



Calling the Child's Therapist as a Witness in a Custody Case

Dr. Deborah Gilman

&

Dr. Shannon Edwards





Definitions Regarding Professional Roles

- **Community Therapist:** Any mental health professional providing psychotherapeutic treatment of a parent, child, couple or family who is not involved with the legal system at any time during the treatment.
- **Court-Involved Therapist (CIT):** Any mental health professional providing psychotherapeutic treatment of a parent, child, couple or family who is, at any time during the treatment, involved with the legal system.
- **Court-Appointed Therapist:** Any mental health professional providing psychotherapeutic treatment of a parent, child, couple or family undertaken because the particular psychotherapist was ordered by a judge to provide treatment. The Court order designates the specific psychotherapist and may describe the expected treatment.
- **Court-Ordered Therapist:** Any mental health professional providing psychotherapeutic treatment of a parent, child, couple or family undertaken because it was ordered by a judge. The Court order does not designate a specific therapist and may describe the expected treatment.



Definitions Regarding Experts

- **Treating Expert:**

- A mental health professional, who currently serves or has served as the therapist for a parent, child, couple or family involved with the legal system.
- To the degree permitted by the Court in a specific case, the treating expert can provide expert opinion regarding a parent or child's psychological functioning over time, progress, relationship dynamics, coping skills, development, co-parenting progress, or need for further treatment, as appropriate to the therapist's role.
- Does **not** have the information base or objectivity necessary to make psycho-legal recommendations, such as specifying parenting plans, legal custody, or decision-making authority.

- **Mental Health Forensic Expert:**

- A mental health professional hired by a party or appointed by a Court ***to answer a legal question*** through the application of psychological methods.
- A mental health forensic expert, for example, may perform a custody evaluation, a psychological evaluation to answer a particular question formulated by the Court, a competency evaluation, an evaluation to assist the Court in the decision-making process regarding custody and/or access.
- Their testimony might include psycho-legal issues such as recommendations about parenting plans, legal custody or decision-making authority.

A Word About Health Insurance

- Most Health Plans have a procedural code that allows a person to attend therapy either alone or with others
- Medical Necessity is necessary for reimbursement
 - Divorce is **NOT** a medical necessity
 - Parental Conflict is **NOT** a medical necessity
 - Refuse/Resist Dynamics are **NOT** a medical necessity
 - Relationship Issues are **NOT** a medical necessity
- Insurance companies require **proof of the diagnosis**
 - Insurance companies require that treatment plan and session goals address the patient's diagnosis (they audit case files)



V-Codes: Other Conditions That May Be a Focus of Clinical Attention

- Psychologists may put a code in a patient's clinical documentation when there is no evidence of a mental disorder, but they are presenting with significant clinical distress.
 - Addresses issues that are a focus of clinical attention
 - These codes are **not** mental disorders.
- Comprehensive and cover a wider variety of **psychosocial** problems

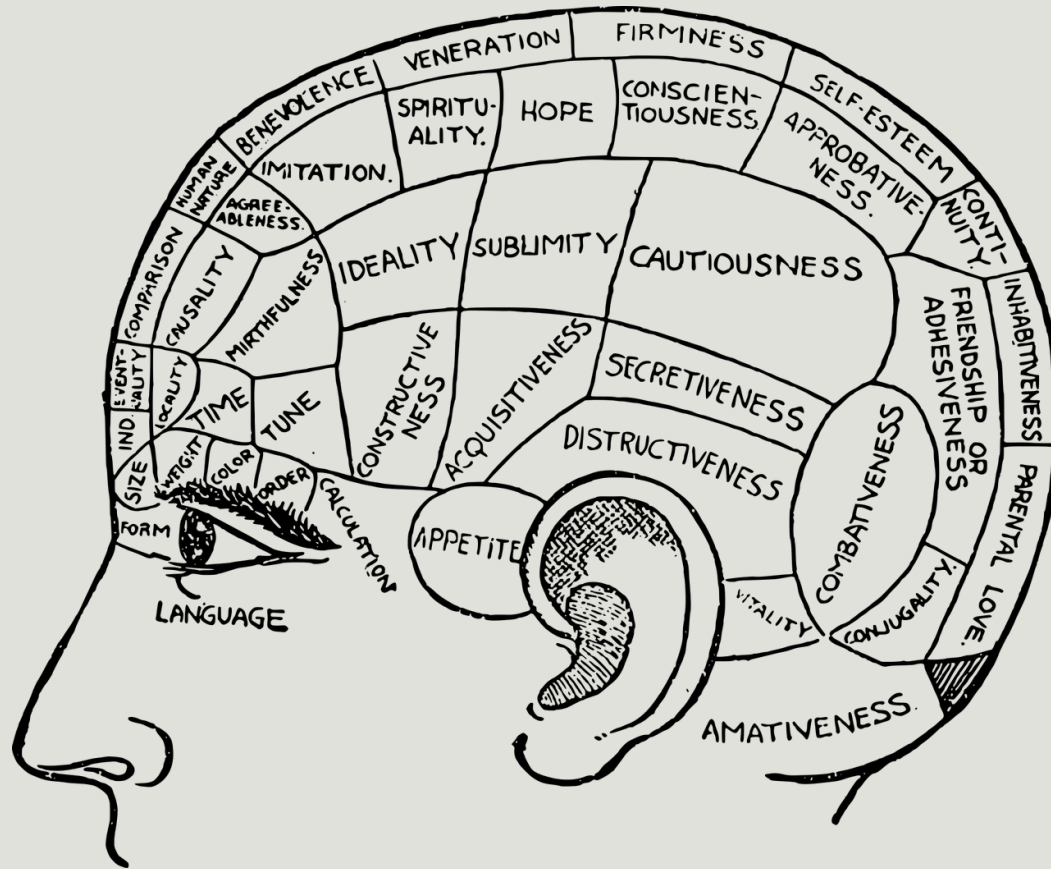
V61.20 (Z62.820)	Parent-Child Relational Problem	V61.29 (Z62.898)	Child Affected by Parental Relationship Distress
V61.10 (Z63.0)	Relationship Distress With Spouse or Intimate Partner	V61.03 (Z63.5)	Disruption of Family by Separation or Divorce





Core Conflicts





Truth & Causation: Psychic Reality vs. Objective Reality





Descriptive vs. Dynamic



Benefit to Client



Benefit to Society



Psychological vs. Social





Empathy



Neutrality



Anonymity



Assessment Strategies

Incompatible Dual Relationship



Therapist as a 'Safe Harbor'

- In conflicted divorces, the child's therapist plays a unique role.
- While the therapist likely offers an invaluable perspective regarding the needs and interests of his or her patient (i.e., the child), such a relationship must not be damaged by involving the therapist in litigation.
- Moreover, the child has a right to a confidential relationship with her therapist, and in divorce litigation, that therapist may be the child's only buffer against inflammatory litigation and undue parental influence.
- The court takes this therapeutic relationship so seriously that a parent may not merely obtain the child therapist's records by executing a HIPAA release.
- During a divorce, which is a time fraught with change and uncertainty, the Court might be reluctant to jeopardize what is potentially the child's greatest source of stability.
- *Safe Harbor Agreement Example*



