2015 WL 9683045 (Okl.Dist.) (Trial Motion, Memorandum and Affidavit)
District Court of Oklahoma.
Tulsa County

J.C. CARTER, Plaintiff,

v.

ST.JOHN MEDICAL CENTER, INC., Defendant.

No. CJ201106418.
July 24, 2015.

Plaintiff's Response to Defendant's Combined Daubert Motion to Strike Plaintiff's Expert Donald Thea, M.D. and Motion for Summary Judgment

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Judge Jefferson Sellers.

COMES NOW the Plaintiff, J.C. Carter, and objects to Defendant's Combined Daubert Motion to Strike Plaintiff's Expert Donald Thea, M.D. and Motion for Summary Judgment for the reasons set forth below.

I. DR. THEA IS QUALIFIED TO TESTIFY AS AN EXPERT REGARDING CAUSATION

Donald M. Thea, M.D. is a physician and a professor at Boston University. (Dr.Thea's complete Curriculum Vitae is attached hereto as ***Ex. 1).*** He is also a board-certified Internist ***(Ex. 2, Dr. Thea Depo. at 87:1-2).*** According to the American Board of Internal Medicine:

> An Internist is a personal physician who provides long-term, comprehensive care in the office and in the hospital, managing both common and complex illnesses of adolescents, adults and the **elderly**. Internists are trained in the diagnosis and treatment of cancer, infections and diseases affecting the heart, blood, kidneys, joints and the digestive, respiratory and *vascular systems.* They are also trained in the essentials of primary care internal medicine, which incorporates an understanding of disease prevention, wellness, substance **abuse**, mental health and effective treatment of common problems of the eyes, ears, skin, nervous system and reproductive organs. (Emphasis supplied) [1]

Dr. Thea is also certified in the internal medicine subspecialty of infectious diseases which the Board of Internal Medicine further describes as:

> An Internist who deals with infectious diseases of all types and in all organ systems. Conditions requiring selective use of antibiotics call for this special skill. This physician often diagnoses and treats AIDS patients and patients with fevers which have not been explained. Infectious disease specialists may also have expertise in preventive medicine and travel medicine.

In addition to being a board-certified Internist and a professor, Dr. Thea is licensed to practice medicine in the state of Massachusetts ***(Ex. 2, Dr. Thea Depo. at 11:23-12:1)*** and regularly and routinely saw patients until two years ago when he

ceased active medical practice to focus on his teaching and administrative responsibilities. ***(Ex. 2, Dr. Thea Depo. at 30:4-20).*** During his practice he has treated patients who have had infections from a wide variety of causes, including infiltrations or hospital-acquired infections due to in dwelling catheters or indwelling stents. ***(Ex. 2, Dr. Thea Depo. at 33:2-6).*** But that has not been the extent of his practice. He has been "on the wards," working with residents and fellows who treat the patient as a whole, not just infectious diseases. ***(Ex. 2, Dr. Thea Depo. at; 89:16-23).***

Dr. Thea will offer opinion testimony on two matters. First, he will testify that the nature of the injury sustained by Mr. Carter is not infectious. ***(Ex. 2, Dr. Thea Depo. at 35:13-15; 81:11-14).*** Second, Dr. Thea will testify that more likely than not the injury Mr. Carter sustained was a result of the medications that were infused at the time and the inflammation that resulted from those medications. ***(Ex. 2, Dr. Thea Depo. at 81:15-22; 88:4-13).*** During Dr. Thea's deposition, SJMC's attorney agreed that Dr. Thea is qualified to give an opinion about infectious disease. (***Ex.2, Dr. Thea Depo. at 93:7-9).*** SJMC in its motion, therefore, does not question Dr. Thea's qualifications to testify that Mr. Carter's injury was not infectious. SJMC only contends in its motion that Dr. Thea is not qualified to testify that the injury was caused by inflammation from the medications.

Testimony by experts in Oklahoma's courts is governed by 12 O.S. § 2702 which provides as follows:
A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

Because this rule is taken word-for-word from Fed. R. Evid. 702, "federal court decisions may be examined for persuasive value." *Christian,* 2003 OK 10 at ¶10, 65 P.3d at 597. As a result, this brief will frequently refer to 12 O.S. § 2702 as "Rule 702".

