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Notes

Missouri Adds Suspenders to a Job Accomplished by a Belt: Application of FRE 702 to Psychologists' Testimony on Medical Causation

*Landers v. Chrysler Corp.*¹

I. INTRODUCTION

In this day of major scientific advances and new technology, the role of expert witnesses is of vital importance. In the American legal system, expert opinions are the most common source of specialized knowledge.² The expert opinion facilitates the trier of fact in making an "intelligent evaluation of facts" that untrained laymen would be unqualified to make.³ Unsurprisingly, courts are constantly determining whether certain witnesses rise to the level of an expert.⁴ Federal Rule of Evidence (FRE) 702 enumerates the test for qualifying a witness as an expert.

The possibility of a psychologist as an expert witness has currently created a jurisdictional conflict. Courts are not questioning the psychologist's ability to testify as an expert witness on *psychological* matters. Rather, courts have reached inconsistent results on the issue of whether psychologists are expert witnesses for the purpose of *medical causation* issues.⁵

Missouri courts were confronted with this issue for the first time in *Landers v. Chrysler Corporation*.⁶ The Missouri Court of Appeals for the Eastern District permitted a psychologist to testify on medical causation issues. The decision is distinguishable from other contrary decisions on the issue because Missouri uniquely preserves the case-by-case approach that is mandated by FRE

1. 963 S.W.2d 275 (Mo. Ct. App. 1997).

2. FED. R. EVID. 702 advisory committee's note.

3. *Id.*

4. The classification as an expert witness is important because the Federal Rules of Evidence allow an expert witness a broader basis of testimony as opposed to a lay witness. Compare FED. R. EVID. 703 (opinion testimony by experts), with FED. R. EVID. 701 (opinion testimony by lay witnesses).

5. Medical causation testimony discussed in this Note excludes the distinct issue of testimony by a psychologist regarding the proper standard of care in a medical malpractice action, which would almost certainly be outside the realm of a psychologist's expert testimony.

6. *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 280 (Mo. Ct. App. 1997).

702. This Note will explain why the Missouri approach is correct and why any other decision would dilute the meaning of FRE 702.

II. FACTS AND HOLDING

Plaintiff Doyle Landers, an auto worker, filed a worker's compensation claim with an administrative law judge (ALJ) against Defendant Chrysler Corporation over a work-related injury.⁷ Unsatisfied with the ALJ decision, Defendant Chrysler filed an application for review with the Labor and Industrial Relations Commission (Commission).⁸ When the Commission affirmed the ALJ's decision, Defendant commenced this action by appealing the claim to the Missouri Court of Appeals for the Eastern District.⁹

At his work site on September 13, 1989, Landers was hit on the top of the head by a skyhook.¹⁰ Although he could not recall much of the incident, Landers did remember falling to his knees after he was hit.¹¹

Landers was treated at Defendant's dispensary soon after the incident.¹² He was later taken to St. Joseph's Hospital where he remained for seven days.¹³ While at the hospital, Landers was examined by neurosurgeon Dr. David Wilkinson.¹⁴ Dr. Wilkinson found that Landers had a cerebral concussion, post-concussion syndrome, cervical sprain with cervical spur, and a scalp laceration.¹⁵ At a follow-up examination on September 29, 1989, Dr. Wilkinson concluded that Landers was totally incapacitated for an indefinite time and directed him to remain off work.¹⁶

After this examination, Defendant's claim manager referred Landers to Dr. Patrick Hogan, who examined Landers on October 4, 1989.¹⁷ Dr. Hogan performed a neurological examination and concluded that Landers suffered from a head injury with complications of headaches and light headedness.¹⁸ Dr. Hogan determined that Landers did not suffer a concussion as a result of the accident.¹⁹ He further concluded that Landers' loss of memory, inability to express himself, and depression were not related to the accident.²⁰ Dr. Hogan

7. *Id.* at 277.

8. *Id.* at 279.

9. *Id.*

10. *Id.* at 277.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Landers*, 963 S.W.2d at 278.