Court-Involved Therapist

- In conflicted divorces, improving the parents' relationship for the benefit of the child(ren) tends to be a majority interest
 - During reunification counseling, when the child(ren) are involved, a **Forensic Notification** (or lack of confidentiality) must be provided to all parties
 - It is important – for adults and children – to understand not all information in sessions will be relevant to the referral question
 - Establishing rapport and an understanding of what can, cannot, and what will not be brought into the courtroom is a core part of report building, specifically with children
- If, during the course of court-ordered therapy, an adult or child is in need of clinical therapy, they should be referred to a therapist where confidentiality will be maintained
- Court-involved therapists offer a unique perspective to the trier of fact regarding the best interest of a child(ren), as well as family dynamics. Involving a clinical therapist AND court-involved therapist in a case would mitigate potential damage by attempting to involve a clinical therapist in litigation.
- It should be discussed and documented at the onset of therapy that the court and/or attorneys are the client and how records can be obtained.
- The scope of work should also be specified (*see our sample order*)



PRIVACY, CONFIDENTIALITY & PRIVILEGE

“First, Do No Harm” (Ethical Standard 3.11, 10.01a)

Agency (Ethical Standard 3.11)

Informed Consent (Ethical Standard 3.10c)

Confidentiality (Ethical Standard 3.11 and 4.02b)



Forensic Specialty Guidelines Related to Therapy

Guideline 4.01: Responsibilities to Retaining Parties

Guideline 4.02.01: Therapeutic–Forensic Role Conflicts

Guideline 4.02.02: Expert Testimony by Practitioners Providing Therapeutic Services

Guideline 4.02.03: Provision of Forensic Therapeutic Services



Calling the Child's Therapist as Fact Witness

- Testimony will be limited only to his or her observations
- It is not for the therapist to opine on who the better parent is or who the child should live with
- Therapist can offer insights:
 - whether the child reports fearing one parent
 - whether s/he reports being more attached to one parent
 - whether one parent provides the child with more comfort than the other,
 - whether the child experiences certain stresses when in the care of one parent.
- Even if counsel and the child's therapist both wish to ensure the child's best interests, the means of achieving this amorphous concept might drastically differ.
- Given the gravity of custodial determinations, it only makes sense that such a decision should be based upon as much information as possible.
 - Could the information from the therapist be better obtained by the Court through the forensic evaluator?



Summary of Evidentiary Rules Related to Expert Testimony in PA

702: A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise (emphasis added) if:

- a) the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;
- b) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and
- c) the expert's methodology is generally accepted in the relevant field.

703. Bases of Opinion Testimony by Experts

- The facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.



Summary of Evidentiary Rules Related to Expert Testimony in PA

704. Opinion on Ultimate Issue

- Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

705. Disclosure of Facts or Data Underlying Expert Opinion

- The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination.



Rules of Evidence Applied to Family Division/Cases

What Can an Expert Bring to the Court?

Assist the Trier of Fact in making determinations related to:

- Custody or issues contributing to changes in custody
- Allegations of abuse
- Best practices in their (respective) fields
- Interpretation of laws or statutes related to mental health
- Interpretation/application of medical and/or mental health records applicable to cases

Specifically: Rules 703 and 705

Commitment Laws and MH Procedures Act (1976, 2018)



Playing Together in the Legal Sandbox

- Psychologists bear the primary responsibility for enhancing adhering to the ethical standards of their own profession.
- APA does not have clear ethical guidelines for clinical psychologists, unlike the forensic ethical guidelines
- The benefit of legal professionals becoming more aware of psychologist's professional obligations
 - Craft more appropriate orders
 - Make more appropriate requests for services
 - Effectively utilize the professionals to benefit the family, protect the children, and assist with complex psycho-legal decision-making



QUESTIONS?

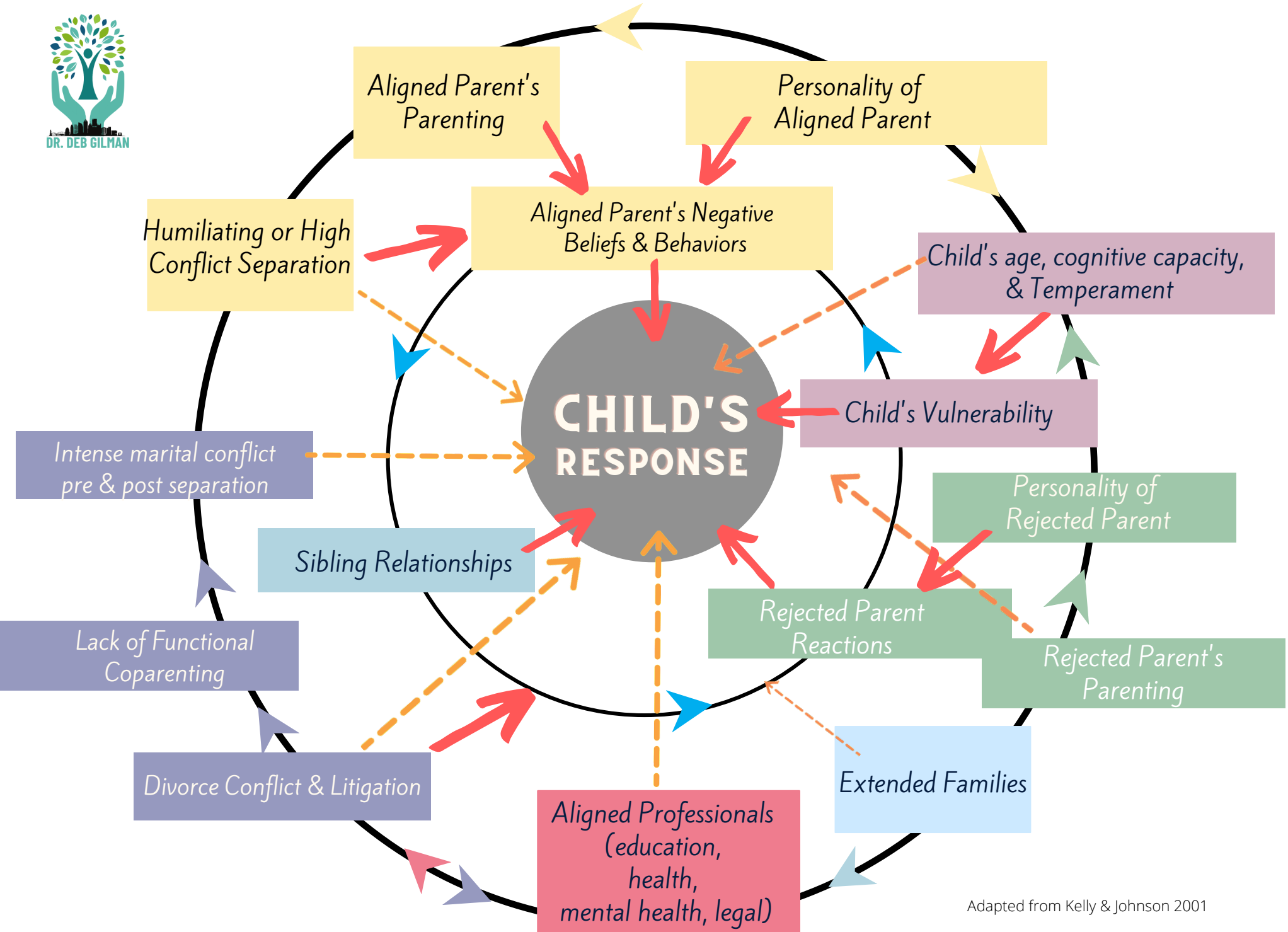




AHA!