When applying Rule 702 it is important to keep in mind some basic underlying principles. Rather than tightly circumscribing the use of expert witnesses, Rule 702 "reflects an attempt to liberalize the admission of expert testimony." *Polski v. Quigley Corp.*, 538 F.3d 836, 838-39 (8th Cir.2008). *See also* 29 Fed. Prac. & Proc. Evid. § 6525 ("Rule 702 takes a liberal approach to expert witness qualification"). [2] Consequently, as the Advisory Committee comments to Fed. R. Evid. 702 recognize, "the trial court's role as gatekeeper is not intended to serve as a replacement for the adversary system." Instead, when a party contends that an expert's testimony is "shaky," the proper response is not to overthrow the adversarial process by preventing that testimony from being heard but, as the U.S. Supreme Court explained in *Daubert,* to attack the evidence through "[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof." *Id.* For these reasons, therefore, the Rule 702 Advisory Committee correctly concluded that "rejection of expert testimony is the exception rather than the rule."

Whether someone is qualified to render an opinion as an expert ultimately turns on his or her "knowledge, skill, experience, training, or education." These criteria "are set out in the disjunctive and qualification may be shown in any one or more of the five ways listed." *Sharp v. 251 st St. Landfill, Inc.*, 1996 OK 109, 925 P.2d 546, 551. It is not necessary that all five be present. It is also "not necessary that the witness be recognized as a leading authority in the field in question." 29 Fed. Prac. & Proc. Evid. § 6525. Rather, "[t]he degree of 'knowledge, skill, experience, training, or education' sufficient to qualify an expert witness is only that necessary to insure that the witness's testimony 'assists' the trier of fact." *Id.* Alleged "gaps in an expert witness's qualifications or knowledge generally go to the weight of the witness's testimony, not its admissibility." *Id.*

As a matter of fact, "the courts have found witnesses to be qualified as experts based on only a relatively modest degree of specialized knowledge." *Id.*

Fortunately, in this case, Dr. Thea is not someone with only a modest degree of specialized knowledge. Dr. Thea is a professor at a major university and board certified in the specialty of internal medicine with a further certification in the subspecialty of infectious diseases. The mere fact that Dr. Thea's expertise is primarily in the subspecialty of infectious diseases does not mean that he is not competent to testify about matters that lie within the broader internal medicine specialty. As one court has explained:

> A medical expert may testify outside his or her area of expertise so long as the witness has sufficient education, training experience and familiarity with the subject matter of the testimony. [Citations omitted]. This approach recognizes that a physician practicing a specialty has been trained initially, and may practice, in a broader area. Cardiology and infectious diseases, for example, are subspecialties of internal medicine.

Simmons v. Yurchak, 28 Mass. App. Ct. 371, 378, 551 N.E.2d 539, 544 (1990) *app. Denied* 407 Mass. 1103.

In *Gaines v. Comanche County Medical Hospital*, 2006 OK 39, the Oklahoma Supreme Court held that a registered nurse was qualified to give causation testimony concerning decubitus ulcers. The Court said that decision "is consistent with 12 O.S. 2001 § 2702's legislative directive providing that witnesses may qualify as experts 'by knowledge, skill, experience training or education.'

The Court also cited *Grover v. Isom*, 137 Idaho 770, 53 P.3d 821, *rehearing denied* (2002). There, the Idaho Supreme Court said a certified registered nurse anesthesiologist with twenty years of experience was qualified to give expert testimony in a patient's action against an oral surgeon. The Idaho Court "found it immaterial that the nurse had never administered anesthesia in an oral surgeon's office."

The concurring opinion in *Gaines*, authored by Justice Opala, and joined by Justices Watt and Colbert, delves deeper into the issue of who qualifies as an expert. Citing cases from several jurisdictions, Justice Opala said in ¶¶5-6:
"Legally recognized expertise in a scientific subject need not be confined to a single academic discipline or a single learned profession. It may be found in several areas of learning or in several practicing professions whose scientific insight overlaps with that of another field of knowledge. If so, persons of different occupations or academic areas of knowledge may qualify as experts in the same subject. This is certainly true in this case.

