

ITEM 11.01 | INTRODUCTION

If scientific, technical or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it 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.¹

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it includes an ultimate issue to be decided by the trier of fact.²

The facts or data upon which an expert bases an opinion may be those perceived by, or made known to, the expert at or before the trial. If the facts or data are of a type reasonable relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence.³

Like any witness, an expert is subject to impeachment, as is the testimony the expert presents. Challenges to the expert's qualifications and the validity of an opinion may be made to the court in its gatekeeper role; and, if the opinion is allowed, challenges may be made before the trier of fact. Experts in general are qualified to render opinions based on their experience, background, and training. In medical malpractice actions, the law imposes additional requirements to ensure that the expert has the necessary expertise.⁴ General challenges to the qualifications of the expert include the knowledge, skill, experience, training, or education of the witness. As the gatekeepers, trial courts have considerable discretion in determining whether an expert is qualified to give an opinion in a given case, but in fact rarely will the expert be excluded on general challenges to qualification. The court should not exclude an expert's opinion based on matters that go to the weight of the opinion because it is the exclusive province of the jury to weigh the evidence.⁵

Challenges that go to the weight of the opinions of an expert include the reasons given by the witness for the opinion expressed, the reasonableness of the opinion in light of all surrounding facts



and circumstances, whether the opinion differs from that of other qualified experts or recognized authorities and treatises, and any relationship or circumstance that may give rise to bias on the part of the expert.⁶ These factors require discovery broad enough for the opposing party to challenge the expert and the expert testimony.

In 2013, the Florida Legislature amended Fla. Stat. § 90.702 and stated in the preamble to the amendment that it intended to adopt as standards for expert testimony to be used by the courts of this state to be those as provided in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), *General Electric Co. v. Joiner*, 522 U.S. 136, 118 S. Ct. 512, 139 L. Ed. 2d 508 (1997), and *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 119 S. Ct. 1167, 143 L. Ed. 2d 238 (1999), and to no longer apply the standard in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). The Florida Supreme Court is currently considering whether to adopt the amendment as a rule of evidence, to the extent that it is procedural.

As gatekeeper, the trial court, upon objection, must determine whether Daubert applies, and, if so, whether the testimony of the expert is admissible under Daubert standards. The details of the analysis required to challenge or support opinions is beyond the scope of this work.

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Footnotes

¹ Fla. Stat. § 90.702 (2015).

² Fla. Stat. § 90.703 (2015).

³ Fla. Stat. § 90.704 (2015).

⁴ E.g., Fla. Stat. § 766.102(5).

⁵ See, e.g., *Univ. of Fla. Bd. of Trs. v. Stone*, 92 So. 3d 264, 272 (Fla. 1st DCA 2012).

⁶ For example, bias can be shown in the form of financial remuneration for testifying, financial or business interest in supporting the opinions expressed, a relationship between the witness and a party or counsel, etc.