2 Insights & 1 Action

- 2 things you gained insight about
- 1 action you will take to apply insight
- Who else needs to hear this?



Reunification: Factors we assess that may contribute to parent child contact problems

<i>Clinical vs. Forensic Psychological Assessment</i>	<i>Treating Psychologist</i>	<i>Forensic Psychologist</i>
Approach	Supportive, accepting, empathic.	Neutral, objective.
Primary abilities drawn upon	Psychotherapeutic assessment and treatment skills.	Medico-legal evaluation techniques.
Nature of hypothesis testing	Diagnostic criteria for the purpose of helping the patient.	Legal criteria for the purposes helping the trier-of-fact.
Scrutiny applied to information supplied by the patient/claimant	Self-report is generally accepted at face value.	Self-report is supplemented by multiple sources of collateral information and is scrutinized by the adjudicator.
Nature of relationship	Helping, treating.	Evaluative – respectful, but not designed to treat disorders.
Goal	Help the patient achieve therapeutic goals.	Help the adjudicator answer legal questions.
Role of critical judgment	The basis of the relationship is therapeutic alliance. Critical judgment is likely to be counter-therapeutic.	Critical judgment is essential to maintain objectivity and independence and to seek the truth.
Ethical Considerations	Offering opinions for legal purposes places the treating clinician in a potential dual role conflict	Forensic psychologists avoid dual role conflicts by conducting an evaluation only and not subsequently seeing evaluatees for treatment.
Type of “reality”	Psychic reality	Objective reality
Assessment of symptom exaggeration or feigning	Rarely done because of the likely negative impact on the therapeutic alliance.	An incentive to exaggerate or feign mental disorder symptoms often exists when conducting a forensic mental health evaluation

Agency – for whom does the psychologist work?	For the benefit of the patient.	For the benefit of the adjudicator.
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Summary of Evidentiary Rules Related to Expert Testimony in Pennsylvania

Establishing *Frye vs. Daubert* – whereas Pennsylvania remains a *Frye* state

Rule 702: Testimony by Experts

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) The expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;
- (b) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and
- (c) The expert's methodology is generally accepted in the relevant field

Qualifying/Test Applied¹

The test to be applied when qualifying a witness to testify as an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine.

How Pa.R.E. 702(a) and (b) differ from F.R.E. 702:

- ❖ 702(a) and (b) impose the requirement that the expert's scientific, technical, or other specialized knowledge is admissible only if it is beyond that possessed by the average layperson.²

How Pa.R.E. 702(c) differs from F.R.E. 702:

- ❖ Reflects Pennsylvania's adoption of the standard in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). The rule applies the "general acceptance" test for the admissibility of scientific, technical, or other specialized knowledge testimony.³
- ❖ The rule rejects the federal test derived from *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

Rule 703: Bases of an Expert's Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

¹ *Miller v. Brass Rail Tavern, Inc.*, 541 Pa. 474, 480 – 81, 664 A.2d 525, 528 (1995)

² *Commonwealth v. O'Searo*, 466 Pa. 224, 229, 352 A.2d 30, 32 (1976)

³ *Grady v. Frito-Lay, Inc.*, 576 Pa. 546; 839 A.2d 1038 (2003)

Qualifying/Test Applied

When an expert testifies about the underlying facts and data that support the expert's opinion and the evidence would be otherwise inadmissible, the trial judge upon request must, or on the judge's own initiative may, instruct the jury to consider the facts and data only to explain the basis for the expert's opinion, and not as substantive evidence.

An expert witness cannot be a mere conduit for the opinion of another. An expert witness may not relate the opinion of a non-testifying expert unless the witness has reasonably relied upon it in forming the witness's own opinion; hearsay would then not be applicable, as the expert relied upon another non-testifying expert's data in forming their opinion.⁴

Rule 704: Opinion on an Ultimate Issue

An opinion is not objectionable just because it embraces an ultimate issue.

F.R.E. 704(b) is not adopted:

- ❖ The Federal Rule prohibits an expert witness [in a criminal case] from stating an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or a defense. This is inconsistent with Pennsylvania law.⁵

Rule 705: Disclosing the Facts or Data Underlying an Expert's Opinion

If an expert states an opinion the expert must state the facts or data on which the opinion is based.

F.R.E. 705 is not adopted:

- ❖ The Federal Rule generally does not require an expert witness to disclose the facts upon which an opinion is based prior to expressing an opinion. Instead, the cross-examiner bears the burden of probing the basis of the opinion.⁶

Qualifying/Test Applied

Accordingly, Kozak requires disclosure of the facts used by the expert in forming an opinion. The disclosure can be accomplished in several ways: 1) ask the expert to assume the truth of testimony the expert has heard or read⁷ or 2) pose a hypothetical question to the expert.⁸

⁴ Foster v. McKeesport Hospital, 260 Pa. Super. 485, 394 A.2d 1031 (1978); Allen v. Kaplan, 439 Pa. Super. 263, 653 A.2d 1249 (1995)

⁵ Commonwealth v. Walzack, 468 Pa. 210, 360 A.2d 914 (1976)

⁶ Kozak v. Struth, 515 Pa. 554, 560, 531 A.2d 420, 423 (1987)

⁷ Kroeger Co. v. W.C.A.B., 101 Pa. Cmwlth. 629, 516 A.2d 1335 (1986); Tobash v. Jones, 419 Pa. 205, 213 A.2d 588 (1965)

⁸ Dietrich v. J.I. Case Co., 390 Pa. Super. 475, 568 A.2d 1272 (1990); Hussey v. May Department Stores Inc., 238 Pa. Super. 431, 357 A.2d 635 (1976)

Rule 706: Court-Appointed Expert Witnesses

Where the court has appointed an expert witness, the witness appointed must advise the parties of the witness's findings, if any. The witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by any party, including a party calling the witness. In civil cases, the witness's deposition may be taken by any party.

How Pa.R.E. 706 differs from F.R.E. 706:

- ❖ Unlike the Federal Rule, Pa.R.E. 706 does not affect the scope of the trial court's power to appoint experts. Pa.R.E. 706 provides only the procedures for obtaining the testimony of experts after the court has appointed them.