Both physicians and registered nurses may qualify by education, training and experience to give expert testimony about the etiology of decubitus ulcers. **No scientific or academic field of knowledge can be said to be tightly compartmentalized within a single profession."**

The mere fact that Dr. Thea is an infectious disease specialist does not mean he is ignorant about non-infectious diseases. As Dr. Thea explained, infectious thrombophlebitis is within his expertise as an infectious disease specialist while non-infectious thrombophlebitis is within in his expertise as an internist. (Dr. Thea 80:20-81:1). This dual expertise makes Dr. Thea especially well-suited to identify the cause of Mr. Carter's injury. In arriving at the cause of injury, it is necessary to first eliminate what SJMC asserts is the real cause—an infectious disease. As even SJMC acknowledges, Dr. Thea, as an infectious disease specialist, is well-qualified to testify that an infectious disease was not the cause of Mr. Carter's injury. Having arrived at that conclusion, Dr. Thea's certification within the broader specialty of internal medicine, which as noted above includes the diagnosis and treatment of vascular diseases, then qualifies Dr. Thea to conclude that the most likely non-infectious cause was inflammation from medications. There is no basis, therefore, for concluding that Dr. Thea knows so little about the non-infectious causes of Mr. Carter's injury that his expert opinion on that subject will not assist the jury.

SJMC's arguments to the contrary all miss the mark. It is true, of course, that a medical specialist owes a duty to his patient to exercise the degree of skill ordinarily employed under similar circumstances by similar specialists in the field. It is equally true that SJMC has provided no basis for concluding that Dr. Thea lacks the requisite degree of skill of an Internist in spite of the fact that he is board certified in that specialty. More importantly, though, the issue is not whether Dr. Thea has met the standard of care for Internists in treating a patient. The issue is whether Dr. Thea has a combination of "knowledge, skill, experience, training, or education" that qualifies him to testify about specific non-infectious causes of Mr. Carter's injury. He clearly does and the extent to which SJMC disagrees merely goes to the weight of Dr. Thea's testimony, not its admissibility.

Dr. Thea's agreement early in his deposition that the treatment of thrombophlebitis is outside his "area of expertise" also does not disqualify him to testify about that disease. This statement is true if "area of expertise" is understood to be limited solely to Dr. Thea's infectious disease subspecialty. But Dr. Thea was not testifying that thrombophlebitis was outside his expertise as an Internist or that he lacked any specialized knowledge about non-infectious thrombophlebitis. In fact, as SJMC points out, he later clarified in his deposition that thrombophlebitis was within his area of expertise as an Internist. ***(Ex. 2, Dr. Thea Depo at p. 80, l. 20-p. 81,1.1; p. 85, ll. 5-17).***

Dr. Thea's admission that he has not practiced general internal medicine since his residency also does not disqualify him as an expert. Rule 702 contemplates that an expert can gain his or her specialized knowledge, not only through experience, but also through "training or education." The Oklahoma Supreme Court also "made quite clear long ago that actual hands-on experience in a particular field is not necessary for one to be qualified as an expert in the field, but study alone can be sufficient." *Sharp v. 251*st *St. Landfill, Inc.*, 1996 OK 109, 925 P.2d 546, 551. Moreover, regardless of whether Dr. Thea has practiced general Internal medicine, the fact remains that he is still a trained, educated and board-certified Internist who has actively practiced internal medicine, primarily within the subspecialty of infectious diseases.

It bears repeating at this point that the mere fact that Dr. Thea has focused on infectious diseases does not mean he lacks the specialized knowledge of an Internist with regard to other types of diseases. This is so, even if Dr. Thea has not in his practice treated those specific diseases. *See Sharp v. 251st St. Landfill, Inc.*, 1996 OK 109, 925 P.2d 546, 552 (Engineer expert not disqualified to testify about landfill design "simply because he has not actually designed a landfill exactly like the one proposed."). SJMC's error that underlies all of its arguments is an assumption that an Internist and an infectious disease specialist are trained and educated differently, within completely separate specialties, that have little or no connection with each other, such as would be the case with a gynecologist and an anesthesiologist. An infectious disease specialist, however, *is an Internist.* In fact, his or her knowledge, skill and training as an Internist is a prerequisite to becoming an infectious disease specialist. There is no reason for anyone to conclude that an infectious disease specialist's gain of additional knowledge about infectious diseases thereby results in the loss of his or her knowledge as an Internist about non-infectious diseases.

