

State v. Porter, 241 Conn 57 (1997): a review of principles and subsequent cases

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State v. Porter, 241 Conn. 57 (1997), holds that such expert testimony of causation must come through an expert who can demonstrate an acceptable methodology for the opinions that he or she will put forth. This also includes, according to the criteria cited therein and in subsequent cases, that the theory fit the particular case.

The Porter Hearing

Once the Court grants a Porter hearing, the burden of proof is on the proponent to demonstrate the admissibility. *Klein v. Norwalk Hospital* 299 Conn. 241 (2010). "The proponent of the evidence must provide a sufficient articulation of the methodology underlying the scientific evidence. Without such articulation, the Court is ill-equipped to determine if the scientific evidence is reliable upon consideration of the various Porter factors. Additionally, without a clear understanding as to the methodology and its workings, the trial court cannot properly undertake its analysis under the fit requirement of Porter, ensuring that the proffered scientific evidence, in fact, is in fact based upon the reliable methodology articulated." (Citations omitted). *Prentice v. Dalco Electric, Inc.* 280 Conn. 336, 345 (2006).

Elements of a medical liability case including expert opinions

"Because the requirements for proper medical diagnosis and treatment ordinarily are not within the common knowledge of laypersons, a former patient who wishes to pursue a medical malpractice action generally must present expert testimony to the trier of fact." *Kairon v. Burhnam*, 120 Conn. App. 291 (2010), citing *Dimmock v. Lawrence and Mem. Hosp., Inc.*, 286 Conn. 789 (2008). To be admissible, such testimony must comply with the requirements for reliability and relevance established in *State v. Porter*, 241 Conn. 57 (1997), cert den'd, 523 U.S. 1058 (1998).

Causation Opinions

Causation opinions must also be based upon facts in evidence. An expert cannot make up facts which are not supported by, and indeed inconsistent, with the facts as presented to the Court. In *State v. Martinez*, 143 Conn. App. 541 (2013), the Supreme Court held that the trial court improperly admitted testimony regarding narcotics field test results without a Porter hearing. *Id.*, at 543. The defendant had sought a hearing arguing that the methodology underlying the field tests had not been established as scientifically valid. The trial court heard testimony from the expert and ruled that a Porter hearing was not necessary because "the defendant had failed to show that the field tests involved an innovative scientific technique requiring a Porter hearing." *Id.* at 556. On appeal, the state argued that the trial court was correct in allowing their expert because his testimony did not involve an innovative scientific technique. The Supreme Court held that the "field test results [were] based upon scientific principles and, therefore, when challenged, they must

comport with the principles of scientific reliability as set forth in Porter." Id at 567. The Court concluded that the trial court abused its discretion in admitting this evidence without conducting a Porter hearing first. As Porter recognized, "the essential holding of the Supreme Court is the general principle that, as a threshold matter, and subject still to the rules of evidence generally, scientific evidence should be admitted in court only upon some showing of its scientific validity." *State v. Porter* at 77.

Criteria in Evaluating Scientific Opinions

"Courts should exclude scientific evidence ... when such concerns render the technique, and the resulting evidence, incapable of assisting the fact finder in a sufficiently meaningful way." *State v. Porter* at 87. The purpose of Porter is to preclude evidence that is nothing more than "junk science." "The fundamental purpose of a Porter hearing is the same irrespective of whether the trier of fact is a court or a jury, namely, to ensure, first, that the proffered scientific evidence is predicated on reliable scientific evidence methods of procedures, and, second, that the evidence is relevant to the facts of the case." *State of Connecticut v. Griffin*, 273 Conn. 266 (2005).

Porter requires a trial court to conduct a two-step inquiry. First, it must determine whether an expert's methodology is scientifically valid and reliable. 241 Conn. At 64.

In specifically analyzing an expert's opinion, *Maher v. Quest Diagnostics, Inc.* 269 Conn. 154 (2004), set forth several criteria to be considered. Those considerations include the following: 1. General acceptance in the relevant scientific community; 2. Whether the methodology underlying the scientific evidence has been tested and subjected to peer review; 3. The known or potential rate of error; 4. The prestige and background of the expert witness supporting the evidence; 5. The extent to which the technique at issue relies upon subjective judgments made by the experts rather than an objectively verifiable criteria; 6. Whether the expert can present and explain the data and methodology underlying the testimony in a manner that assists the jury in drawing conclusions therefrom; and 7. Whether the technique or methodology was developed solely for litigation. Id at 80.

Even if an expert's methodology is reliable, the court must exclude the testimony unless it is "sufficiently tied to the facts of the case so that it will aid the jury." *Daubert*, 509 U.S. at 591; *Porter*, 241 Conn at 65 ("Proposed scientific testimony must be demonstrably relevant to the facts of the particular case in which it is offered. . . ."). In *State v. Kirsch, supra*, the Supreme Court referred to this "fit" requirement as analyzing "whether the methodology is being utilized in a novel way for which it was not developed originally" or "whether it is scientifically reliable for one purpose but not another." 263 Conn at 407. "Any step that renders the analysis unreliable ... renders the testimony inadmissible." *In re Paoli RR Yard*, 35 F.3d 717 (3d Cir 1994).