Notes on Expert Testimony in Pennsylvania

The long held general rule regarding expert testimony is that an expert may not express an opinion based upon facts not in evidence.⁹ However, beginning in 1971, Pennsylvania courts began creating an exception through caselaw for the reports of others that were not in evidence but upon which experts customarily relied upon in the practice of their profession. As such, the hearsay rule would be non-applicable in these instances, as the expert relied upon another non-testifying expert's data in forming their opinion. The other experts need not testify.¹⁰

The Supreme Court first articulated the exception in *Thomas*,¹¹ in the context of expert medical witnesses. The Court expanded the exception in *Daniels*,¹² wherein it rejected the "contention that the rule in *Thomas* is necessarily limited to observations of the other persons in the medical profession." Rather, the Court held that the trial court was "plainly correct" in allowing a doctor's opinion to be based partly on lay persons' observations of the behavior and symptoms.

From there, the Superior Court ran with the ball and the medical exception expanded incrementally. Cases included: 1) a physician who was permitted to rely upon psychiatric reports of other physicians who treated Plaintiff, but who did not testify at trial¹³; 2) a physician was permitted to rely on hospital discharge summary in formulating an opinion as to Defendant's sanity¹⁴; and 3) a vocational expert who relied upon various medical, psychological, and psychiatric reports in forming an opinion about minor Plaintiff's future employment prospects where the court found reports were the type upon which a vocation expert would generally rely.¹⁵

⁹ *Murray v. Siegal*, 195 A.2d 190 (1963)

¹⁰ *Foster v. McKeesport Hospital*, 260 Pa. Super. 485, 394 A.2d 1031 (1978); *Allen v. Kaplan*, 439 Pa. Super. 263, 653 A.2d 1249 (1995)

¹¹ *Commonwealth v. Thomas*, 282 A.2d 693 (Pa. 1971)

¹² *Commonwealth v. Daniels*, 390 A.2d 172, 176 – 177 n.7 (Pa. 1978)

¹³ *Cooper v. Burns*, 545 A.2d 935, 940 (Pa. Super. 1988), *allocator denied*, 563 A.2d 888 (Pa. 1989)

¹⁴ *Commonwealth v. Trill*, 543 A.2d 2206, 1113 (Pa. Super. 1988)

¹⁵ *Kearns by Kearns v. DeHass*, 546 A.2d 1226 (Pa. Super. 1988), *allocator denied*, 559 A.2d 527 (Pa. 1989)

Most recently, in *SEPTA*¹⁶, Commonwealth Court addressed *SEPTA*'s appeal from the Philadelphia Court of Common Pleas challenging the admission of an expert opinion based largely on hearsay. Commonwealth Court affirmed, finding that the hearsay testimony was of the type reasonably relied upon by experts in the field at issue in the case when forming opinions. Thus, the expert's opinion was admissible under Pennsylvania Rule of Evidence (Pa.R.E.) 703, because the expert's methodology was consistent with that used by other experts in the field, and the expert did not simply restate the conclusions or opinions of others. Importantly for purposes of this post, the court, in addition to citing Rule 703, also cited caselaw predating 1998, the year that the Supreme Court first adopted the Pennsylvania Rules of Evidence.

¹⁶ *Hooks v. Southeastern Pennsylvania Trans. Auth.*, No. 946 C.D. 2016

Pennsylvania Rules of Evidence

Rule	Title	Objection	Note
103.	Rulings on Evidence.	<p>CONTINUING OBJECTION WHEN THE INITIAL OBJECTION IS OVERRULED AND THE COURT STATES THAT THE RULING SHALL APPLY TO ALL QUESTIONS ON THE SAME MATTER</p> <p>OFFER OF PROOF</p>	
403.	Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons.	OBJECTION - CUMULATIVE - REPETITIOUS	ALLOWABLE IF CORROBORATES AND BUTRESSES FACTS TO BE PROVEN
404.	Character Evidence; Crimes or Other Acts.	<p>OBJECTION - THE CHARACTER/REPUTATION OF PARTY NOT AT ISSUE (AN ELEMENT OF THE CLAIM OR DEFENSE)</p> <p>OBJECTION: 404 (B) - OTHER CRIMES, WRONGS OR ACTS</p>	
405.	Methods of Proving Character.	OBJECTION - QUESTION IS IMPROPER BECAUSE IT SEEKS TO ELICIT PERSONAL OPINION (RATHER THAN KNOWLEDGE OF HOW THE PARTY IS VIEWED)	
406.	Habit; Routine Practice.	OBJECTION - COUNSEL HAS NOT ESTABLISHED THAT THE CONDUCT QUALIFIES AS ADMISSIBLE EVIDENCE OF HABIT/ROUTINE	PERMISSIBLE IF ESTABLISHES A SUFFICIENT PATTERN OF CONSISTENT BEHAVIOR TO SUPPORT THE INFERENCE OF HABIT/ROUTINE PRACTICE
501.	Privileges.	<p>ATTORNEY - CLIENT PRIVILEGE COMMON LAW</p> <p>CLERGY PRIVILEGE UNDER 42 Pa. C.S.A. 5943 The privilege is limited to information told in confidence</p>	<p>ATTORNEY - CLIENT PRIVILEGE COMMON LAW</p> <p>NOT PRIVILEGED IF:</p> <p>1. THE COMMUNICATION TOOK PLACE IN</p>

Rule	Title	Objection	Note
		PRIVILEGE - CONFIDENTIAL INFORMANT PRIVILEGE - HUSBAND AND WIFE (TWO SEPERATE & DISTINCT MARITAL PRIVILEGES) 1. ADVERSE SPOUSAL TESTIMONY; (CAN REFUSE TO TESTIFY AGAINST SPOUSE) (2) CONFIDENTAIL MARITAL COMMUNICATION PRIVILEGE – PHYSICIAN PATIENT PRIVILEGE – PSYCHIATRIST-PSYCOLOGIST PRIVILEGE – SCHOOL PERSONELL (GUIDENCE COUNSELOR, NURSE, PSYCOLOGIST) PRIVILEGE – SELF INCRIMINATION PRIVILEGE – SEXUAL ASSAULT COUNSELOR	THE PRESENCE OF A THIRD PARTY; 2. THE COMMUNICATION WAS MADE WITH THE EXPECTATION THAT IT WOULD BE REVEALED 3. THE ATTORNEY IS REBUTTING THE CLIENT’S ATTACK ON HIS INTEGRITY/PROFES SIONAL COMPETENCE 4. THE ATTORNEY IS ACTING IN A NONLEGAL CAPACITY
601.	Competency.	OBJECTION - THE WITNESS IN INCOMPETENT TO TESTIFY BECAUSE HE/SHE: 1. LACKED REASONABLE ABILITY TO PERCEIVE THE MATTER. 2. LACKED REASONABLE ABILITY TO REMEMBER THE MATTER; 3. INCAPABLE OF EXPRESSING THEMSELVES – EVEN WITH AN INTERPRETER. 4. INCAPABLE OF UNDERSTANDING THE DUTY OF A WITNESS TO TELL THE TRUTH OBJECTION – DEAD MAN’S ACT WHICH DISQUALIFIES SURVIVING PARTIES TO A TRANACTION OR EVENT WHO HAVE AN INTEREST ADVERSE TO THE DECEDENT	WITNESS IS PRESUMED COMPETENT UNLESS - OBJECTION Child witness: 1) a capacity to communicate, 2) the mental capacity to observe the actual occurrence and the capacity of remembering what it is that he or she is called to testify about; and 3) a consciousness of the duty to speak the truth. Questions to Ask: 1) a capacity to communicate What is your name? What are the names of your mother and father?

