

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KATHRYN PRATT :
Plaintiff : CV 2023-00720
v. :
: :
TAMOOR SHAHID M.D. : CIVIL ACTION-LAW
GEISINGER MEDICAL CENTER :
GEISINGER CLINIC : Defendants’ Motion in Limine-Frye Motion
Defendants :

OPINION AND ORDER

This matter came before this Court for oral argument on April 7, 2026, on Defendants’ Motion in Limine, filed March 16, 2026, to preclude Plaintiff from introducing the testimony of D. Stewart MacIntyre, M.D. (hereinafter “MacIntyre”). Defendants contend that the opinions set forth in the expert report prepared by MacIntyre are scientifically unsound, and thus that his testimony should be precluded under the standard announced in *Frye v. United States*, 293 F. at 1013, and adopted in Pennsylvania in *Commonwealth v. Topa*, 471 Pa. 223, 369 A.2d 1277 (Pa.1977), now codified as part of Pa.R.E. 702

The Standard Applicable to the Presentation of Scientific Evidence:

Our Superior Court reviewed the appropriate standard for the admissibility of scientific evidence in the matter of *Commonwealth v. Foley*, 2012 PA. Super. 31, 38 A.3d 882 (Pa.Super, 2012), as follows:

Pennsylvania continues to adhere to the *Frye* test, which provides that “novel scientific evidence is admissible if the methodology that underlies the evidence has general acceptance in the relevant scientific community.” *Betz v. Pneumo Abex LLC*, 998 A.2d 962, 972 (Pa.Super.2010) (en banc) (citing *Grady v. Frito-Lay, Inc.*, 576 Pa. 546, 839 A.2d 1038 (2003)). The *Frye* test is a two-step process. *See id.* First, the party opposing the evidence must show that the scientific evidence is “novel” by demonstrating “that there is a legitimate dispute regarding the reliability of the expert's conclusions.” *Id.* If the moving party has identified novel scientific evidence, then the proponent of the scientific evidence must show that “the expert's methodology has general acceptance in the relevant scientific community” despite the legitimate dispute. *Id.* (internal quotation marks omitted).

Commonwealth v. Foley, 2012 PA. Super. 31, 38 A.3d 882, 888 (Pa.Super, 2012).

Our Supreme Court has drawn a distinction between proof of general acceptance of the expert’s methodology, and proof of general acceptance of the expert’s conclusions.

We now turn to the importance of *Frye's* proper application, and make the following points. First, consistent with our traditional adherence to the general evidentiary tenet that the proponent of a proposition bears the burden of proving it, *see In re Johnson*, 509 Pa. 347, 502 A.2d 142, 146 (1985), and the principle that is evident in this type of case, *see, e.g., Topa* 369 A.2d at 1277 and *Commonwealth v. Zook*, 532 Pa. 79, 615 A.2d 1 (1992), *cert. denied*, 507 U.S. 974, 113 S.Ct. 1420, 122 L.Ed.2d 789 (1993), we emphasize that the proponent of expert scientific evidence bears the burden of establishing all of the elements for its admission under Pa.R.E. 702, which includes showing that the *Frye* rule is satisfied.

Second, in applying the *Frye* rule, we have required and continue to require that the proponent of the evidence prove that the methodology an expert used is generally accepted by scientists in the relevant field as a method for arriving at the conclusion the expert will testify to at trial. *See, e.g., Blasioli*, 713 A.2d at 1119. This does not mean, however, that the proponent must prove that the scientific community has also generally accepted the expert's conclusion. We have never required and do not require such a showing. This, in our view, is the sensible approach, for it imposes appropriate restrictions on the admission of scientific evidence, without stifling creativity and innovative thought.

Grady v. Frito-Lay, Inc., 576 Pa. 546, 558, 839 A.2d 1038, 1045 (Pa. 2003).

Question Presented:

WHETHER THE COURT SHOULD PRECLUDE THE TESTIMONY AT TRIAL OF PLAINTIFF'S EXPERT WITNESS, D. STEWART MACINTYRE, M.D., BASED UPON DEFENDANTS' CLAIM THAT HIS OPINIONS ARE SCIENTIFICALLY UNSOUND.

