The assessment of expert testimony relevance and admissibility in medical malpractice cases in the Czech Republic. Can American judicial practice help us?

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Abstract: The relevance and admissibility of medical expert testimony in relation to medical malpractice suits requires a more successful development of formal criteria and more intentional compliance with efficient judicial procedures. The American judicial system provides an excellent model for implementation of a critical approach to knowledge collection, the evaluation of the validity of scientifically sound information, and the examination of expert’s testimony on the basis of a sound methodology. An analysis of the assessment and application of reliability yields evidence that assuring standards to improve the quality of medical expert testimony will increase the overall probability of a fair outcome during the judicial process. Applying these beneficial strategies in medical malpractice cases will continue to support further considerations of promoting justice and solving problems through sufficient scientific means.

Keywords: medical malpractice, expert testimony, relevance assessment, admissibility assessment, criteria of admissibility, adverse outcome of the treatment.

The relevance and admissibility assessment of expert testimony are important elements of the judicial evaluation of the evidence in criminal and civil so-called “medical malpractice cases”. There is no universal method applicable in each case that would make it possible to easily exclude irrelevant or inadmissible medical experts’ testimonies on the basis of an exhaustive list of formal criteria.

The difficulties a judge faces when assessing this type of evidence are known as the “essential paradox” of expert testimony. In 1991, Samuel R. Gross wrote: “We call expert witnesses to testify about matters that are beyond the ordinary understanding of lay people … and then we ask lay judges and jurors to judge their testimony”.

Modern trial judges are supposed to think more like scientists when examining the medical expert’s opinion. This fact is sometimes called a necessary fusion of science and legal doctrine in judicial practice. A common judge in his daily activity often has to deal not only with questions of law but ever more with issues of scientific methodology, scientific validity, statistical significance, the principles of evidence-based medicine and so on[1;2;3;4].

On the other hand, the burden which weighs on the shoulders of an expert is not only to be the qualified source of relevant medical information in a particular field, but also to be an independent scientific researcher. An expert should be able to prove the admissibility and reliability of the applied methods of examination, to construct an analytically perfect chain of coherent arguments, to substantiate theoretically...

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and empirically the results and drawn conclusions and at the same time to keep within the bounds of relevance in his reflection and within the limits of admissibility in his action.

The Czech judicial system has been faced with the problems of “medical malpractice cases” rather recently, its experience in this area not exceeding 10 - 15 years. The democratization of the basic social institutions after the “Velvet Revolution” of 1989, the ratification of fundamental international and European conventions and treaties, the building of the civil society aimed at respect and protection of human rights and freedoms, the education of the legal culture of the citizens including the culture of judicial protection of their rights and interests in civil proceedings naturally led to the discovery of certain deficiency in the theory and practice of evaluation by the courts of so-called “specific evidences” such as the testimony of medical experts in “medical malpractice cases”. This tendency is inherent to the judicial system not only of the Czech Republic, but is also valid for the other reputed “transitional countries” in Europe [5-10].

The deficiency of practical experience of the national judicial system in this sphere, the lack of the unified court practice, and the need for serious analytical scientific researches and thorough theoretical elaboration of the problem cause us to access foreign experience. From this point the experience of the American judicial system has a particular interest for the national judicial system of the Czech Republic. More than half a century of practical judicial activities in the field of “medical cases”, tens of thousands of claims of patients, a lot of analytical scientific research of lawyers and medical experts can serve as a necessary and sufficient condition for successful theoretical development of the problem of judicial assessment of testimony of medical experts in “medical malpractice cases” in the Czech Republic[11;12;13].

In this article the issue of assessment by the court of the relevance and admissibility of a medical expert’s testimony is discussed in terms of application and further development of the American experience and ideas in the legal court practice in the Czech Republic. In the second section of the article the characteristics of factors that determine the relevance of a medical expert’s testimony will be discussed. The third section is devoted to the content of the criteria of admissibility of medical expert’s testimony as one of the evidences in “medical malpractice case”.

Relevance Assessment of a Medical Expert’s Testimony

Commonly, the relevance assessment is considered the first stage of evidence evaluation. There is a certain logical meaning in this consideration, because the complexity of the task increases in the sequence “relevance - admissibility – reliability” when comparing different phases of the process of the verification of evidence. In addition, according to the generally accepted legal standpoint only the relevant evidence is admissible, which excludes the necessity for a judge to assess the admissibility of testimony found irrelevant. For example, the Supreme Court of the USA stated in Doubert that relevance as “a valid scientific connection to the pertinent inquiry” is a precondition to the admissibility of the expert’s testimony.

The relevance of the evidence indicates its certain ties to the fact in proof. This property specifies the evidence from the standpoint of its matter. The gnoseologic requirement for the matter of the testimony is that it must contain the characteristics of the object of cognition, i.e., be its informational equivalent. Otherwise, the information in it will not perform a signal function.

This gnoseologic page is taken into account in the procedural rules of the relevance of an expert’s testimony. So in the Criminal Procedure Code of the Czech Republic, the only evidence considered relevant is that which may contribute directly or indirectly to the resolution of the case (§ 89 Art. 2). In Federal Rule 401 of Evidence (USA, 1975), “relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence[14-22].