19. *Id.*

20. *Id.*

found that Landers had a five to eight percent permanent partial disability and would not need further medical treatment as a result of the accident.²¹ Additionally, Dr. Hogan found that the injury did not prohibit Landers from successfully performing his job.²² He supported this finding by the fact that Landers performed his duties for two years following the accident.²³

Although not feeling fully restored, Landers returned to work on October 17, 1989.²⁴ Defendant's dispensary records indicated Landers still complained of dizziness, slurred speech, and slow response to questions.²⁵ Fellow employees reported that Landers had trouble performing his work accurately and efficiently.²⁶ Furthermore, Landers' wife testified that Landers had mood swings like "Dr. Jekyll and Mr. Hyde," and that he would keep himself in a dark room.²⁷

These comments led Landers' attorney to refer him to Dr. Thomas Fitzgerald, a clinical psychologist.²⁸ Dr. Fitzgerald performed a series of neuropsychological tests on Landers in September and October of 1990.²⁹ The tests resulted in his conclusion that Landers suffered a closed head injury which caused impaired retention and memory, poor concentration and attention, inability to sequence, emotional liability, and fatiguability as a result of this accident.³⁰ Dr. Fitzgerald also found that Landers suffered a seventy-five to eighty percent permanent partial disability as a result of the injury and would not be employable by others based on his condition.³¹

Landers was then examined by Dr. Richard Wetzel, another clinical psychologist who practiced neuropsychology.³² After performing a series of cognitive tests on Landers, Dr. Wetzel concluded that he suffered from brain dysfunction, depression, a lesion in his brain, and that he was seventy-five percent disabled as a result of the injury.³³

By request of Defendant, Dr. Wayne Stillings also examined Landers' condition.³⁴ Dr. Stillings concluded that Landers did not suffer a concussion or permanent brain injury and that Landers suffered no permanent partial disability as a result of the injury.³⁵

21. *Id.* at 279.

22. *Id.* at 278.

23. *Id.* at 279.

24. *Landers*, 963 S.W.2d at 278.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Landers*, 923 S.W.2d at 279.

35. *Id.*

The ALJ first decided Landers' claim³⁶ on November 2, 1995, finding that Landers' memory loss, inability to perform his job properly, personality changes, concentration problems, speech problems, and depression were connected to the work related injury.³⁷ The ALJ concluded that Landers suffered a fifty percent permanent partial disability and was entitled to future medical care.³⁸ Defendant filed an application for review with the Labor and Industrial Relations Commission, which affirmed the decision of the ALJ.³⁹ Defendant then appealed this decision to the Missouri Court of Appeals.⁴⁰

Defendant argued that the Commission erred as a matter of law in ruling that Landers' alleged brain deficits were medically causally related to the work-related injury.⁴¹ Defendant argued the Commission's decision was not supported by any competent or substantial evidence.⁴² Defendant also contended that the evidence provided by Dr. Wetzel and Dr. Fitzgerald in support of Landers' claim was inapplicable since the doctors were only clinical psychologists and not medical doctors. As psychologists, they were not qualified to render an opinion regarding whether Landers' brain deficits were medically causally related to the accident.⁴³ Defendant argued that the only competent evidence in the record was that Landers suffered no brain injury as a result of the accident.⁴⁴ Thus, the Commission should not have upheld the ALJ's finding of fifty percent permanent partial disability when the record lacked sufficient evidence to support such a finding.

The Missouri Court of Appeals for the Eastern District held that a clinical psychologist may testify as an expert as to the causation of a claimant's injuries.⁴⁵ Furthermore, the Commission has discretion to determine the weight to accord conflicting medical theories.⁴⁶ The court thus affirmed the Commission's finding.⁴⁷

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* The defendant raised two other points on appeal. In the second point, the defendant argued that the Commission erred in awarding the plaintiff future medical treatment for depression in that the depression was not related to a compensable injury and there was no competent evidence to support the award. *Id.* at 282. In the third point, the defendant argued that the Commission erred in finding that the plaintiff suffered a 50% permanent partial injury because it was not supported by substantial and competent evidence. *Id.* at 284.

42. *Landers*, 963 S.W.2d at 279.