Rule	Title	Objection	Note
			<p>Do you have any brothers and sisters? Do they live at home? How old are you? When is your birthday?</p> <p>2) the mental capacity to observe the actual occurrence and the capacity of remembering what it is that he or she is called to testify about</p> <p>How did you get here today? Do you know what building you are in now? What town are you in now? Where do you live? What school do you go to? How far do you live from school?</p> <p>3) a consciousness of the duty to speak the truth.</p> <p>Do you know what it means to tell the truth?</p> <p>Do you know what it means to swear to tell the truth and to take an oath?</p> <p>If you told me a story, or something that wasn't true, what would happen to you?</p> <p>Who would punish you?</p> <p>What would happen to you?</p> <p>(PERMISSIBLE IF ONE OF THE FOLLOWING)</p> <p>A. WITNESS DOES NOT HAVE AN INTEREST ADVERSE TO THE DECEDENT AND IS COMPETENT TO TESTIFY</p> <p>B. THE ACT DOES NOT PROHIBIT WRITTEN EVIDENCE</p>

Rule	Title	Objection	Note
			C. THE ACT WAS WAIVED (EG. DEPOSITION OF DECEDENT; CALLING ADVERSE PARTY ON CROSS);
602.	Need for Personal Knowledge.	OBJECTION - IT HAS NOT BEEN ESTABLISHED THAT THE WITNESS HAS PERSONAL KNOWLEDGE	COURT CAN ATTRIBUTE ANY HESITANCE OR UNCERTAINTY TO WEIGHT RATHER THAN ADMISSIBILITY
607.	Who May Impeach a Witness, Evidence to Impeach a Witness.	OBJECTION - THE LINE OF QUESTIONING HAS NO RELEVANCE	PERMISSIBLE IF LINE OF QUESTIONING IS FOR IMPEACHMENT OF WITNESS BY SHOWING BIAS, PREJUDICE, INTEREST OR CORRUPT MOTIVE
608.	A Witness's Character for Truthfulness or Untruthfulness.	OBJECTION - THIS WITNESS LACKS THE NECESSARY KNOWLEDGE TO TESTIFY ABOUT GENERAL REPUTATION FOR TRUTHFULNESS OBJECTION - THE QUESTION CALLS FOR THE WITNESS' OWN OPINION AND IS PROHIBITED	PERMISSIBLE IF PROPER FOUNDATION ESTABLISHED: 1. KNOWS OTHER WITNESS AND HIS/HER GENERAL REPUTATION FOR TRUTHFULNESS IN THE COMMUNITY 2. HE/SHE HAS NOT BEEN ASKED TO STATE, NOR WILL HE/SHE GIVE HIS/HER OWN OPINION 3. HIS/HER TESTIMONY WILL BE LIMITED TO THE COMMUNITY OPINION OF THE INDIVIDUAL
609.	Impeachment by Evidence of a Criminal Conviction.	OBJECTION - IMPEACHMENT PRIOR CONVICTIONS/CRIMEN FALSI	OBJECTIONABLE IF 1. CONVICTION FOR A CRIME THAT DOES NOT INVOLVE DISHONESTY OR FALSE STATEMENT 2. THE CONVICTION IS MORE THAN 10 YEARS

Rule	Title	Objection	Note
			OLD (PAROLE VIOLATION CONFINEMENT MAY EXTEND PERIOD)
611.	Mode and Order of Examining Witnesses and Presenting Evidence.	<p>OBJECTION – THE QUESTION CALLS FOR A NARRATIVE ANSWER</p> <p>OBJECTION - ARGUMENTATIVE - QUESTION IS IMPROPPER IF ARGUMENATIVE</p> <p>OBJECTION - ASKED AND ANSWRED</p> <p>OBJECTION - COMPOUND QUESTION</p> <p>OBJECTION CUMULATIVE - REPETITIOUS OBJECTION - LEADING THE WITNESS</p> <p>OBJECTION - MISLEADING QUESTION – ASSUMES FACTS NOT ESTABLISHED BY THE EVIDENCE OR MISCHARACTERIZATION OF THE WITNESSES' TESTIMONY</p> <p>OBJECTION – CHART/DIAGRAM NOT SUPPORTED BY EVIDENCE AND IS INACCURATE AND/OR MISLEADING</p>	<p>NARRATIVE - PROPER WHEN THE TESTIMONY INVOLVES PRELIMINARY MATTERS WHICH THE PARTIES DO NOT CONTEST, OTHERWISE COUNSEL SHOULD REPHRASE AND PROCEED WITH SPECIFIC QUESTIONS</p> <p>CUMULATIVE - ALLOWABLE IF CORROBORATES AND BUTRESSES FACTS TO BE PROVEN</p> <p>CHART/DIAGRAM PERMITTED IF</p> <p>1. PROPERLY AUTHENTICATED UNDER RULE 901 AS A FAIR AND ACCURATE REPRESENTATION OF THE EVIDENCE IT PROPORTS TO PORTRAY (SUMMARIZES CORRECTLY)</p> <p>(2) IS RELEVANT UNDER RULES 401 AND 402 AND</p> <p>(3) HAS PROBATIVE VALUE THAT IS NOT OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.</p>

Rule	Title	Objection	Note
612.	Writing or Other Item Used to Refresh a Witness's Memory.	<p>OBJECTION – LACK OF FOUNDATION SHOWING THAT THE WITNESS' PRESENT MEMORY IS INADEQUATE.</p> <p>THE WITNESS NEVER TESTIFIED THAT HE/SHE COULD NOT RECALL SPECIFIC DETAILS (AND IN FACT, ADMITTED TO HAVING AN INDEPENDENT PRESENT RECOLLECTION OF EVENTS)</p>	<p>(a) <i>Right to Refresh Memory.</i> A witness may use a writing or other item to refresh memory for the purpose of testifying while testifying, or before testifying.</p> <p>(b) <i>Rights of Adverse Party.</i> (1) If a witness uses a writing or other item to refresh memory while testifying, an adverse party is entitled to have it produced at the hearing, trial or deposition, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. (2) If a witness uses a writing or other item to refresh memory before testifying, and the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have it produced at the hearing, trial or deposition, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony.</p> <p>(c) <i>Rights of Producing Party.</i> If the producing party claims that the writing or other item includes unrelated matter, the court must examine it in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.</p> <p>(d) <i>Failure to Produce or Deliver.</i> If the writing or other item is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply</p>