II. DAUBERT DOES NOT APPLY TO DR. THEA'S TESTIMONY

SJMC argues that Dr. Thea's opinions do not meet the requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). A *Daubert* inquiry, however, is limited to circumstances where the reliability of an expert's method cannot be taken for granted. *Christian v. Gray*, 2003 OK 10, ¶ 11, 65 P.3d 591, 599-600, *as corrected* (Feb. 24, 2003). Under Rule 702, when expert testimony by a physician is based on his training and experience, the standards set out in *Daubert* do not apply. *Sementilli v. Trinidad Corp.*, 155 F.3d 1130, 1134 (9th Cir. 1998), *as amended* (Nov. 12, 1998). *See also Cline v. DaimlerChrysler Co., Corp.*, 2005 OK CIV APP 31, ¶ 28, 114 P.3d 468, 476-77 (*Daubert* not apply where expert's testimony was not based upon some novel concept and his examination methods and opinions were not extraordinary). As already shown, Dr. Thea's training and experience makes him well-qualified to provide opinion testimony as to the cause of Mr. Carter's injury. A separate *Daubert* analysis is not required. The reliability of Dr. Thea's testimony is thus an issue for the jury.

Defendant does not provide the Court with an accurate assessment of Dr. Thea's testimony. For instance, Defendant cites P. 102, ll. 16-21 of Dr. Thea's deposition and proclaims that there is absolutely no evidence of extravasation in the medical record.

Def. Motion, p. 8. Defendant does not provide the testimony by Dr. Thea that explains why there may be no evidence of that in the medical record.

Dr. Thea explains that "One can have extravasation to different degrees, and the - the manifestations that I mentioned before can vary depending upon the degree of extravasation and the - and the anatomical site in which the extravasation occurred" and that "If you have an extravasation from an indwelling catheter in a vein that's relatively deep as opposed to a vein that's on the surface of the skin, you're not going to be able to see those changes in the architecture." ***(Ex. 2, Dep. Dr. Thea, p. 103, ll. 7-16).***

Defendant then came back to that point and Dr. Thea again explained how extravasation could occur without their being any immediate manifestation of same. The Defendant seeks to exclude that testimony because the doctor said it would be speculation on his part. ***Def. Motion, p. 8.***

In *Robinson v. Oklahoma Nephrology Associates, Inc.*, 2007 OK 2, ¶ 11, the Supreme Court reversed a trial court for granting summary judgment in a medical negligence case because no expert used the phrase "reasonable medical probability" to describe the degree to which the doctor's negligence caused the Plaintiff's injury. The Court said:

> Our case law requiring a medical malpractice plaintiff to produce evidence that her injuries were caused by a particular physician's negligence has never required that she produce experts who will utter a particular magic phrase but has focused instead on the particulars of each case. While the plaintiff must present evidence to remove the cause of her injuries from the realm of guesswork, she need not establish causation to a specifically high level of probability merely to withstand a demurrer to the evidence. *Neese v. Shawnee Med. Ctr. Hosp., Inc.* 1987 OK 37, ¶¶ 20-24, 626 P.2d 1327, 1331. "Absolute certainty is not required." *McKellips*, 1987 OK 69,¶ 11, 741 P.2d at 471."

In *Oklahoma Natural Gas, Co.*, 1944 OK 283, ¶¶8-10, the Supreme Court held that
"we are committed to the rule opinion evidence, such as that given by the plaintiff's expert witnesses, that a certain cause 'might', 'could' or 'possibly did or would bring about a certain result is competent and may have some probative value...The value of such evidence is ordinarily for the trier of the facts. But where such evidence is not corroborated or supplemented by other evidence, and where the fact necessary to be established must be proved by testimony of a qualified expert, such evidence, standing alone, is generally held to be insufficient to make out a prima facie case."

In this case, the Defendant seeks to strike Dr. Thea's testimony about extravasation because he said it was "speculation". As noted above, the issue is not whether the doctor says any particular magic words, the issue is whether the evidence is corroborated or supplemented by other evidence. Here, there is other evidence of extravasation.

