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STATE OF MEDICAL MALPRACTICE & NURSING HOME LIABILITY

Analogous Support for an Expert's Opinion May Be Sufficient

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SECRET WARDLE NOTES

The current position of the court supports the premise that under MRE 702, a medical malpractice plaintiff's causation expert may be able to rely on adjunct peer reviewed literature that, while not directly on point, can be correlated to support their opinion in a clear, methodical, scientific and reasonable manner. While mere personal opinion, without more, is insufficient, the court may address the "total picture" to determine if there is peer reviewed support, even indirectly, for the expert's opinion.

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The Court of Appeals' opinion in *Walters v Falik* involves a dental malpractice claim where a dental etching solution (containing phosphoric acid) allegedly resulted in Plaintiff developing an auto-immune disease, Wegener's Granulomatosis. Liability was not an issue on appeal, but rather only the trial court's conclusion that Plaintiff's expert's opinion on causation was not supported by sufficient data and reliable scientific principles (MRE 702).

In a recent opinion of the Supreme Court in *Ehler v Misra*, the Plaintiff's expert's opinion was deemed inadmissible as it was premised upon his own personal opinion. Plaintiff's expert could not point to any supportive peer reviewed literature and knew of no one in the expert community who shared his opinion. Defendant's expert, on the other hand, had peer reviewed articles refuting Plaintiff's expert's opinion.

In *Walters*, the Court of Appeals reversed the trial court's ruling and it was appealed to the Supreme Court. The Supreme Court then remanded the case back to the Court of Appeals for reconsideration in light of *Ehler*.

The Court of Appeals determined that the *Walters* matter was distinguishable from *Ehler* in that Plaintiff's expert testified to a scientific based logical correlation between Plaintiff's exposure to phosphoric acid in her mouth and the overwhelming inflammatory response thereto, with literary support. The Court held that Plaintiff's expert's opinion was supported "by myriad variables or factors, as opposed to the circumstances in *Ehler* where the expert's opinion concerning the standard of care was apparently premised solely on his own personal beliefs." Even though Plaintiff's expert could not point to any peer reviewed literature

directly identifying a specific link between Plaintiff's condition and this particular exposure, he could tie his opinions to numerous studies and literature examining the causes of Plaintiff's condition, employing scientific analogies to explain how Plaintiff's exposure would cause the physiological response demonstrated, and additional scientific factors. Further, Defendant's expert did not produce any peer reviewed literature that would debunk Plaintiff's expert's theories. The matter was remanded back to the trial court for further proceedings consistent with this opinion.

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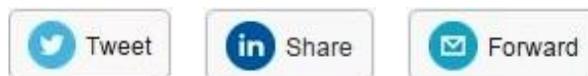
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