43. *Id.*

44. *Id.*

45. *Id.* at 282.

46. *Id.*

47. *Id.*

III. LEGAL BACKGROUND

A. *Federal Rule of Evidence 702 and Missouri Revised Statute Section 490.065*

Originally enacted in 1975, the Federal Rules of Evidence liberalized many of the current rules of evidence for the federal courts. One such area of liberalization was the broadening of standards for the admissibility of expert testimony.⁴⁸ The Federal Rules changed the emphasis from questions of *admissibility* to questions of *weight* of the evidence. Rule 702, the specific rule governing the admission of expert testimony, states:

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.⁴⁹

Like several other states, Missouri has adopted virtually the exact wording of Rule 702 in Section 490.065 of the Missouri Revised Statutes.⁵⁰ The only difference between Section 490.065 and Rule 702 is that Section 490.065 begins “[i]n any civil action,” while the remaining portion is identical to Rule 702.⁵¹

The rule essentially delineates two threshold requirements for someone to offer their expert opinion.⁵² First, through one of the five areas expressly listed, the person must be established as an expert. Second, the evidence must be helpful to the trier of fact.

Courts have universally found that psychologists are experts for purposes of testifying about the *existence* of brain conditions or brain injuries.⁵³ Courts are now confronted with the question of whether those same psychologists may render expert opinions as to the *medical causes* of such conditions and injuries.

48. Angela D. Slater, *Federal Standards for Admissibility of Expert Evidence on Causation*, 61 DEF. COUNS. J. 51, 51 (1994).

49. FED. R. EVID. 702.

50. MO. REV. STAT. § 490.065 (1994).

51. *Id.*

52. FED. R. EVID. 702. Since the court found the Missouri statute to be virtually identical to FED. R. EVID. 702, all cites herein will be to FED. R. EVID. 702.

53. *See Executive Car & Truck Leasing, Inc. v. DeSerio*, 468 So. 2d 1027, 1029 (Fla. Dist. Ct. App. 1985).

B. Psychologists and Causation

Although many courts have confronted the issue of psychologists testifying as experts about causation, there is a wide disparity among the decisions. While most courts have established bright line rules either expressly allowing or prohibiting psychologists' testimony on medical causation, some courts have taken intermediate approaches.

The majority of courts allow psychologists to testify on the causation of injuries.⁵⁴ These courts look to their state rule analogous to FRE 702 and find that the rule includes no restrictions against a psychologist testifying on medical causation.⁵⁵ These courts emphasize the liberal purpose for which the rule was enacted.⁵⁶ This approach is based on the belief that "it would be somewhat anomalous to conclude [a psychologist] would not be qualified to testify about [the cause of plaintiff's injury] when the neurologist who sought his expertise and assistance in diagnosing the disease would most likely be qualified to do so."⁵⁷

In *Cunningham v. Montgomery*,⁵⁸ the Oregon Court of Appeals reversed the trial court's finding that a neuropsychologist was not able to testify on the issue of causation.⁵⁹ Plaintiff brought a malpractice action against a dentist for cognitive damage she allegedly suffered from the dentist's negligent use of nitrous oxide while treating the plaintiff for a toothache.⁶⁰ The trial court refused to admit the psychologist's testimony concerning causation solely because he was not a medical doctor.⁶¹ The appellate court found that the psychologist's specialized training and experience qualified him to testify on causation despite the fact that he was not a medical doctor.⁶² The court looked to FRE 702⁶³ to find that an "expert witness on a medical subject need not be a person licensed to practice medicine."⁶⁴

54. See *Fabianke v. Weaver*, 527 So. 2d 1253 (Ala. 1988); *Hooper v. Industrial Comm'n*, 617 P.2d 538 (Ariz. Ct. App. 1980); *Valiulis v. Scheffels*, 547 N.E.2d 1289 (Ill. App. Ct. 1989); *Hutchison v. American Family Mut. Ins. Co.*, 514 N.W.2d 882 (Iowa 1994); *Cunningham v. Montgomery*, 921 P.2d 1355 (Or. Ct. App. 1996).

55. *Hutchison*, 514 N.W.2d at 889 (refusing to impose barriers other than requirements of the rule).