Rule	Title	Objection	Note
			in a criminal case, the court must strike the witness's testimony or—if justice so requires—declare a mistrial, or the court may use contempt procedures.
613.	Witness's Prior Inconsistent Statement to Impeach; Witness's Prior Consistent Statement to Rehabilitate.	OBJECTION – THE QUESTION CALLS FOR HEARSAY	<i>Witness's Prior Consistent Statement to Rehabilitate.</i> Evidence of a witness's prior consistent statement is admissible to rehabilitate the witness's credibility if the opposing party is given an opportunity to cross-examine the witness about the statement and the statement is offered to rebut an express or implied charge of: (1) fabrication, bias, improper influence or motive, or faulty memory and the statement was made before that which has been charged existed or arose; or (2) having made a prior inconsistent statement, which the witness has denied or explained, and the consistent statement supports the witness's denial or explanation.
614.	Court's Calling or Examining a Witness.	OBJECTION TO COURT'S QUESTIONING	PROPER WHERE JUSTICE REQUIRES THAT THE COURT ASK QUESTIONS WHEN ABSURD, AMBIGUOUS OR FRIVOLOUS TESTIMONY IS GIVEN, OR TESTIMONY IS VAGUE AND NEEDS FURTHER CLARIFICATION
701.	Opinion Testimony by Lay Witnesses.	OBJECTION – THE WITNESS IS BEING ASKED TO GIVE AN OPINION OBJECTION – THE QUESTION CALLS FOR A LEGAL CONCLUSION WHICH THE	OPINION PERMISSIBLE IF THE FOLLOWING IS ESTABLISHED: 1. RATIONALLY BASED ON THE PERCEPTION

Rule	Title	Objection	Note
		WITNESS IS NOT COMPETENT TO RENDER	<p>OF THE WITNESS;</p> <p>2. HELPFUL TO A CLEAR UNDERSTANDING OF THE WITNESS' TESTIMONY OR THE DETERMINATION OF A FACT AT ISSUE</p> <p>3. NOT BASED ON SCIENTIFIC, TECHNICAL OR OTHER KNOWLEDGE SPECIFIC TO AN EXPERT WITNESS</p>
702.	Testimony by Expert Witnesses.	<p>OBJECTION (FRYE) TO EXPERT WITNESS TESTIMONY BECAUSE HE/SHE FAILED TO ESTABLISH THAT THE METHODOLOGY EMPLOYED IS GENERALLY ACCEPTED IN THE RELEVANT SCIENTIFIC/TECHNICAL COMMUNITY</p> <p>OBJECTION TO EXPERT WITNESS COMPETENCE TO TESTIFY -</p> <p>OBJECTION TO EXPERT WITNESS - REQUISITE DEGREE OF MEDICAL CERTAINTY –</p>	<p>VOIR DIRE RE: COMPETENCE MAY BE CONDUCTED</p> <p>(SKILL, KNOWLEDGE, EXPERIENCE & TRAINING IN THE FIELD)</p> <p>“MAGIC WORDS” NOT REQUIRED IF TAKEN AS A WHOLE, THE TESTIMONY ESTABLISHES REASONABLE CERTAINTY</p>
703.	Basis of an Expert's Opinion Testimony.	OBJECTION TO EXPERT TESTIMONY - BEYOND THE FAIR SCOPE OF PRETRIAL DISCOVERY	<p>SEE Pa.R. Civ.P. 4003.5(c)</p> <p>To the extent that the facts known, or opinions held by an expert have been developed in discovery proceedings under subdivision (a)(1) or (2) of this rule, the direct testimony of the expert at the trial may not be inconsistent with or go beyond the fair scope of his or her testimony in the discovery proceedings as set forth in the deposition, answer to an interrogatory, separate report or supplement thereto. However, the expert shall not be prevented from testifying as to facts or</p>

Rule	Title	Objection	Note
		OBJECTION TO EXPERT TESTIMONY - TESTIMONY BASED IN PART ON HEARSAY -	<p>opinions on matters on which the expert has not been interrogated in the discovery proceedings.</p> <p>PERMISSIBLE IF NO SURPRISE OR PREJUDICE.</p> <p>PERMISSIBLE IF ESTABLISHES A FOUNDATION FOR THIS OPINION THAT THE DATA WAS OF THE TYPE REASONABLY RELIED UPON BY EXPERTS IN THE PARTICULAR FIELD</p>
704.	Opinion on an Ultimate Issue.	OBJECTION TO EXPERT TESTIMONY - ULTIMATE ISSUE	<p>OBJECTIONABLE IF THE FOLLOWING IS TRUE:</p> <ol style="list-style-type: none"> 1. lay witness not capable of rendering such an opinion; 2. the opinion is beyond the realm of the expert witness' expertise; 3. the factfinder would not be helped by hearing the opinion; 4. the probative value of the opinion is outweighed by the danger that it would be unfairly prejudicial, confuse the issues or misled the jury.
705.	Disclosing the Facts or Data Underlying an Expert's Opinion.	OBJECTION - THE WITNESS IS BEING ASKED TO ASSUME FACTS THAT ARE NOT YET OF RECORD - HYPOTHETICAL QUESTION FOR EXPERT	PERMISSIBLE IF A PROPER FOUNDATION HAS BEEN LAID TO ESTABLISH THE EXTENT THE WITNESS HAS BEEN ASKED TO ASSUME THE TRUTH OF CERTAIN FACTS NOT YET OF RECORD, THEY WILL BE PROVIDED BY SUBSEQUENT WITNESSES

Rule	Title	Objection	Note
801.	Hearsay.	OBJECTION - THE QUESTION/ANSWER CALLS FOR HEARSAY	<p>“Hearsay” means a statement that:</p> <p>(1) the declarant does not make while testifying at the current trial or hearing (Out-of- Court); and</p> <p>(2) a party offers in evidence to prove the truth of the matter asserted in the statement.</p> <p>“Non-Hearsay” is a statement not being offered for its truth</p> <p>Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:</p> <p>(1) <i>A Declarant-Witness’s Prior Statement.</i> The declarant testifies and is subject to cross-examination about a prior statement, and the statement:</p> <p>(A) is inconsistent with the declarant’s testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;</p> <p>(B) is consistent with the declarant’s testimony and is offered;</p> <p>(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or</p> <p>(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or</p> <p>(C) identifies a person as someone the declarant perceived earlier.</p>
803(1).	Present Sense Impression.	OBJECTION - HEARSAY	A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
803(2).	Excited Utterance.	OBJECTION - HEARSAY	A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused. When the declarant is unidentified, the proponent shall show by independent corroborating evidence that the declarant actually perceived the startling event or condition.