Answer to Question Presented:

THE COURT WILL NOT PRECLUDE THE TESTIMONY AT TRIAL OF D. STEWART MACINTYRE, M.D.

The Court Does Not Regard MacIntyre's Methodology As Novel:

The Court personally attended the testimony of MacIntyre during the hearing conducted on April 7, 2026. He testified by Zoom technology, over a period in excess of one hour. The primary purpose of his testimony was for the Court to consider his qualifications under 40 P.S. Section 1303.512. Nevertheless, the Court gave counsel for the Defendants wide latitude to question MacIntyre regarding the basis for his opinions.

MacIntyre testified at length regarding the *methodology* he employed in determining whether to administer antibiotics for suspected *Clostridioides difficile* (hereinafter "C.diff") infection. He explained the need for proper consideration of clinical signs, symptoms, patient complaints and the results of scientific testing. In one report, MacIntyre opines that some of

the tests performed on Plaintiff were not indicated, “since she was known to recently have C. diff, completed a course of Flagyl (a weak medication for treating C. diff), and then had a return of symptoms. Once a patient recently had C. diff., providers should presume that patient will continue to be colonized and you do not do follow up tests or discontinue antibiotics based on negative follow up tests.”

Defendant’s expert, Steven R. Peikin, M.D., authored a report dated October 27, 2025. Dr. Peikin discussed the various clinical observations of the Plaintiff, diagnostic testing for C.diff, and the appropriate use of antibiotics in her treatment. Dr. Peikin flatly disagrees with MacIntyre’s conclusion that Plaintiff’s relapse was associated with the cessation of antibiotic therapy. Rather, Dr. Peikin contends “Her recurrent diarrhea was not due to ineffective treatment with Flagyl but rather the known incidence of relapse after treatment (about 25% with any treatment for C. difficile).”

It appears to the Court that the *methodology* employed by MacIntyre is not unlike the *methodology* advocated by Dr. Peikin. Rather, MacIntyre *concluded* that Plaintiff’s clinical presentation was such that Dr. Shahid should have taken immediate steps to treat the Plaintiff with an effective antibiotic. Peikin *concluded* that the care provided by Dr. Shahid was consistent with the applicable standard of care. While the conclusions reached by MacIntyre differ widely from the conclusions reached by Defendants’ experts, the Court does not find that the *methodology* employed by MacIntyre was “novel.”

In the Alternative, MacIntyre’s Methodology and Conclusions Are Generally Accepted in the Scientific Community:

Even if the Court chose to label MacIntyre’s methodology and conclusions as “novel,” the Court finds that they are generally accepted in the scientific community. Attached to Plaintiff’s brief in opposition to Defendants’ Motion are articles from scientific journals discussing the “significant challenge to the prompt identification and management of CDI” which is posed by false negative PCR test results. The Court has no basis upon which to conclude that those articles are scientifically unsound. MacIntyre contends that diagnostic testing performed on the Plaintiff:

was not necessary or appropriate, since she was known to recently have C. diff, completed a course of Flagyl (a weak medication for treating C. diff), and then had a return of symptoms. Once a patient recently had C. diff., providers should presume that patient will continue to be colonized and you do not do follow up tests or discontinue antibiotics based on negative follow up tests.

It is clear to the Court that the conclusions reached by MacIntyre are subject to serious dispute by Defendants. Defendants' experts will opine that follow up testing is the appropriate standard of care, and that health care providers are entitled to rely upon the results of those tests, in planning appropriate patient care. While MacIntyre's conclusions differ from those advanced by Defendants' experts, that difference is not a proper basis for excluding the testimony.

ORDER

AND NOW, this 14th day of April, 2026, Defendants' Motion in Limine, filed March 16, 2026, seeking to preclude Plaintiff from introducing the testimony of D. Stewart MacIntyre, M.D., is **DENIED**.

BY THE COURT:

Hon. William P. Carlucci, Judge

cc: Court Administrator
Corey J. Mowrey, Esq.
Joseph G. Zack, Esquire
Post & Post, LLC
200 Berwyn Park, Suite 102
920 Cassatt Road
Berwynn, PA 19312
Joshua E. Gajer, Esquire
White & Williams, LLP
One Liberty Place
1650 Market Street, Suite 1800
Philadelphia, PA 19103-7304