56. *Id.* at 885 (recognizing Iowa's liberal rule on the admission of opinion testimony).

57. *Valiulis*, 547 N.E.2d at 1297.

58. 921 P.2d 1355 (Or. Ct. App. 1996).

59. *Id.* at 1360.

60. *Id.* at 1356.

61. *Id.* at 1358.

62. *Id.* at 1360.

63. Oregon's version of FED. R. EVID. 702 is codified at OR. REV. STAT. § 40.410 (1997).

64. *Cunningham v. Montgomery*, 921 P.2d 1355, 1358 (Or. Ct. App. 1996).

Other courts have expressly prohibited psychologists from testifying on issues concerning medical causation.⁶⁵ These courts rationalize their decisions on the basis that psychologists do not possess the medical training necessary to render an opinion concerning causation.⁶⁶ Further, many of the courts which prohibit psychologists from testifying about causation look to state statutes defining the practice of medicine and psychology as basis for their decisions.⁶⁷

For example, in *Huntoon v. TCI Cablevision of Colorado*,⁶⁸ the Colorado Court of Appeals barred a neuropsychologist from testifying on the issue of causation.⁶⁹ The court relied on the Colorado statutes which defined the practice of medicine as treating the physical and mental aspects of the body and defined psychology as treating solely the psychological aspects of the mind.⁷⁰ In *Edmonds v. Illinois Central Gulf Railroad Co.*,⁷¹ the Fifth Circuit also turned to definitions of psychology in order to determine an expert's qualification. The court found that the testifying clinical psychologist had "specialized training in the application of psychological principles to the assessment and treatment of people with psychological problems."⁷² The court found the psychologist was "not a medical doctor, and not involved in making medical diagnosis."⁷³ Therefore, the court concluded the psychologist's testimony concerning causation was beyond the psychologist expertise and offered no assistance to the jury.⁷⁴

Between the two extreme positions, some courts have developed middle-of-the-road approaches to determining whether or not a psychologist may testify on causation. These approaches include: (1) prohibiting psychologists from testifying about causation, but finding harmless error if causation testimony

65. See *Edmonds v. Illinois Cent. Gulf R.R.*, 910 F.2d 1284, 1287 (5th Cir. 1990); *Huntoon v. TCI Cablevision, Inc.*, 948 P.2d 33, 35 (Colo. Ct. App. 1997); *Executive Car & Truck Leasing, Inc. v. DeSerio*, 468 So. 2d 1027, 1029 (Fla. Dist. Ct. App. 1985); *Chandler Exterminators, Inc. v. Morris*, 416 S.E.2d 277, 277 (Ga. 1992), *superseded by statute as recognized in Drake v. LaRue Constr. Co.*, 451 S.E.2d 792 (Ga. Ct. App. 1995); *Martin v. Benson*, 481 S.E.2d 292, 296 (N.C. Ct. App. 1997), *rev'd*, 500 S.E.2d 664 (N.C. Ct. App. 1998).

66. *Chandler Exterminators*, 416 S.E.2d at 278 ("Medical causation is not a subject within the scope of psychological expertise."); *Martin*, 481 S.E.2d at 296 ("[I]t is evident that the practice of psychology does not include the diagnosis of medical causation.").

67. *Chandler Exterminators*, 416 S.E.2d at 278 (comparing the statutory definitions of "to practice psychology" and "to practice medicine"); *Martin*, 481 S.E.2d at 295 (examining the statutory definition of the "[p]ractice of psychology").

68. 948 P.2d 33 (Colo. Ct. App. 1997).

69. *Id.* at 33.

70. *Id.*

71. 910 F.2d 1284 (5th Cir. 1990).

72. *Id.* at 1287.