That evidence comes in the form of the medical records and deposition testimony of Dr. Divina Roman, a doctor of internal medicine employed by Omni Medical Group under the St. John Health System. **(Ex. 3, Depo. Dr. Roman, p. 4).** Dr. Roman saw and examined Mr. Carter while he was in St. John Medical Center in July 2005. Dr. Roman told Mr. Carter that his problems with his IV site could be caused by extravasation. Dr. Roman said that when there is an IV, there is always the possibility that the IV can go "through and through the vein" and then you would have "some extravasation of the blood outside of the blood vessel". Dr. Roman repeated that explanation, saying that "whenever you have an IV insertion, there's so many anatomical parts that if you go through and through the walls of the vein, you can touch the adjacent parts." And she added that if there's an injury to a blood vessel, you can have extravasation. In fact, Dr. Roman testified that she explained to Mr. Carter that "probably there was some blood that went out of the blood vessel that" caused swelling. ***(Ex. 3, Dep. Dr. Roman,p. 6,11. 9-24;p. 9,11.10-25 top. 10, 11.1-3, 20-25, and p. 11,l1.1-2).***

The Defendant then attacks Dr. Thea's testimony that the Versed, the medication given during the IV that extravasated, caused Mr. Carter's thrombophlebitis. Again, Dr. Thea is only repeating what Dr. Roman put in Mr. Carter's medical record.

(Ex. 4, 07/16/05 records signed by Dr. Roman with diagnosis of Right Hand Thrombophlebitis). Dr. Roman testified that thrombophlebitis is any swelling. A thrombus is a clot and phlebitis is the vein or blood vessel. ***(Ex. 3,p. 16,11.17-25 and p. 17,11.1-6).***

Dr. Roman testified that her differential diagnoses also included cellulitis, which is a swelling of the soft tissue vs. thrombophlebitis which is a swelling of the vein. Dr. Roman said a patient can have "thrombophlebitis with a surrounding cellulitis". She testified it's possible Mr. Carter had thrombophlebitis and cellulitis at the same time but she was not sure. ***(Ex. 3, Dep. Dr. Roman, p. 21,11 1-16, p. 22,11. 1-25 and p. 23,11.1-25).***

So, here is Mr. Carter's treating doctor struggling to decide if it is thrombophlebitis, cellulitis or both. Certainly, her testimony would not be excluded because she cannot say one is more likely that the other. In cases like this, it is proper procedure to allow the doctors to talk about their differential diagnoses, given the patient's history and clinical findings, and then give an opinion as to what the doctors think is the most likely diagnosis. The jury, as the trier of fact, determines what weight or credibility to give the testimony and resolves the factual dispute.

III. SJMC'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED

SJMC's motion for summary judgment is based entirely on its contention that Dr. Thea is not qualified to testify as to causation and that as a result there is no evidence of causation. As shown above, however, Dr. Thea is qualified to testify about causation. Even if Dr. Thea's testimony is stricken in its entirety, Defendant's motion for summary judgment should be denied.

PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMETN OF UNCONTROVERTED FACTS

1. Plaintiff admits UF#1.

2. Plaintiff admits UF#2.

3. Plaintiff denies UF#3. The Exhibit cited by Defendant, Exhibit C, is the Plaintiff's Final Witness and Exhibit List, and is not the kind of evidentiary material that can be included in a summary judgment motion. See Rule 13 (c) "The admissibility of other evidentiary material filed by either party shall be governed by the rules of evidence." A Final Witness List is not admissible evidence. And even if it were, it does not help the Defendant because the Plaintiff identifies more than one expert. In Plaintiff's Answers to Defendant's Interrogatories, Plaintiff identified several expert witnesses. Plaintiff identified Lynn Hadaway as an expert witness and said that she would testify that "Mr. Carter's injury to his hand was an inflammatory and compression process including compartment syndrome caused by excessive pressure from fluid; thrombophlebitis or vein wall irritation and a clot formation; and/or the irritant effect caused by the Versed. Mr. Carter's injury was more likely than not caused by the negligence of the Defendant." ***(Ex. 5, Plaintiff's Responses to Defendant's First Written Discover, pp. 7-10).***