Rule	Title	Objection	Note
803(3).	Then-Existing Mental, Emotional, or Physical Condition.	OBJECTION - HEARSAY	<p>PERMISSIBLE IF THE DECLARANT MADE THE STATEMENT TO THE WITNESS CONTEMPORANEOUSLY WITH THE EVENT IN QUESTION.</p> <p>A statement of the declarant's then-existing state of mind (such as motive, intent, design, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.</p>
803(4).	Statement Made for Medical Diagnosis or Treatment.	OBJECTION - HEARSAY	<p>A statement that: (A) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.</p>
803(6).	Records of a Regularly Conducted Activity. - Permit the introduction of records that are inherently reliable -	<p>OBJECTION - THE RECORDS ARE NOT PROPERLY AUTHENTICATED</p> <p>OBJECTION BUSINESS RECORDS/HOSPITAL RECORDS –</p>	<p><i>Records of a Regularly Conducted Activity</i> ADMISSIBLE UNDER THE BUSINESS RECORDS EXCEPTION IF THE record (which includes a memorandum, report, or data compilation in any form) of an act, event or condition - (A) the record was made at or near the time by—or from information transmitted by—someone with knowledge; (B) the record was kept in the course of a regularly conducted activity of a</p>

Rule	Title	Objection	Note
			<p>“business,” which term includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;</p> <p>(C) making the record was a regular practice of that activity;</p> <p>(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and</p> <p>(E) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness</p> <p>OBJECTIONABLE IF MEDICAL OPINIONS, DIAGNOSIS AND CONCLUSIONS ARE BEING OFFERED; PERMISSIBLE IF THE RECORDS ARE OFFERED FOR THE LEGITIMATE AND LIMITED PURPOSE OF ESTABLISHING THE FACT OF THE HOSPITALIZATION, TREATMENT PRESCRIBED, SYMPTOMS FOUND AND/OR THE EXISTENCE OF SOME READILY ASCERTAINABLE SUBSTANCE OR CHEMICAL WITHIN THE BODY.</p> <p>Medical Records are susceptible to photostatic reproduction may be proved as to foundation, identity and authenticity without any preliminary testimony, by</p>

Rule	Title	Objection	Note
			use of legible and durable copies, <i>certified in the manner provided</i> in this subchapter by the employee of the health care facility charged with the responsibility of being custodian of the originals thereof. These copies may be used in any trial, hearing, deposition or other judicial or administrative action or proceeding, whether civil or criminal, in lieu of the original charts or records which, however, the health care facility shall hold available during the pendency of the action or proceeding for inspection and comparison by the court, tribunal or hearing officer and by the parties and their attorneys of record. This subchapter does not apply to an X-ray film or any other portion of a medical record which is not susceptible to photostatic reproduction.
803(8).	Public Records.	OBJECTION - HEARSAY	<p>PERMISSIBLE UNDER THIS EXCEPTION IF FOLLOWING FOUNDATION IS LAID:</p> <p>1. records, reports, statements or data compilation of any form which set forth:</p> <ul style="list-style-type: none"> a. the activities of the office or agency; b. matters observed in the course of official duties; c. may be admitted unless opponent has evidence to indicate that the documents lack trustworthiness
803(15).	Statements in Documents That Affect an Interest in Property.	OBJECTION - HEARSAY	PERMISSIBLE IF FOUNDATION LAID:

Rule	Title	Objection	Note
			<p>1. DOCUMENT, OTHER THAN A WILL, PURPORTING TO ESTABLISH OR EFFECT AN INTEREST IN PROPERTY;</p> <p>2. THE DOCUMENT HAS BEEN AUTHENTICATED AND IS TRUSTWORTHY</p>
803(16).	Statements in Ancient Documents.	OBJECTION - HEARSAY	<p>PRESUMPTION THAT A DOCUMENT MEETING THE FOLLOWING REQUIREMENTS IS SELF-AUTHENTICATING: A STATEMENT IN A DOCUMENT THAT IS AT LEAST 30 YEARS OLD AND WHOSE AUTHENTICITY IS ESTABLISHED – FREE FROM SUSPICIOUS ALTERATIONS, BEEN IN PROPER CUSTODY.</p>
803(17).	Market Reports and Similar Commercial Publications.	OBJECTION - HEARSAY	PERMISSIBLE IF DOCUMENT IS AN OFFICIAL PUBLICATION, TRADE JOURNAL, NEWSPAPER, PERIODICAL OF GENERAL PUBLICATION
803(25).	An Opposing Party's Statement.	OBJECTION - HEARSAY	<p>(A) WAS MADE BY THE PARTY IN AN INDIVIDUAL OR REPRESENTATIVE CAPACITY;</p> <p>(B) IS ONE THE PARTY MANIFESTED THAT IT ADOPTED OR BELIEVED TO BE TRUE (ADOPTIVE ADMISSION - PARTY HEARD, UNDERSTOOD AND ACQUIESCED TO THE STATEMENT & MANIFESTED ADOPTION BY SPECIFIC ACTIONS);</p>

Rule	Title	Objection	Note
			<p>(C) WAS MADE BY A PERSON WHOM THE PARTY AUTHORIZED TO MAKE A STATEMENT ON THE SUBJECT;</p> <p>(D) WAS MADE BY THE PARTY'S AGENT OR EMPLOYEE ON A MATTER WITHIN THE SCOPE OF THAT RELATIONSHIP AND WHILE IT EXISTED”</p> <p>(E) WAS MADE BY THE PARTY'S COCONSPIRATOR DURING AND IN FURTHERANCE OF THE CONSPIRACY. THE STATEMENT MAY BE CONSIDERED BUT DOES NOT BY ITSELF ESTABLISH THE DECLARANT'S AUTHORITY UNDER (C); THE EXISTENCE OR SCOPE OF THE RELATIONSHIP UNDER (D); OR THE EXISTENCE OF THE CONSPIRACY OR PARTICIPATION IN IT UNDER (E).</p>
803.1.	Exceptions to the Rule Against Hearsay—Testimony of Declarant Necessary.	OBJECTION HEARSAY - RECORDED RECOLLECTION	<p>PERMISSIBLE UNDER THIS EXCEPTION IF FOLLOWING FOUNDATION IS LAID:</p> <p>1. The record pertains to a matter about which the witness once had personal knowledge</p> <p>2. The witness now has insufficient recollection about the matter to testify fully and accurately;</p> <p>3. The record was made [or adopted] by the witness when the matter was fresh in the witness’s memory;</p>

Rule	Title	Objection	Note
			4. The witness has vouched for the accuracy of the written record.
Rule 804	Exceptions to the Rule Against Hearsay	OBJECTION TO HEARSAY	<p>PERMISSIBLE IF THE STATEMENT IS WITHIN THE DYING DECLARATION EXCEPTION</p> <p>When the Declarant is Unavailable as a Witness</p> <p>(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:</p> <p>(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;</p> <p>(2) refuses to testify about the subject matter despite a court order to do so;</p> <p>(3) testifies to not remembering the subject matter, except as provided in Rule 803.1(4);</p> <p>(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or</p> <p>(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).</p> <p>But this paragraph (a) does not apply if the statement's</p>

Rule	Title	Objection	Note
			<p>proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.</p> <p><u>Foundation needed:</u></p> <ol style="list-style-type: none"> 1. Declarant believed death was imminent; 2. The statement was based on personal knowledge; 3. The statement addresses what the declarant believed to be the cause or circumstances of his/her imminent death
804 (B) (1-4)	The Exceptions.	OBJECTION TO HEARSAY	<p>(b) <i>The Exceptions.</i> The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:</p> <p>(1) <i>Former Testimony.</i> Testimony that:</p> <p>(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and</p> <p>(B) is now offered against a party who had-or, in a civil case, whose predecessor in interest had-an opportunity and similar motive to develop it by direct, cross-, or redirect examination.</p> <p>(2) <i>Statement Under Belief of Imminent Death.</i> A statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.</p> <p>(3) <i>Statement Against Interest.</i> A statement that:</p> <p>(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was</p>

