

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

UNITED STATES OF AMERICA

Plaintiff

Case No. 3:17-cr-00087-RGJ-1

v.

Judge Rebecca Grady Jennings

Defendant

---

**DEFENDANT DR. JEFFREY CAMPBELL'S MOTION IN LIMINE TO EXCLUDE THE  
REPORT OF DR. TIMOTHY KING**

COMES NOW Defendant, [REDACTED], by and through his undersigned counsel, and respectfully requests that this Honorable Court exclude the report of Dr. Timothy King for the following reasons:

1. On June 4, 2017, Dr. King issued a report titled "Medical Review [REDACTED] MD Physicians Primary Care."

2. Dr. King's report fails to comply with Rule 702 of the Federal Rules of Evidence and should be excluded.

3. A trial judge must determine at the outset, whether the expert is proposing to testify to 1) scientific knowledge that 2) will assist the trier of fact to understand or determine a fact in issue. This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is sufficiently valid and whether that reasoning or methodology properly can be applied to the facts at issue. *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 597, 589 (1993).

4. "The task for the district court in deciding whether an expert's opinion is reliable is not to determine whether it is correct, but rather to determine whether it rests upon a reliable

foundation, as opposed to, say, unsupported speculation.” *In re Scrap Metal Antitrust Litig.*, 527 F.3d 517, 529 (6th Cir. 2008).

5. Dr. King’s report is inadmissible for the following reasons:

a. The expert uses a medical malpractice standard to determine culpability.

Such a standard misapplies the law and is not helpful to the jury.

b. The expert did not personally review complete patient charts or create the summary for each patient described in his report. He offered an opinion based on a review of summaries someone else created of the patients’ charts.

6. Defendant [REDACTED] respectfully requests that this Court exclude the report of Dr. King.

WHEREFORE, for the reasons stated herein and in the attached Brief in Support, Defendant, [REDACTED], by and through his undersigned counsel, respectfully requests that this Honorable Court GRANT this instant motion and exclude the report of Dr. Timothy King.

Respectfully Submitted,  
CHAPMAN LAW GROUP

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

**UNITED STATES OF AMERICA**

**Plaintiff**

Case No. 3:17-cr-00087-RGJ-1

v.

Judge Rebecca Grady Jennings

**Defendant**

---

**BRIEF IN SUPPORT OF [REDACTED] MOTION IN LIMINE TO  
EXCLUDE THE REPORT OF DR. TIMOTHY KING**

Defendant challenges the admissibility of Dr. King's expert report for the following reasons:

1. The expert uses a medical malpractice standard to determine culpability. Such a standard misapplies the law and is not helpful to the jury.
2. The expert's report was based only on his review of summaries of the patient charts rather than review of the complete patient charts.

**I. DR. KING INCORRECTLY APPLIES A MEDICAL MALPRACTICE STANDARD WHICH IS NOT HELPFUL TO THE TRIER OF FACT AND CONFUSING TO THE JURY IN DETERMINING DEFENDANT'S CRIMINAL CULPABILITY**

In cases alleging a violation of 21 U.S.C. § 841(a) against a physician, expert testimony that the defendant wrote the prescription at issue without a legitimate medical purpose and outside the scope of usual professional practice is required, unless there is evidence of plainly improper prescribing practices that a lay juror could recognize as illegitimate.

*United States v. Word*, 806 F.2d 658 (6<sup>th</sup> Cir. 1986).

Fed. R. Evid. 702 requires that the expert's scientific, technical, or other specialized knowledge aid the trier of fact. There is nothing helpful about testimony that applies the wrong standard. "Indeed, this court should exercise a gatekeeper function to protect unhelpful and confusing testimony from tainting the jury." *Kumho Tire Co. v. Carmichael*, 119 S. Ct. 1167 (1999).

In Dr. King's report, he begins his narrative opinion by writing, "[REDACTED] fail to evaluate, diagnose, and treat patients in accordance with generally accepted standards of care and principles of pain management." With this statement Dr. King incorrectly frames his findings under a standard used in civil law to litigate medical malpractice. Dr. King reiterates this inappropriate standard twice more to summarize his findings by writing, "[REDACTED] fails to practice medicine according to generally accepted medical principles and standards of care. [REDACTED] operates outside the usual course of medical practice." The next paragraph states, "The use of controlled substances is not supported by generally accepted scientific and medical principles of pain care. [REDACTED] prescribe controlled substances without a legitimate medical purpose and outside the usual course of medical care." Dr. King conflates the criminal and civil standards by incorporating alleged failures to meet the standard of care as support for a finding that [REDACTED] conduct is without legitimate medical purpose and outside the usual course of medical practice. This standard is incorrect, against the weight of precedent, and would mislead a jury into applying and convicting Dr. Campbell for violation of a civil standard.

