

RESOLUTION 07.2022-07 (A-23)
REPLACING THE FRYE STANDARD FOR THE DAUBERT STANDARD IN
EXPERT WITNESS TESTIMONY

ISMS Board Action Taken on 10/22/2022

Adopted Resolution 07.2022-07 (A-23), as submitted.

Medical Legal Council Recommendation to ISMS Board on 10/22/2022

The Council was provided with a copy of the resolution, including relevant ISMS policy, the results of a member survey, an excerpt from the Law of Medical Practice in Illinois regarding opinion testimony, and a copy of AMA Opinion 9.7.1, Medical Testimony. The Council was also informed that the AMA has entered into various amicus briefs in other jurisdictions supporting the use of the *Daubert* standard—including *Motorola v. Murray* (District of Columbia) and *Danhoff v. Fahim* (Michigan).

The author attended the meeting and engaged in a lively conversation with the Council regarding the resolution. The author discussed his experience with the judicial system through the provision of expert witness testimony and depositions, and noted a court applying the *Frye* standard is less interested in the methodology underlying the expert's opinion and takes greater interest in the experience and education of the expert. The author contends that by applying the *Daubert* standard, the testimony must be scientifically based rather than an expert's notion of what is generally accepted in the medical profession.

The Council took note that the United States Supreme Court has adopted the *Daubert* standard, and this standard applies to all federal courts. It additionally observed that a growing majority states have either adopted *Daubert* or a modified version, including Indiana, Iowa, Wisconsin, Missouri and Kentucky. The Council also noted that AMA policy is supportive of the *Daubert* standard.

The Medical Legal Council recommends that the ISMS Board of Trustees adopt Resolution 07.2022-07 (A-23), as submitted.