US Supreme Court Decisions, Expert Testimony, and Implant Dentistry

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KEY WORDS
Implant dentistry
Expert testimony

There have been 3 US Supreme Court decisions in the last 8 years that have established new rules of admissibility of expert witness testimony. These will have great bearing on the practice of oral implantology now and in the future.

INTRODUCTION

Oral implantology is a fast growing discipline. There has been an explosion of data in this field over the last 20 years. Some of the science and techniques are controversial and not thoroughly studied, placing some treatment modalities in doubt. As research is reported and published, some science and techniques have been validated and some have been found to be unsound. This growing body of complex scientific knowledge (and science in general) has generated a refashioning in our court systems to insure factual testimony. The oral implantologist may be called upon to testify in product liability, personal injury, or malpractice litigation.

MATERIALS AND METHODS

The rules for expert testimony in the US court system are undergoing change. Until 1993, the 1923 Frye decision in a federal appeals court was the guide for expert witness testimony. In Frye vs United States, the court said any expert testimony should contain only information that met a "general acceptance" test. This means that there must be a consensus in the appropriate scientific community about the information in a scientific testimony. This is still used by some state courts. In 1993, the US Supreme Court, in Daubert vs Merrill Dow Pharmaceuticals, Inc, minimized the Frye decision and issued a new 4-point test for admissibility of scientific evidence to insure that the testimony "is not only relevant, but reliable." This made a new standard for admissibility of expert testimony. The Frye criterion lost authority but is still a factor to be considered.

The Daubert decision created a flexible test. The judge in a trial has the power to admit testimony or to deem it inadmissible. The first point in Daubert requires that the information in the testimony can be or has been tested using the scientific method. Second, the information must be peer reviewed or published. Third, it must be evaluated for error and reasoned scientifically to the facts. Fourth, the testimony must be directly relevant to the particular case.

The trial judge has been appointed as the "gatekeeper" who screens the testimony as to relevance and reliability. For example, the Supreme Court has ruled that animal studies may not be relevant or reliable when applied to human conditions.
Credentials are not enough, as decided in Kumho Tire Co vs Carmichael 1999. Even though an expert may have impeccable credentials, his or her conjectures are inadmissible. The expert’s opinion is admissible only if it is a conclusion based on the scientific method. An expert witness should expect a Daubert/Kuhmo challenge to his or her testimony. Different courts may have diverging opinions of these decisions. Many lawyers do not adequately prepare their experts as to law of the particular jurisdiction and what to expect, so the expert may be ill equipped for the rigorous scrutiny of the evidence presented. This may cause the expert to err in his or her testimony. There has been a call to punish “those who breach the standard of care in the practice of legal medicine.” Testifying as an expert witness is considered to be part of the practice of dentistry, and an expert may be held accountable for any misinformation proffered.

**DISCUSSION**

Questions arise. If information appears in a publication that does not scrutinize its content for good science, does that information meet the Daubert criteria? The rules just state “publication” without regard to a method of review. Which factors are indicative of reliability in a particular case? Statistical data that do not meet the 0.05 level may not be admissible, based on the Daubert criteria. Some issues may not be able to be decided until more research is reported on that particular topic. How would a litigation be settled?

The court does not search for scientific precision. It cannot investigate all the subtleties that characterize good scientific work. Trial judges are considered by some to be unreliable gatekeepers when it comes to interpretation of science. “A judge is not a scientist, and a courtroom is not a scientific laboratory. But the law must seek decisions that fall within the boundaries of scientifically sound knowledge. Science itself may be uncertain and controversial on a particular issue. There is an important need for the law to interpret sound science. Judges may appoint independent experts for testimony and ‘sounding boards,’ apart from those presented by the contending parties.” Problems arise in protecting the interests of the parties, identifying qualified impartial experts, and preparing an expert for the sometime hostile environment of depositions and cross-examinations.

These federal court decisions and changes are being considered for modifications in state court systems, but there is uncertainty and nonuniformity. Some states have not adopted the Daubert criteria and others have deemed it not stringent enough.

**CONCLUSIONS**

We can expect to see written reports from experts, more pretrial screening, and more control of direct and cross-examination by judges. Judges may ask opposing experts to confer in a pretrial open exchange to insure reliability of testimony. This may result in more pretrial settlements.

It may behoove the practitioner of oral implantology to maintain a list of citations that are kept in the charts of certain patients and certain types of cases. Any implant dentist testifying in litigation must be his or her own best advocate, especially in a malpractice trial. Evidence for reasons for treatment would be best substantiated by data published in reputable journals. If the practitioner is called upon to defend or to testify, the question will be asked, “How do you know that?”

**REFERENCES**

1. Frye vs United States, Court of Appeals of the District of Columbia, 54 App DC 46, 47, 293 F 1013m 1014, (1923) [DC Cir 1923, 293, F 1013].

Note: Citations for US Supreme Court can be accessed at http://supct.law.cornell.edu/supertlaw/.