United States District Judge Marcia S. Krieger
PROCEDURES FOR RULE 702 MOTIONS
(Effective January 1, 2006)

A. Procedures for making a motion pursuant to Fed. R. Evid. 702

A party seeking to exclude opinion testimony[1] by an expert shall proceed as follows:

(i) the parties shall jointly confer, and the proponent of the expert shall separately identify[2] each opinion of the expert that it intends to offer;

(ii) for each challenged opinion, the opposing party shall identify which of the four Rule 702 grounds[3] are allegedly not satisfied;

(iii) the parties shall confer to determine how much time is necessary for an evidentiary hearing to address the objections; and

(iv) the parties shall jointly file a Rule 702 motion that identifies each challenged opinion; the grounds upon which the party opposing the expert challenges each opinion; and the amount of time necessary for a hearing. (See sample motion below.)

Upon receipt of a properly-presented joint Rule 702 motion, the Court will set an evidentiary hearing to address the objections.

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[1]Rule 702 controls the admission of opinion testimony given by experts. It is not a basis for excluding expert reports (which typically are inadmissible hearsay) or "striking experts."

[2]Identification of the opinions to be proffered must be specific. Expert reports or Rule 26(a)(2) disclosures are not sufficient to satisfy this requirement.

[3]The four objections contemplated by Rule 702 are: (i) the expert lacks sufficient qualifications (*i.e.* skill, training, knowledge, or expertise); (ii) the expert did not obtain sufficiently reliable facts or data; (iii) the expert did not use reliable principles or methodologies; and (iv) the expert did not reliably apply the principles or methodology to the facts and data obtained. Objections as to "relevance" of the opinion will not be considered with regard to Rule 702, nor will disputes as to the weight that should be given an opinion. Rule 702 determines the foundational requirements for an expert opinion to be admitted. So long as the opinion satisfies the rule's requirements, the foundation is laid. As with all other evidence, objections as to relevance may be made at the time the opinion is offered at trial, at a hearing, or in support of a dispositive motion.

B. Hearing procedures

In a hearing on a *Daubert* or Rule 702 challenge to an expert opinion, the following procedure will be used.

(i) the proponent of the expert testimony will identify the witness and itemize each opinion the witness will express as an expert;

(ii) as to each identified opinion, the opponent will state the nature of its challenge(s) under Rule 702;

(iii) the proponent of the expert testimony will then call the expert witness and elicit only that information relevant to the particularly-identified challenge(s), followed by cross-examination and re-direct examination. The proponent may call additional witnesses, if necessary, or rest; and

(iv) the opponent of the expert testimony may then call witnesses to address the challenge(s), followed by cross-examination and re-direct examination.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Case No. *-**-*(*)

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Plaintiff(s),

v.

*,

Defendant(s).

PARTIES' JOINT MOTION UNDER FED. R. EVID. 702

The parties, through their undersigned counsel, hereby request a determination regarding the admissibility of opinion testimony from Plaintiff's expert Dr. John Smith.

Opinion 1

The medical treatment provided by Dr. Jane Jones to Plaintiff was beneath the standard of care because she administered penicillin to Plaintiff without first determining whether Plaintiff was allergic to penicillin.

Objection to Opinion 1

Dr. Smith lacks the knowledge skill, experience, training or education to express this opinion.

Opinion 2

The medical treatment provided by Dr. Jones to Plaintiff fell beneath the standard of care because when she performed an x-ray on Plaintiff's leg, Dr. Jones failed to use proper techniques

resulting in the Plaintiff being overexposed to radiation.

Objection to Opinion 2

Dr. Smith lacks the knowledge skill, experience, training or education to express this opinion. Dr. Smith's opinion also is not the product of reliable principles and methods and is based upon insufficient facts and data.

Time Requested for Hearing

The parties anticipate that the admissibility of these two opinions can be determined in a 90-minute hearing.

Respectfully submitted this ____ day of _____, 200___.

[Signature Block]