁸ It is the burden of the party seeking to introduce the expert testimony to establish its admissibility by a preponderance of evidence.⁹

Plaintiffs' Motion to Partially Exclude Dr. Stephen J. Sondheimer:

Upon the Plaintiffs' Motion to Partially Exclude the Testimony of Dr. Stephen J. Sondheimer, it is the decision of this Court that the motion is hereby **GRANTED** as to causation and **DENIED** as to all other grounds.

Plaintiffs contend, and this Court agrees, that Dr. Sondheimer is not qualified to testify as to the causation of Plaintiff Holly's injuries. Defendants represented during argument that Dr. Sondheimer's testimony will be limited to standard of care. Plaintiffs' motion is granted to the extent of Dr. Sondheimer's testimony regarding causation. It is otherwise denied.

⁵ *Id.*

⁶ *Perry v. Berkley*, 996 A.2d 1262, 1271 (Del. 2010).

⁷ *Slicer v. Hill*, 2012 WL 1435014, at *5 (Apr. 20, 2012 Del. Super.).

⁸ *Id.*

⁹ *Sturgis*, 942 A.2d at 583.

Plaintiffs' Motion to Partially Exclude Dr. Stephen J. Adashek:

Upon the Plaintiffs' Motion to Exclude the Testimony of Dr. Stephen J. Adashek, it is the decision of this Court that the motion is hereby **DENIED**.

Plaintiffs' challenges to Dr. Adashek's testimony go to the weight and credibility of the testimony. Weight and credibility challenges relate to an expert's skill or knowledge in being able to tie the facts of the case to the opinion he or she plans to give.¹⁰ Dr. Adashek is competent to testify as an expert and Plaintiffs' challenges go to the weight rather than the admissibility of the evidence. Therefore, Plaintiffs' motion is denied.

Plaintiff's Motion to Partially Exclude Jessica Jordan:

Upon the Plaintiffs' Motion to Partially Exclude the Testimony of Jessica Jordan, it is the decision of this Court that the motion is hereby **DENIED**.

It is the finding of this Court that Jessica Jordan is qualified to testify as an expert and that Plaintiffs' challenges go to the weight rather than the admissibility of the evidence. Therefore, Plaintiffs' motion is denied.

Plaintiffs' Motion to Exclude Karen Brayboy:

Upon the Plaintiffs' Motion to Exclude the Testimony of Karen Brayboy, it is the decision of this Court that the motion is hereby **DENIED**.

Karen Brayboy is qualified as an expert witness to testify regarding the standard of care in this case and that Plaintiffs' challenge goes to the weight rather than the admissibility of the evidence. Therefore, Plaintiffs' motion is denied.

¹⁰ *Perry v. Berkley*, 996 A.2d 1262, 1270–71 (Del. 2010).

Plaintiffs' Motion to Exclude Dr. Richard H. Bennett:

Upon the Plaintiffs' Motion to Exclude the Testimony of Dr. Richard H. Bennett, it is the decision of this Court that the motion is hereby **DENIED**.

Plaintiffs contend that Dr. Bennett did not form the expert opinions that were in his report until after the December 2, 2011 deadline. Specifically, Plaintiffs allege that because Dr. Bennett did not examine Plaintiff Holly until December 28, 2011, Dr. Bennett's expert disclosure was simply an adoption of opinions formed by Defendants' counsel. However, Defendants' counsel has represented to the Court that Dr. Bennett was contacted prior to the deadline and that Plaintiffs' allegations are unfounded. Further, the report made after the December 28, 2011 examination of Plaintiff Holly was provided to Plaintiffs' Counsel. Plaintiffs suffered no prejudice and that exclusion of this witness is not warranted. Additionally, all other grounds for exclusion go to the weight rather than the admissibility of the evidence. Accordingly, Plaintiffs' motion is denied.

Plaintiffs' Motion to Exclude Dr. Kim Klancke:

Upon the Plaintiffs' Motion to Exclude the Testimony of Dr. Kim Klancke, it is the decision of this Court that the motion is hereby **DENIED**.

Dr. Klancke is qualified as an expert to testify about the causation of Plaintiff Holly's stroke. Accordingly, any challenges by the Plaintiffs go to the weight of the testimony and not the admissibility of the evidence. Accordingly, Plaintiffs' motion is denied.

Plaintiffs' Motion to Partially Exclude DR. BRUCE COULL:

Upon the Plaintiffs' Motion to Partially Exclude the Testimony of Dr. Bruce Coull, it is the decision of this Court that the motion is hereby **DENIED**.

Plaintiffs contend that literature and studies used by Dr. Coull used to reach his opinion do not identically mirror circumstances in this case. Specifically, Plaintiffs argue that because the studies used by Dr. Coull do not cite how many of the subjects in the studies suffer from migraines with aura, those studies are not analogous to this case and his testimony should be excluded. However, it is disputed in this case whether Plaintiff Holly suffered from migraines with aura. Further, this challenge goes to the weight of the testimony rather than the admissibility of the evidence. Plaintiffs may challenge Dr. Coull's opinion through cross-examination. Accordingly, the motion is denied.

Plaintiffs' Motion to Exclude Dr. Paul H. Axelson:

Upon the Plaintiffs' Motion to Exclude the Testimony of Dr. Paul H. Axelson, having been heard and considered, it is the decision of this Court that the motion is hereby **GRANTED** in part and **DENIED** in part.

Dr. Axelson is qualified to testify as an expert in the field of pharmacology. Accordingly, Dr. Axelson may testify regarding the medication that Plaintiff Holly was taking. However, Dr. Axelson is not qualified to opine as to the cause of Plaintiff Holly's stroke. Therefore, Plaintiffs' motion is granted in that Dr. Axelson's testimony regarding the causation of the stroke is excluded and is denied as to Plaintiffs' other challenges.

IT IS SO ORDERED this 27th day of January 2014.

Andrea L. Rocanelli

Honorable Andrea L. Rocanelli