The Government is alleging that [REDACTED] violated 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 846 for unlawful distribution of controlled substances and conspiracy to unlawfully distribute controlled substances. In *U.S. v. Moore*, the Court held a DEA registrant may be found

criminally liable for his or her prescriptions when the conduct “exceeds the bounds of professional practice,” meaning the conduct was not the practice of medicine at all. 423 U.S. 122, 124 (1975). The Court has not interpreted the Controlled Substance Act to regulate the medical professional’s prescribing habits beyond prohibiting physicians from “engag[ing] in illicit drug dealing and trafficking as conventionally understood.” *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006). Dr. King’s standard is much different than the precedent established by the Court in that it requires adherence to generally accepted scientific and medical principles and standards of care. Justice Potter Stewart, during oral argument in *Moore*, correctly pointed out that subjecting physicians to prosecution based on “professional disagreements” rests on dubious grounds when the Government bases the legitimacy of a prescription on whether or not the practice is “generally accepted.” *United States v. Moore*, 423 U.S. 122 (1975); oral argument found at *United States v. Moore*, Oyez, <https://www.oyez.org/cases/1975/74-759> (last visited Feb 11, 2021). In fact, the Supreme Court in *Moore* specifically disavows the position that a practice must be “generally accepted” to be lawful, stating, “Congress understandably was concerned that the drug laws not impede legitimate research and that physicians be allowed reasonable discretion in treating patients and testing new theories.” *Id.*

In *U.S. v. Feingold*, the Ninth Circuit cautioned against using a standard such as Dr. King’s, stating, “[w]e emphasize, however, that a district court may mislead a jury if its instructions referring to an applicable standard of care suggest that a breach of that standard alone is sufficient to sustain a criminal conviction.” 454 F.3d 1001, 1009 (9<sup>th</sup> Cir. 2006). The *Feingold* court held that *Moore* did not criminalize malpractice, even intentional malpractice, but only those actions which completely betrayed any semblance of legitimate medical treatment. *Id.* at 1010.

Dr. King's report instructs the jury on an improper legal standard and draws legal conclusions based on that improper standard. As a result, his report will be confusing to the trier of fact, unduly prejudicial, and not probative of any material fact at issue and should be excluded.

## **II. DR. KING DID NOT PERSONALLY REVIEW COMPLETE PATIENT CHARTS OR CREATE THE SUMMARIES FOR THE PATIENTS DESCRIBED IN HIS REPORT**

Rule 702 requires that an expert opinion be based on "sufficient facts or data." F. R. Evid. 702. Dr. King failed to meet the Rule 702 standard by failing to review the patient charts himself. While in some instances experts may base their findings from a partial review of medical records, Dr. King's conclusions are not based on his own review of full or partial charts but rely on chart summaries created by an assistant. These summaries of the patients at issue contained in the report were not authored by Dr. King and should be excluded. It is the district court's role not to decide whether an expert's opinion is correct, but whether it is reliable. *In Re Scrap Metal Antitrust Litig.*, 527 F.3d 517, 529 (6<sup>th</sup> Cir. 2008). An expert's opinion that is not based off sufficient data and instead is based on speculation is not admissible, because "the courtroom is not the place for scientific guesswork, even of the inspired sort." *Tamraz v. Lincoln Elec. Co.*, 620 F.3d 665, 670-672 (6<sup>th</sup> Cir. 2010). Under the standard articulated in *Daubert*, the court must be able to assess and conclude that the reasoning and methodology applied to the facts is valid. The court's ability to do this is hindered as Dr. King's findings are not based on his own thorough review and analysis of the patient charts but on the summarizations made by another person who is not before the court to testify as to his or her qualifications or method of review in creating the synopses. Therefore, the summaries contained in the report must be excluded.

WHEREFORE, [REDACTED], by and through his undersigned counsel, respectfully requests that this Honorable Court GRANT this instant motion and exclude the report of Dr. Timothy King.

Respectfully Submitted,  
CHAPMAN LAW GROUP