Rule	Title	Objection	Note
			<p>so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and (B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.</p> <p><i>(4) Statement of Personal or Family History.</i> A statement made before the controversy arose about:</p> <p>(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or</p> <p>(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.</p>
804 (B)(6).	Forfeiture by Wrongdoing	OBJECTION - HEARSAY	<p>Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused-or acquiesced in wrongfully causing-the declarant's unavailability as a witness and did so intending that result.</p>

Rule	Title	Objection	Note
901.	Authenticating or Identifying Evidence.	OBJECTION - EXHIBIT NOT PROPERLY AUTHENTICATED OBJECTION - INSUFICIENT FOUNDATION TO ESTABLISH IDENTITY OF THE SPEAKER (RECOGNIZE SPEAKER'S VOICE OR CIRCMSANTAL EVIDENCE) OBJECTION - EXHIBIT NOT FAIRLY AND ACCURATELY REPRESENT THE PATICULAR CONDITION AT THE TIME OF THE INCIDENT	

Miscellaneous Rules

A. DISCOVERY RULES – FAILURE TO COMPLY (CIVIL CASES)

Pa.R.Civ.P. 4019 – **OBJECTION - PLAINTIFF/DEFENDANT FAILED TO DISCLOSE THE EXISTENCE OF THIS EVIDENCE IN PRE-TRIAL DISCOVERY DESPITE A FORMAL REQUEST FOR DISCLOSURE. REQUEST THAT EVIDENCE BE EXCLUDED**

1. **ALLOWABLE IF NO PREJUDICE, SURPRISE, BAD FAITH.**
2. **ADDITIONAL TIME MAY BE ALLOTED TO COMPLY WITH DISCOVERY REQUEST**
3. **SANCTIONS MAY BE IMPOSED FOR FAILURE TO COMPLY WITH DISCOVERY REQUEST**

B. The Mental Health Procedures Act, (MHPA) 50 P.S. § 7111 Excludes evidence

EVIDENCE EXCLUDED BY STATUTE – MENTAL HEALTH RECORDS - OBJECTION THE EVIDENCE IS EXCLUDED BY STATUTE – MENTAL HEALTH RECORDS

RULE:

- (a) **All documents** concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone except:
 - (1) those engaged in providing treatment for the person;

- (2) the county administrator, pursuant to section 110;
- (3) a court in the course of legal proceedings authorized by this act; and
- (4) pursuant to Federal rules, statutes and regulations governing disclosure of patient information where treatment is undertaken in a federal agency.

WAIVER:

THE STATUTORY PROTECTIONS MAY BE WAIVED IF THE PARTY PLACES HIS/HER MENTAL HEALTH AT ISSUE

C. 75 PA.C.S.A §6581 Vehicle Code's Seat Belt Law – The Occupant Protection Act

EVIDENCE EXCLUDED BY STATUTE – SEAT BELT LAW - OBJECTION - THE EVIDENCE IS EXCLUDED BY STATUTE – SEAT BELT LAW

(1) A child passenger restraint system shall be used as designated by the manufacturer of the system in motor vehicles equipped with seat safety belts and shall meet the Federal Motor Vehicle Safety Standard (49 C.F.R. § 571.213).

(2) A child booster seat shall be used as designated by the manufacturer of the system in motor vehicles equipped with seat safety belts and shall meet the Federal Motor Vehicle Safety Standard (49 CFR § 571.213) that is designed to elevate a child to properly sit in a federally approved safety seat belt system.

(e) Civil actions. --In no event shall a violation or alleged violation of this subchapter be used as evidence in a trial of any civil action;

D. 63 P.S. §525.1 The Peer Review Protection Act

EVIDENCE EXCLUDED BY STATUTE – PEER REVIEW PROTECTION ACT - OBJECTION - THE EVIDENCE IS EXCLUDED BY STATUTE – PEER REVIEW PROTECTION ACT

The Pennsylvania Peer Review Protection Act, 63 P.S. §§425.1-425.4 (“PRPA”), provides confidentiality safeguards and limited liability to healthcare providers in the context of post-care review and investigations. Since 1975, those safeguards have allowed healthcare providers to give candid feedback and conduct open investigations to improve the quality of patient care.

PERMISSABLE IF EVIDENCE GENERATED DURING THE COURSE OF HOSPITAL'S ROUTINE CARE OF PATIENTS AND OUTSIDE OF THE SCOPE OF THE PEER REVIEW ACT

E. 71 P.S. §1690.108 The Pennsylvania Drug and Alcohol Abuse Control Act

EVIDENCE EXCLUDED BY STATUTE – PA DRUG AND ALCOHOL ABUSE CONTROL ACT - ~~OBJECTION~~ - THE EVIDENCE IS EXCLUDED BY STATUTE – PA DRUG AND ALCOHOL ABUSE CONTROL ACT

(a) A complete medical, social, occupational, and family history shall be obtained as part of the diagnosis, classification, and treatment of a patient pursuant to this act. Copies of all pertinent records from other agencies, practitioners, institutions, and medical facilities shall be obtained in order to develop a complete and permanent confidential personal history for purposes of the patient's treatment.

(b) All patient records (including all records relating to any commitment proceeding) prepared or obtained pursuant to this act, and all information contained therein, shall remain confidential, and may be disclosed only with the patient's consent and only (i) to medical personnel exclusively for purposes of diagnosis and treatment of the patient or (ii) to government or other officials exclusively for the purpose of obtaining benefits due the patient as a result of his drug or alcohol abuse or drug or alcohol dependence except that in emergency medical situations where the patient's life is in immediate jeopardy, patient records may be released without the patient's consent to proper medical authorities solely for the purpose of providing medical treatment to the patient. Disclosure may be made for purposes unrelated to such treatment or benefits only upon an order of a court of common pleas after application showing good cause therefor. In determining whether there is good cause for disclosure, the court shall weigh the need for the information sought to be disclosed against the possible harm of disclosure to the person to whom such information pertains, the physician-patient relationship, and to the treatment services, and may condition disclosure of the information upon any appropriate safeguards. No such records or information may be used to initiate or substantiate criminal charges against a patient under any circumstances.

F. 42 PA.C.S.A § 5985.1

HEARSAY EXCEPTION – CHILD SEXUAL ABUSE VICTIM (TENDER YEARS EXCEPTION) - notice must be given

(a) General rule. --

(1) An out-of-court statement made by a child victim or witness, who at the time the statement was made was 16 years of age or younger, describing any of the offenses enumerated in paragraph

(2), not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil proceeding if:

(i) the court finds, in an in-camera hearing, that the evidence is relevant and that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(ii) the child either:

(A) testifies at the proceeding; or

(B) is unavailable as a witness.

G. PAROL EVIDENCE RULE –OBJECTION THE QUESTION SEEKS TO ELICIT TESTIMONY WHICH VIOLATES THE PAROL EVIDENCE

When a contract is expressed in a writing which is intended to be the complete and final expression of the rights and duties of the parties, written agreements, negotiations and understanding, which contradicts the written contract is not admissible.