



News & Trending
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IS NORTH CAROLINA A DAUBERT STATE? DRUM ROLL PLEASE...

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Yes! North Carolina is now officially a *Daubert* state, according to a recent decision of the North Carolina Court of Appeals. In *State v. McGrady*, COA13-330, 2014 WL 211962 (N.C. Ct. App. Jan. 21, 2014), the Court of Appeals offered its first in-depth interpretation of a 2011 amendment to Rule 702 of the North Carolina Rules of Evidence. Rule 702 provides the standard for the admission of expert testimony. The 2011 amendment brought Rule 702 into line with federal practice. Federal law had long since codified the United States Supreme Court's decision in *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993).

So why is this a big deal for North Carolina? Because our Supreme Court had rejected *Daubert* in *Howerton v. Aria Helmet, Ltd.*, 358 N.C. 440, 597 S.E.2d 674 (2004). For at least the past 10 years, North Carolina's practice has differed from federal practice and that of many other states. As a result, North Carolina state court was viewed as a more forgiving venue (and therefore more plaintiff-friendly), at least as far as expert testimony was concerned.

In *McGrady*, the trial court excluded an expert witness who planned to testify in a murder trial on behalf of the defendant regarding the doctrine of the "use of force." The trial court excluded the testimony because it was "within the realm of common knowledge and would not be helpful to the jury." The court also concluded that the proposed expert "completely lacked medical credentials and provided little evidence regarding the principles or methodology used to come to his conclusions." The Court of Appeals held that "[g]iven the changes wrought by our legislature, . . . it is clear the amended Rule 702 should be applied pursuant to the federal standard as articulated in *Daubert*." The Court of Appeals also stressed that a trial court has "a great deal of discretion . . . when determining whether expert testimony is admissible under *Daubert*."

North Carolina now joins the predominant view of expert testimony in America. While that view has spawned a great deal of motions practice over the years, North Carolina now has the benefit of that jurisprudence in applying the rules in our courts. It should serve as useful guidance to parties and their counsel so that the court system sees fewer "experts" who lack qualifications, lack proper foundation for their opinions, or whose opinions offer no help to the jury.

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