

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES MILLER : CIVIL ACTION  
 :  
 v. :  
 :  
 STANLEY HOFFMAN, M.D. and :  
 DONNA HALE : NO. 97-7987

MEMORANDUM AND ORDER

HUTTON, J.

June 21, 1999

Presently before this Court are the Plaintiff James Miller's Motion to Exclude Three Expert Witnesses of Defendant Stanley Hoffman, M.D. (Docket No. 71) and the Answer of Defendant Stanley Hoffman, M.D. (Docket No. 76). For the reasons stated below, the Plaintiff's Motion is **DENIED**.

**I. BACKGROUND**

This is a civil rights case in which Plaintiff, James Miller ("Miller" or "Plaintiff"), has brought claims pursuant to 42 U.S.C. § 1983 alleging deliberate indifference to his serious medical needs. Miller, an inmate at Graterford State Correctional Institution ("Graterford"), alleges that defendants Stanley Hoffman, M.D. ("Hoffman" or "Defendant") and Donna Hale ("Hale") were deliberately indifferent to his serious medical needs in violation of his constitutional right under the Eighth Amendment to be free from cruel and unusual punishment. Miller also alleges that Hoffman's treatment deviated from the accepted standard of

medical care and constituted medical malpractice. The Court has entered summary judgment in favor of Defendant Hale. Thus, Miller's claims against Hoffman are all that remain.

Hoffman has indicated that he intends to introduce evidence at trial provided by medical expert, B. David Grant, M.D. ("Grant"). The Plaintiff does not challenge the admissibility of this witness. Hoffman has also indicated that he wishes to introduce into evidence at trial provided by three additional experts: Robert A. Fischer, M.D. ("Fischer"), who is described as a consultant in infectious diseases; Murray W. Seitchik, M.D., F.A.C.S. ("Seitchik"), a plastic surgeon; and Anthony P. Sorrentino, Pharm.D. ("Sorrentino"), a pharmacist. On January 25, 1999, the Plaintiff filed the instant Motion moving the Court to exclude all expert evidence of Fischer, Seitchik, and Sorrentino, as lacking the requisite qualifications under Federal Rule of Evidence 702, and as otherwise inadmissible under Federal Rule of Evidence 403. Defendant Hoffman filed an Answer to Plaintiff's Motion to Exclude Expert Evidence on February 16, 1999.

## **II. DISCUSSION**

### **A. Standard**

Under Rule 702 of the Federal Rules of Evidence:

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.

Fed. R. Evid. 702. This rule embodies the Federal Rule's " 'strong and undeniable preference for admitting any evidence having some potential for assisting the trier of fact.' " Holbrook v. Lykes Bros. S.S. Co., 80 F.3d 777, 780 (3d Cir.1996) (quoting DeLuca v. Merrell Dow Pharmaceuticals, Inc., 911 F.2d 941, 956 (3d Cir. 1990)). Moreover, Rule 702 "specifically embraces this policy, and has a liberal policy of admissibility." Id. (citations omitted). Nevertheless, when "[f]aced with a proffer of expert scientific testimony, then, the trial judge must determine at the onset, pursuant to Rule 104(a), whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue."<sup>1</sup> Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 592, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993) (footnotes omitted).

The United States Court of Appeals for the Third Circuit treats the Daubert standard as a three-part test, which requires that: (1) the proffered witness must be an expert; (2) the expert must testify to scientific, technical or specialized knowledge;

---

<sup>1</sup>Federal Rule of Evidence 104(a) provides that: Preliminary questions concerning the qualification of a person to be a witness, the existence or a privilege, or the admissibility of evidence shall be determined by the court., subject to the provisions of subdivision (b) [pertaining to conditional admissions]. In making its determination it is not bound by the rules of evidence except those with respect to privileges.

Fed. R. Evid. 104(a).

and (3) the expert's testimony must assist the trier of fact. United States v. Velasquez, 64 F.3d 844, 849 (3d Cir. 1995) (citing In re Paoli R.R. Yard Litig., 35 F.3d 717, 741-42 (3d Cir. 1994), cert. denied sub nom., General Elec. Corp. v. Ingram, --- U.S. ----, 115 S.Ct. 1253, 131 L.Ed.2d 134 (1995)). Under this test, the first requirement must be broadly interpreted. Id. The second requirement, however, may require the Court to make a "'preliminary assessment of whether the reasoning or methodology underlying the testimony is ... valid,' by considering all relevant factors that may bear on the reliability of the proffered evidence." Id. (citations ). The Court should consider factors such as, (1) whether a method consists of a testable hypothesis; (2) whether the method has been subject to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the method has been put. Id. at 849 n. 8 (quoting Paoli, 35 F.3d at 742 n. 8). Furthermore, the evidence must be relevant or "fit" under the facts of the case. Id. at 850. In other words, "[t]here must be a valid connection between the expertise in question and the inquiry being

made in the case." Id. Finally, the evidence must assist the trier of fact.