73. *Id.*

74. *Id.*

existed,⁷⁵ or (2) generally disallowing psychological testimony, but allowing it when presented in conjunction with testimony from a physician.⁷⁶

Another intermediate approach was applied in *Richard Joint Venture v. Brunson*.⁷⁷ In that case the Court of Special Appeals of Maryland applied an estoppel argument against a defendant who argued that the psychologist's testimony concerning causation was inadmissible.⁷⁸ Prior to trial, the trial court refused to qualify the testifying psychologist as an expert on the issue of causation, ruling that the psychologist was to testify "strictly" within the area of psychology.⁷⁹ However, the record indicated the psychologist did testify on causation issues.⁸⁰ Despite this, the Court of Special Appeals refused to find error in the psychologist's testimony because the issue of causation was elicited from the psychologist by the defendant's counsel and not during plaintiff's direct examination of the psychologist.⁸¹

IV. INSTANT DECISION

In *Landers v. Chrysler Corp.*, the Missouri Court of Appeals for the Eastern District was forced to decide an issue of first impression: whether a neuropsychologist was qualified to testify on causation of an organic brain injury.⁸² The court looked at cases from other jurisdictions which came down on both sides of the issue and ultimately decided to follow the majority of jurisdictions, which allow the psychologist to testify on medical causation.⁸³

The court rejected the defendant's claim that the authorities cited by the trial court were inapplicable because these cases were based on the application of Federal Rule of Evidence 702, which Missouri has not adopted.⁸⁴ Instead, the court concluded that Section 490.065 of the Missouri Revised Statutes was "virtually identical" to FRE 702.⁸⁵

75. Haas v. Seekell, 538 So. 2d 1333, 1336-37 (Fla. Dist. Ct. App. 1989).

76. Simmons v. Mullen, 331 A.2d 892, 899-900 (Pa. 1974).

77. 625 A.2d 326 (Md. Ct. Spec. App. 1993), cert. granted, 634 A.2d 47 (1993), *aff'd in part, rev'd in part*, 645 A.2d 1147 (1994).

78. *Id.* at 330.

79. *Id.*

80. *Id.* at 331.

81. *Id.*

82. *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 280 (Mo. Ct. App. 1997).

83. *Id.* at 279-80 (citing *Hutchison v. American Family Mut. Ins. Co.*, 514 N.W.2d 882 (Iowa 1994); *Madrid v. University of California*, 737 P.2d 74 (N.M. 1987); *Cunningham v. Montgomery*, 921 P.2d 1355 (Or. Ct. App. 1996); *Howle v. PYA/Monarch, Inc.* 344 S.E.2d 157 (S.C. Ct. App. 1986); *Seneca Falls Greenhouse & Nursery v. Layton*, 389 S.E.2d 184 (Va. Ct. App. 1990)).

84. *Landers*, 963 S.W.2d at 281-82.

85. *Id.*

Using Section 490.065 as its guide, the court evaluated the admissibility of the psychologist's testimony.⁸⁶ Section 490.065 permits the admission of expert testimony if it is helpful to the trier of fact.⁸⁷ The admissibility of expert opinion is generally a matter of discretion for the trial court.⁸⁸ In this case, the Labor and Industrial Relations Commission, as fact finder, had discretion to determine the expert's qualifications to testify on specific matters.⁸⁹

The court turned to statutory interpretation to determine what was needed to qualify a witness as an expert. The court concluded that because the statute used the word "or," a person may qualify as an expert based on any of the areas listed in the statute.⁹⁰ That is, a witness could be qualified as an expert based on her "knowledge, skill, experience, training, *or* education."⁹¹ Thus, the court found there was no requirement that a witness be qualified as an expert solely on the basis of her education.⁹² The court found that other Missouri cases firmly established the premise that medical personnel, other than medical doctors, may be qualified to testify on medical matters.⁹³

Applying this interpretation of the rule to the facts at hand, the court held that Dr. Wetzel's knowledge, skill, training, and experience in the area of neuropsychology allowed him to testify on the causation of plaintiff's brain injuries.⁹⁴ As such, the court found that there was sufficient evidence in the record for the Commission to conclude that the plaintiff's disabilities were caused by the work-related injury and denied the defendant's point of appeal.⁹⁵

V. COMMENT

The issue of psychologists testifying on medical causation has created a nationwide jurisdictional debate. The solution, however, may be ascertained from within the governing rule of FRE 702. Although many courts have turned to outside sources and policy reasons, the rule governing admission of expert testimony clearly provides the answer.

