

EXAMINERS' ANALYSIS OF QUESTION NO. 5

1. **Dr. Fran:** That Dr. Fran is a psychologist and not a psychiatrist does not prevent her from being qualified as an expert witness. Under MRE 702, a person can be qualified as an expert based on their skill, knowledge, experience, education or training. These various qualifications are in the disjunctive - meaning that a witness need not have all of these qualifications, just at least one. Moreover, the rule does not state any quantitative measurement of any particular qualification.

Opinions Related To PTSD

Dr. Fran's education and experience qualifies her as an expert. Under MRE 702, she would be qualified to render an opinion on PTSD and the nature and likely time element of her emotional injuries. Her opinion will assist the trier of fact "to understand the evidence or to determine a fact in issue", i.e. Deborah's mental condition and her debilitation, which is a predicate to receipt of expert testimony. Because a psychological diagnosis of Deborah is not within the common knowledge of a juror, her expertise is needed.

Opinions Related To Physical Injuries

Dr. Fran cannot, however, testify concerning Deborah's physical injuries because she is not a medical doctor. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 789 (2004) (mental health treater who was not an M.D. could not testify to medical implications of mental health diagnosis).

Dr. Fran should be allowed to testify as a mental health expert only.

2. **Jennifer:** Jennifer should not be excluded as a witness because of her relationship to Deborah. MRE 601 presumes a witness is competent to testify so long she testifies based on personal knowledge. That Jennifer is Deborah's daughter may cause her to be biased for Deborah. Yet this fact - which either party may reveal to the trier of fact - may make

her less believable once on the witness stand. But it is no argument to keep her off the witness stand. Jennifer cannot be precluded as a witness. Any bias or interest she may have will go to the weight of her testimony.

RR's lack of qualifications objection lacks merit. It must be remembered the facts say Jennifer will testify as to witnessing her mother's screaming and silence. She is a fact witness - not an expert. MRE 602. She is simply saying what she saw and heard. She is not extrapolating from what she saw and heard to an opinion as to the cause of Deborah's condition or the prognosis for recovery. Accordingly, she needs no qualifications - other than the personal knowledge she has - to testify as to what she saw and heard. RR's position would likely have merit if Jennifer were offered as an expert, which she is not.

3. Dr. Bill: RR prevails over Deborah's hearsay objection. MRE 801(D)(2)(1) does not categorize Deborah's statement as hearsay because (1) she is a party and (2) the statement is being offered against her. Defendant's hearsay objection would be overruled and Dr. Bill can quote Deborah's statement to him, as an admission by a party opponent.