## **B. Analysis**

In this case, the Plaintiff argues that the testimonies of Drs. Fischer, Seitchik, and Sorrentino do not satisfy the third requirement of Federal Rule of Evidence 702--"that their testimony must assist the trier of fact." (Pl.'s Mem., at 5.) Miller asserts that the qualifications of these three experts and the evidence they intend to offer at trial are not relevant to the subject matter of the case. (Def.'s Mem., at 5.) Because the evidence "does not 'fit,'" Miller contends that it is likely to mislead the trier of fact and must therefore be excluded under Federal Rule of Evidence 702. The Court finds that Drs. Fischer, Seitchik, and Sorrentino should not be excluded from use at trial because they have specialized knowledge and/or expertise regarding the specific subject matter of this case and, therefore, will assist the trier of fact as required under Federal Rule of Evidence 702. The Court will address each expert witness in turn.

### **1. Fischer**

Robert A. Fischer, M.D., is a medical doctor who specializes in treating infectious diseases. Fischer's Curriculum Vitae shows that he is an experienced and well known infectious disease expert. He has extensive experience in the treatment of

all types of infections. He had a fellowship in infectious diseases at the University of Massachusetts Medical Center. He is a member of the Infectious Control Committee of Albert Einstein Medical Center. He is a clinical assistant professor of medicine at Temple University. He has more than ample qualifications to render an opinion about the medical necessity of "reverse isolation."

Miller's complaint against Hoffman contends that Hoffman placed Miller in reverse isolation in an attempt to intimidate Miller and to prevent Miller from establishing his claims against Hoffman. Hoffman contends that he placed Miller in reverse isolation for medically necessary reasons. To support this contention, Hoffman has presented the expert report of Fischer. Fischer offers an opinion and perspective relevant to this case.

Hoffman also intends to call Grant to testify regarding reverse isolation. Grant limits his opinion to its applicability to the treatment of burns. Fischer approaches it from the perspective of treating an infection. Thus, Fischer's opinion is not cumulative of Grant's opinion. Because the Court finds that said testimony is relevant and will assist the trier of fact to understand the evidence or a fact in issue, the Plaintiff's Motion to Exclude the report and testimony of Fischer is denied.

## **2. Seitchik**

Murray Seitchik, M.D., a plastic surgeon, has appropriate expertise to render an opinion in this case. He has extensive experience concerning the treatment of wounds and infections arising from wounds. His opinion is not cumulative of the opinions of other experts. He emphasizes different matters based on his area of specialty. He points out the importance of the use of x-rays by Hoffman. Seitchik also makes the observation that chronic post-traumatic bursitis can be difficult to treat. These observations were not made by other experts. He emphasizes the failure of the cultures to reveal a bacterial agent. This fails to constitute as cumulative evidence. Thus, the Court finds that Seitchik's testimony is relevant and will assist the trier of fact to understand the evidence or a fact in issue. Accordingly, the Plaintiff's Motion to Exclude the report and testimony of Seitchik is denied.

### **3. Sorrentino**

Anthony B. Sorrentino, Pharm.D., who possesses a doctorate in pharmacology, is qualified to testify in this case. Sorrentino's resume indicates that he has extensive experience concerning the effects of certain drugs. Sorrentino's Curriculum Vitae shows that he currently teaches at the Philadelphia College of Pharmacy and Science. From 1978 to 1996, he was the Assistant Director for Out-Patient Pharmacy Services and Manager of the Jefferson Apothecary, Jefferson Hospital's Pharmacy. See In re

Paoli R.R. Yard PCB Litig., 916 F.2d 829, 855 (3d Cir. 1990) (finding that "insistence on a certain kind of degree or background is inconsistent with our jurisprudence in this area"); see also Kannankeril v. Terminix Int'l, Inc., 128 F.3d 802, 809 (3d Cir. 1997) (stating that "[i]f the expert meets the liberal minimum qualifications, then the level of the expert's expertise goes to credibility in weight and not admissibility").

Miller's complaint alleges that Hoffman caused the wound in his elbow by injecting him with Solu-Medrol. Miller asserts that all of Hoffman's actions after he allegedly caused Miller's wound relate to his attempt to cover up his supposed negligence. Sorrentino, an experienced pharmacologist, has provided a report indicating that the injection of Solu-Medrol lacked the ability to cause Miller's wound. Sorrentino's testimony that it was impossible for the Solu-Medrol to cause the wound constitutes relevant evidence for the jury to consider. Moreover, Sorrentino is the only expert testifying in this case to give an authoritative opinion on the effect of the Solu-Medrol. Accordingly, such testimony can not be cumulative. The Plaintiff's Motion to Exclude the report and testimony of Sorrentino is, therefore, denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES MILLER : CIVIL ACTION  
 :  
v. :  
 :  
STANLEY HOFFMAN, M.D. and :  
DONNA HALE : NO. 97-7987

O R D E R

AND NOW, this 21st day of June, 1999, upon consideration of the Plaintiff James Miller's Motion to Exclude Three Expert Witnesses of Defendant Stanley Hoffman, M.D. (Docket No. 71) and the Answer of Defendant Stanley Hoffman, M.D. (Docket No. 76), IT IS HEREBY ORDERED that the Plaintiff's Motion is **DENIED.**

BY THE COURT:

---

HERBERT J. HUTTON, J.