Plaintiff also listed Dr. Steven Richeimer as an expert and stated that Dr. Richeimer would testify that Mr. Carter has CRPS (Chronic Regional Pain Syndrome) and that it was caused by the injuries described by Dr. Thea, which happen to be the same injuries described by Lynn Hadaway. ***(Ex. 5, p. 11).*** Dr. Richeimer testified in his deposition that he believed Mr. Carter's CRPS was triggered by thrombophlebitis. ***(Ex. 6, Dep. Dr. Richeimer, p. 51, 11. 17-25 and p. 52, 11. 1-7).*** Defendant will likely point out that Dr. Richeimer previously testified that he believed the injury was caused either by cellulitis or thrombophlebitis and was not sure which it was, and that he is now saying thrombophlebitis because that is what Dr. Thea said. ***(Ex. 6, Dep. Dr. Richeimer, pp. 53-55).***

Even if the Court strikes Dr. Thea's testimony, the evidence from Dr. Divina Roman and Lynn Hadaway provides a basis to support the opinions of Dr. Richeimer.

4. Plaintiff admits UF#4, and adopts and incorporates by reference herein the response to UC#3.

5. Plaintiff admits UF#5, but denies, under the circumstances that it is a material fact.

6. Plaintiff admits UF#6, but denies, under the circumstances that it is a material fact.

7. Plaintiff admits UF#7, but denies, under the circumstances that it is a material fact.

8. Plaintiff admits UF#8, but points out that Dr. Thea later testified that thrombophlebitis was within his area of expertise, so Plaintiff contends this is not a material fact.

9. Plaintiff admits UF#9, but denies, under the circumstances that it is a material fact.

10. Plaintiff admits UF#10, but denies, under the circumstances that it is a material fact.

11. Plaintiff denies UF#11 as not being a statement of fact, but a conclusion of law that is the sole province of the Court.

12. Plaintiff denies UF#12 and adopts Plaintiff's response to the Motion to Strike, found at page 9 of this brief, and incorporates it into this paragraph. Under the circumstances, this is not a material fact.

13. Plaintiff denies UF#13 for the reasons set forth in the response to the Motion to Strike, on pp. 10-12.

14. Plaintiff admits UF#14, but denies, under the circumstances that it is a material fact. Dr. Thea testified that he was called in if there was a question of whether an IV extravasation resulted in a possible infection. ***(Ex. 2, Dr. Thea deposition, p. 34,ll. 5-13).***

15. Plaintiff denies UF#15 as not being a statement of fact, but a conclusion of law that is the sole province of the Court.

Defendant's argument that Plaintiff does not have any expert witness to provide opinions that SJMC'S medical care and treatment of Plaintiff was below the standard of care ***Seep. 14 of Def. Motion,*** is wrong. Lynn Hadaway will testify that the medical care and treatment of Plaintiff was below the standard of care. ***(Ex. 5, Plaintiff's Responses to Defendant's First Written Discovery, pp. 7-10).*** Plaintiff does not understand why Defendant would make that claim as it was not even briefed or mentioned in its Statement of Uncontroverted Facts, other than when the Defendant misstated how many expert witnesses Plaintiff had identified.

Defendant's argument on causation fails for three reasons. First, Dr. Thea's testimony is admissible. Second, if it is not, then the testimony from Lynn Hadaway and Dr. Richeimer establish causation. And third, the testimony of Dr. Roman establishes that Mr. Carter had either cellulitis or thrombophlebitis, caused by the IV stick that Lynn Hadaway says was done in a negligent manner. Dr. Richeimer has testified that he believes thrombophlebitis is the main trigger, but if the Court tells Dr. Richeimer that he cannot rely on Dr. Thea's conclusion, then Dr. Richeimer would default back to his earlier opinions that the CRPS was caused either by cellulitis or thrombophlebitis, and Plaintiff meets his causation burden.

CONCLUSION

For the reasons set forth above, this Court should deny Defendant's Combined Daubert Motion to Strike Plaintiff's Expert Donald Thea, M.D. and Motion for Summary Judgment in its entirety.

Respectfully Submitted:

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Footnotes

1 American Board of Internal Medicine, (July 17, 2015), http://www.abms.org/member-boards/contact-an-abms-member-board/american-board-of-internal-medicine/

2 *Federal Practice and Procedure* is an authoritative, widely-cited legal treatise on federal civil procedure in general and on Rule 702 in particular. The Oklahoma Supreme Court in interpreting and applying 12 O.S. § 2702 has explicitly relied on that treatise. *See Sharp v. 251st St. Landfill, Inc.*, 1996 OK 109, 925 P.2d 546, 551.