The problem which plagues many jurisdictions is that they are longing to create and apply hard and fast rules, especially in evidentiary rulings. However, even a cursory look at the rule governing admissibility of expert testimony indicates the test is individualized. The test requires the court to evaluate the

86. *Id.*

87. *Id.*

88. *Id.* at 281.

89. *Id.*

90. *Id.*

91. MO. REV. STAT. § 490.065 (1994) (emphasis added).

92. *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 281 (Mo. Ct. App. 1997).

93. *Id.* See *Cebula v. Benoit*, 652 S.W.2d 304, 308 (Mo. Ct. App. 1983) (finding medical personnel could qualify as expert medical witnesses).

94. *Landers*, 963 S.W.2d at 282.

95. *Id.*

particular witness and determine whether he or she is qualified to provide testimony as an expert. Specifically, there are five areas to be analyzed: the witness's knowledge, skill, experience, training, and education.⁹⁶ Naturally, in some areas, general characteristics will emerge which will automatically qualify certain witnesses as experts. However, that will not always be the case. In certain areas, such as the ability of a psychologist to testify on medical causation, an independent evaluation of each case is the best approach.

Although the Missouri court followed the majority approach by allowing the particular psychologist to testify, it is critical to evaluate how the Missouri court reached this decision. Nowhere in the opinion did the court express the notion that *all* psychologists are capable of giving an expert opinion on medical causation. Rather, the court looked at the particular psychologist and determined that his characteristics, including his skill and experience, qualified him to give his expert opinion concerning the medical cause of the plaintiff's brain injury.⁹⁷ In doing so, the court implicitly followed what the admissibility rule requires: a case-by-case approach.

Undoubtedly this case-by-case approach will be criticized as a waste of judicial resources. However valid that criticism may be, it remains clear that the rule mandates the case-by-case approach. It also remains important, however, to remember that one part of the expert admissibility test is quite liberal. This part merely requires that the expert's testimony is helpful to the fact finder. This is consistent with the increasingly liberal approach of the Federal Rules of Evidence to the admission of all evidence. However, the second part of the test is just as important: the witness must be qualified as an expert. This too is arguably a liberal test. The rule lists several broad categories of possible ways a witness may qualify himself as an expert.

One must not forget the protection device that accompanies this liberal rule: the weight to be given to the evidence. This device may still impact the evidence. Simply because evidence is admitted does not mean the fact finder must believe it. This is of obvious importance when the issue is largely based on expert opinion.

Jurisdictions which have adopted a strict policy of not allowing psychologists to testify on medical issues have created a dangerous precedent. Essentially, these courts are creating a "best evidence rule" that applies to expert witnesses. These courts are implying that only those best qualified may testify. That is, if the issue is a medical issue such as medical causation, then only medical doctors can give their expert opinion. However, the only "best evidence rule" the American legal system follows is one that applies to written documents. It has been denied from application to other principles simply because that is not the focus of our legal system. Our system focuses on liberal

96. MO. REV. STAT. § 490.065 (1994) (emphasis added).

97. Landers v. Chrysler Corp., 963 S.W.2d 275, 282 (Mo. Ct. App. 1997).

admissibility and a desire to ascertain the truth. Whatever one's belief is on a "best expert witness" rule, there is simply no support for such a rule within the expert testimony admissibility rule.

This result in *Landers* is consistent with recent decisions by the Missouri courts. In 1983, in *Cebula v. Benoit*, a Missouri court found that medical personnel, other than medical doctors, may be qualified to testify as medical experts.⁹⁸ The use of the word "may" is crucial to an understanding of how these types of decision are reached. There is no bright line rule that all medical personnel may testify. Rather, courts should look at the various characteristics possessed by each particular witness to see if they qualify to testify as an expert.

