

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

JUNE V. HABIAK : CIVIL ACTION
 :
 v. : No. 05-1074
 :
 LEHIGH VALLEY HOSPITAL :

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

March 3, 2006

Plaintiff June Habiak moves to exclude three of Defendant Lehigh Valley Hospital's liability experts from testifying at trial. I will grant two of Habiak's motions and preclude the hospital from presenting the testimony and reports of Samuel Miranda and Lawrence Leventhal. Additionally, Defendant has filed seven motions in limine, which are summarily addressed in the accompanying Order.

BACKGROUND

Lehigh Valley Hospital (LVH) revoked its offer to employ June Habiak as a nurse, asserting Habiak lacked the recent clinical experience necessary for the position she was offered. Habiak claims LVH rescinded the offer after it obtained information about her medical history through a post-offer/pre-employment physical examination and alleges LVH's stated reason for denying her employment is a pretext for illegal disability discrimination. It is undisputed that LVH was aware of Habiak's absence from the nursing profession from the outset of the employment process.

DISCUSSION

Habiak moves to preclude LVH from offering, at trial, the testimony and reports of Samuel

Miranda, R.N., Lawrence Leventhal, M.D., and Elizabeth Genovese, M.D. – three experts LVH proffers to rebut Habiak’s disability discrimination claim. Federal Rule of Evidence 702 “embodies a trilogy of restrictions on expert testimony: qualification, reliability and fit.” *Schneider v. Fried*, 320 F.3d 396, 404 (3d Cir. 2003).¹ A broad range of skills and training (either educational or occupational) qualify a witness as an expert, and I am satisfied all three of these individuals possess the knowledge and experience required by Rule 702 to offer testimony on their respective areas of expertise. *Id.* Many factors bear on the reliability of an expert’s testimony;² however, an expert opinion, at a minimum, must be based on something other than intuition and speculation to be

¹Rule 702 provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or 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.

Fed. R. Evid. 702.

²In assessing the reliability of expert testimony, a district court may consider:

(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 methodology has been put.

Oddi v. Ford Motor Co., 234 F.3d 136 (3d Cir. 2000).

reliable. *Oddi v. Ford Motor Co.*, 234 F.3d 136 (3d Cir. 2000). Here, Habiak argues Miranda's report "and intended testimony are unsupported by any discernable methodology or critical analysis." Defendant counters that I should concentrate on Miranda's experience in nursing administration, rather than on the non-scientific nature of his methodology, to overcome Habiak's objections. I decline Defendant's invitation and will preclude Miranda from testifying because his report lacks any reliable basis from which to discern how he arrived at his conclusion. For example, although Miranda approves of LVH's practice of monitoring the success rates of nurses it has hired, he offers no explanation on how this practice supported the hospital's decision to rescind Habiak's offer. More specifically, his report offers no analysis of how these rates, and the practice of monitoring them, is specifically connected to Habiak's absence from the nursing profession prior to applying for a position at LVH. In fact, Miranda was required to use some process or methodology for reaching his conclusion because his report states the success rates of nurses coming from refresher courses (like the one Habiak completed prior to receiving LVH's offer) is "highly individualized." Thus, I will exclude LVH from offering Miranda's report and testimony at trial because his opinion lacks the requisite methodology to establish its reliability.

Finally, an expert opinion has the requisite "fit" if the expert's methodology has a connection to the disputed issues in a case. This hurdle is generally satisfied if the expert's testimony assists the trier of fact. The conclusions in Leventhal's report, though, do not meet this requirement. Leventhal opines "Ms. Habiak's impairment due to her ankylosing spondylitis puts her and her patients at risk for injury during the traditional nursing responsibilities of lifting and transferring of patients." In light of LVH's position that it rescinded Habiak's offer because she lacked the requisite clinical experience, Leventhal's opinion has no relevancy because the hospital itself insists its decision was

based on wholly non-medical reasons. Having failed to establish a connection between Leventhal's opinion and the facts at issue in this case, I will exclude LVH from offering his report and testimony at trial.

Accordingly, I enter the following:

ORDER

AND NOW, this 3rd day of March, 2006, Plaintiff's Motions in Limine to Exclude the Testimony of Samuel Miranda and Lawrence Leventhal (Document 30) is GRANTED, and the Motion in Limine to Prevent Elizabeth Genovese from Testifying (Document 30) is DENIED.

It is further ORDERED that:

- (1) Defendant's Motion in Limine to Preclude Plaintiff from Introducing Evidence Concerning Defendant's Alleged Failure to Provide Reasonable Accommodations (Document 36) is GRANTED;³
- (2) Defendant's Motion in Limine to Exclude Evidence of Prior Determinations By or Complaints Filed With the Equal Employment Opportunity Commission (EEOC) and Pennsylvania Human Relations Commission (PHRC) (Document 42) is GRANTED;
- (3) Defendant's Motion in Limine to Preclude Evidence Regarding Plaintiff's Claim for Punitive Damages (Document 37) is DENIED;
- (4) Defendant's Motion in Limine to Exclude Plaintiff's Testimony Regarding the Causes of Her Emotional Distress (Document 38) is DENIED;

³Plaintiff neither presented a failure to accommodate claim in her EEOC charge nor did she plead it in her complaint.

- (5) Defendant's Motion for Reconsideration to Permit Presentation of Evidence of Plaintiff's Rejection of LVH's Unconditional Offer or Employment (Document 39) is DENIED;
- (6) Defendant's Motion in Limine to Preclude Evidence Regarding Plaintiff's Claim for Lost Income and Benefits (Document 40) is DENIED; and
- (7) Defendant's Motion in Limine to Preclude Evidence LVH's Pre-Employment Medical Assessment Violated the ADA (Document 41) is DENIED WITHOUT PREJUDICE to its reassertion at trial.

BY THE COURT:

/s/ Juan R. Sánchez

Juan R. Sánchez, J.