



Jurisprudence Section - 2012

E7 Michigan MRE 703 a Study in Fairness

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After attending this presentation, attendees will have a better understanding of the boundaries for an expert witness to present the factual basis of an opinion.

This presentation will impact the forensic science community by discussing the difference between what facts or data must be admitted in evidence when testifying as an expert in a Michigan case. It will also allow forensic examiners to understand the “backdoor hearsay” rationale behind the rule and the difference between underlying facts or data that must be admitted as evidence and learned treatises and studies that do not need to be admitted.

Courts all over the country are presented with the problem of how to assess the reliability of proposed expert testimony and opinions and most importantly, whether the opinion applies reliably to the facts of the case. In Michigan, the facts or data upon which the expert relies in forming the opinion “shall” be in evidence by virtue of the requirement of Michigan Rule of Evidence (MRE) 703. The Federal Rule of Evidence is inconsistent with this requirement. It states: “The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.”

Often, the ability of an expert to provide the baseline facts upon which he or she relied allows the expert to introduce testimony that would be otherwise inadmissible but is introduced to the jury only because the expert was allowed to provide it as a baseline fact. Often, these facts are assumptions or hypothetical and further, do not necessarily apply to the facts of the case for which the expert is providing an opinion.

The sufficiency of the application of the opinion to the facts of the case as a threshold matter is addressed in the voir dire process of the expert; however, the reliability of the expert’s facts or data to support the ultimate conclusion of the expert can only be analyzed through requiring sufficient foundation for the admission of the witness who can authenticate those facts or data and be subject to cross examination on the admissibility of those baseline facts or data in the case for which the expert is called to testify.

A case study involving an expert’s proposed testimony in an area called “retrograde extrapolation” will be presented. Retrograde extrapolation is a technique in which a person with knowledge in the field (often a toxicologist or pharmacologist) uses a subject’s assumed bodily alcohol content at one point in time to opine as to what the bodily alcohol content was at an earlier point in time that has specific relevance to a contested fact in a case. The attendees will learn how the proponent of the opinion failed to meet the threshold of admissibility and why the judge’s ruling was fair by preventing the admission of expert testimony that was not supported by facts that were reliable.

Expert, Hearsay, Reliability