The rule in *Landers* specifies that whether someone qualifies as an expert witness is based on overall qualifications and not solely on the possession of a certain academic degree. When the scope of a psychologist's testimony was questioned on a different, yet related issue, the D.C. Circuit stated:

The determination of a psychologist's competence to render an expert opinion based on his findings as to the presence or absence of mental disease or defect must depend upon the nature and extent of his knowledge. It does not depend upon his claim to the title psychologist. And that determination . . . must be left in each case to the traditional discretion of the trial court [T]he lack of a medical degree . . . [is] not [an] automatic disqualification[] The trial judge should make a finding in respect to the individual qualification of each challenged expert.⁹⁹

Although this reasoning was applied to the issue of the presence of a mental defect, it applies equally to the issue of medical causation. The focus of the test in FRE 702 is on whether the witness has adequate qualifications. It is irrelevant what issue is being tested; whether it is the existence of a mental defect or medical causation, the test should be applied uniformly. It would be inconsistent to find that for the *existence* of a medical condition, a court would consider a psychologist's qualifications; yet for medical causation issues, merely the title of psychologist would prevent the witness from being a expert witness on medical *causation* issues.

The presumptuous notion of some courts that all psychologists are unqualified to testify about medical causation is unfounded.¹⁰⁰ As explained by a leading scholar on evidence:

The common law . . . does not require that the expert witness on a medical subject shall be a person *duly licensed to practice medicine*.

98. 652 S.W.2d 304 (Mo. Ct. App. 1983).

99. *Jenkins v. United States*, 307 F.2d 637, 645-46 (D.C. Cir. 1962).

100. See *supra* note 62 and accompanying text.

[S]uch a rule is ill-advised, first, because the line between chemistry, biology, and medicine is too indefinite to admit of a practicable separation of topics and witnesses; and, second, because some of the most capable investigators have probably not needed or cared to obtain a license to practice medicine.¹⁰¹

Thus, it is even more clear that a psychologist's ability to testify about medical causation, or any other issue, cannot be a bright line rule to be applied in every circumstance. Rather, the decision should be based on a particular psychologist's qualifications on a particular issue. This is the standard for every expert witness determination. The medical field's desire to attach vague labels to certain positions should have no impact on the expert witness determination.

Unfortunately, jurisdictions adopting bright line approaches may tend to reflect the legal "snowball" phenomenon. That is, one court reaches a result and another court follows its illogical reasoning as the only discussion on the matter. However, like the *Landers* decision, some courts implicitly appear to conduct independent, case-by-case evaluations even though not directly stating that approach.

For example, in the recent decision of *Huntoon v. TCI Cablevision of Colorado, Inc.*, the Colorado Court of Appeals refused to qualify a neuropsychologist as an expert on the medical cause of a brain injury.¹⁰² The court looked at the differences in the Colorado statutes defining the practices of medicine and psychology to reach its decision. Yet, the court also stated: "Here, the neuropsychologist did not demonstrate the necessary qualifications to render an opinion concerning causation."¹⁰³ This decision seems to hint at a case-by-case evaluation. Hence, in subsequent cases, perhaps lawyers will pay closer attention to demonstrating the precise qualities the neuropsychologist possesses that will enable him to testify on medical causation. However, courts' reliance on statutory definitions somewhat weakens this possibility.

101. 2 JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 569 (Chadbourn rev. 1979).

102. *Huntoon v. TCI Cablevision*, 948 P.2d 33, 35 (Colo. Ct. App. 1997).

103. *Id.* at 35.

VI. CONCLUSION

The rule governing the admissibility of expert witness testimony is neither convoluted nor confusing. The rule clearly sets forth two requirements. These requirements apply equally to all expert issues, including the issue of medical causation. The rule designates no one class as being more expert on certain issues than other classes of expert witnesses. Therefore, courts need to stop interpreting FRE 702 to give the rule hidden agendas that not are required. Issues concerning whether a particular psychologist may testify on medical causation must be decided individually. To adopt any other rule would dilute the meaning and the significance of the Federal Rules of Evidence.

The decision in *Landers* does not require deep scholarly thought. Yet, nonetheless, the Missouri Court of Appeals should be commended for being one of the first jurisdictions to interpret the issue correctly. The court applied FRE 702 in its intended manner. The rule decided in *Landers* acts as suspenders, only further supporting what has always been required under FRE 702.

STACEY A. TURLEY

