



STANDARDS FOR EXPERT TESTIMONY

New Jersey was one of the first jurisdictions to recognize the increasing importance of expert testimony in modern litigation, one of the first to stress the importance of judicial gate keeping, and one of the first to adopt a more structured multi-factor test for examining the validity of expert testimony. Unfortunately, New Jersey can no longer claim it is on the cutting edge when it comes to ensuring bad science is barred from the courtroom.

New Jersey is one of only a handful of states that have not yet adopted some form of the federal *Daubert* standard for expert testimony. Under the state's current evidentiary rules, judges often allow testimony which might be barred as unreliable in federal court and in the majority of state courts. As a result, the New Jersey courts are an attractive forum for litigation based on "junk science."

New Jersey's weak evidentiary standards have meant that New Jersey's courtrooms have become a target for personal injury lawyers promoting unsubstantiated scientific theory. There is a reason why 93% of mass tort litigation against our pharmaceutical companies have been filed by out-of-state plaintiffs: New Jersey has made it possible to sue businesses based upon novel theories that few other states would entertain. Weak evidentiary standards can be particularly harmful to an industry's viability, as testimony given by experts in court can determine a trial's outcome – and ultimately, whether a business will cease to exist. Similarly, health care providers such as doctors, hospitals and nurses are not judged on the most reliable science when determining liability for poor medical outcomes.

Our rules regarding the admissibility and review of expert testimony have remained unchanged since 1991. In this same period the Federal Rules of Evidence, the Uniform Rules of Evidence, numerous state evidence rules, and our own jurisprudence have all advanced to reflect the increased importance and use of expert testimony. New Jersey should join the majority of other states that have adopted the *Daubert* standard via legislation or court rule.

Under the *Daubert* standard, before a witness offers expert testimony the judge must:

- Determine whether the offered evidence is based on sufficient facts or data;
- Confirm that the evidence is the product of reliable principles and methods; and
- Ensure the evidence is based on the application of those principles and methods to the facts of the case.

This three-part screening process keeps junk science out of the courtroom, ensuring justice is not thwarted by a scientific charlatan.