The relevance of an expert’s testimony is in no doubt when the medical information found by the expert has a definite relation to the elements of the case that must be proved (e.g. the causal connection between the health care provider’s conduct and the plaintiff’s resulting injury). The expert may also
discover within an examination of material supposed “interim facts”, i.e., facts without any independent legal significance (without direct relation to the questions of law), is nevertheless useful in the issues of the confirmation or disproof of these elements. In these cases, the conclusion is legitimate that “the expert testimony is sufficiently tied to the facts to aid the jury in the resolution of a factual dispute”.

The problem of expert opinion relevance should be examined from the position of an analysis of the factors that contribute to the circumstances when part of a medical expert’s testimony (or rarely whole testimony) is not sufficiently tied with the facts in issue. These factors can be divided into two categories:

1) internal factors determined by the processes dependent either on the judge or on the medical expert, and
2) external factors determined by the processes independent neither of the judge nor of the medical expert.

Within the framework of an analysis of the first category, it should be borne in mind that there are certain limitations in the evaluation of the ability of the presumed “lay person” to formulate the relevant questions in the specific field of knowledge, such as medicine. Although it is obvious that a person needs at least some specific erudition to be capable of proper problem definition and task assignment in any field of science, medicine, or technology, a judge is nevertheless commonly considered as capable of understanding the issue at a level sufficient for the formulation of indisputably relevant questions and for assessment of the relevance of an expert’s answers to them. It is recognised in judicial practice that the judge “must have considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable”.

Analyzing the category of internal factors contributing to the relevance assessment of expert testimony, we can determine its matter as the usefulness of the expert opinion from the judge’s standpoint for the resolution of the case. Besides some subjective inflection, this category also has a certain objective significance, when the usefulness of the testimony relies on “whether there is a logical relationship between the proffered testimony and the factual issues in the case”. In Doubert, this relationship is characteristically described as determined by the “fit” of the expert testimony to the case. The relevant medical expert testimony must be “sufficiently tied to the facts”, “aid the jury in resolving a factual dispute”, “assist the trier of fact in understanding the evidence or in determining a fact in issue”.

Thereby, within an analysis of the internal factors influencing the relevance of the testimony, special attention should be paid to the evaluation of separate measures implemented by the expert, whose results do not have a relationship to the ascertainment of the factual issues in proof. These measures may be of two types:

a) measures related to the process of examination of the object of expertise,
b) measures non-related to the process of examination of the object of expertise.

The measures within the expert examination of the object of expertise can include the collecting, analysis and interpreting of data array that have no direct links to the facts in proof. In such cases of scrutinising the irrelevant information, the expert, for example, can study and include in his report details of family anamnesis, the course of childhood diseases, a number of non-specific laboratory tests absolved by the patient throughout his life, while the main issue to prove is the timeliness of the diagnosis of pulmonary tromboembolie, or the adequacy of the antibiotic medication in the post-operational treatment of the peritonitis. From the lawyer’s standpoint, such reflections are of minor significance and are not relevant within the individual “medical malpractice case”.

The measures non-related to the process of examination of the object of expertise may have certain scientific or clinical value, but have no significance for judging the case by the court. This category includes, for example, the measures to substantiate the expert’s opinion by irrelevant data arrays (data based on experimental studies on animals, extrapolation of statistical or epidemiological data per analogiam etc.), to apply the results of the expert’s own original research inconsistent with the generally accepted position of colleagues in the same field of medicine and so on.

Concerning the issue of the ostensible “generally accepted scientific view”, two standpoints
exist corresponding to the American Frye and Doubert standards. According to the older Frye standard, the expert testimony must be excluded if its conclusions are based on the positions accepted only by a minority of scientists in the relevant field. However, under the Doubert standard, it only provides a basis to impeach the expert testimony, not to exclude it.

The external factors determined by the processes independent neither on the judge, nor on the expert, that may influence the relevance of the expert’s testimony can be also divided into two groups:

a) external factors related to the actions of third persons;
b) external factors related to the influence of environment.

When the role of external factors is analyzed, the matter is in the first place about the quality of the material, which the expert disposes for examination. The medical documentation does not always contain all the necessary information related to the facts in proof, or this information may be incorrect, incomplete, biased, etc. Medical reports may be the object of unlawful actions of third persons. As the influence of environment, the situation of a limitation of the expert’s access to all the scope of the required data (not only medical data in some cases) should be considered. Further, the health status of the patient at the time of the expert examination may considerably vary from one at the time of treatment and adverse outcome emergence. All these external factors can greatly influence the relevance of the information obtained and analyzed by the expert during the examination and in the end determine the relevance of the expert testimony.

Therefore, for the relevance assessment of an expert opinion the judge needs to evaluate the character of the influence of two categories of factors that contribute to the circumstances when part of a medical expert’s testimony or the whole testimony is not sufficiently tied to the facts in issue. That means an assessment of the role of the internal factors determined by the processes within the system “judge – expert”, (measures related and non-related to the process of examination of the object of expertise), and the external ones related to the actions of third persons and to the influence of environment.

**Admissibility Assessment of an Expert’s Testimony**

The admissibility is the property of the evidence that characterises its compliance with the legal requirements from a position of:
- the procedural sources of the evidential information,
- the methods of acquisition of the evidential information, and
- the procedure of the fixation of this information in the court records.

The only evidence that has weight has been obtained under the formal conditions of compliance with procedural law. The evidence obtained by illegal enforcement or threat of such coercion cannot be used in the litigation except in the cases when it is applied as evidence against a person who has used such coercion or threat (§ 89 Art. 3 of Criminal Procedure Code of the Czech Republic). Inadmissible evidence has no legal force and may not be used for proving any of the facts of the case.

The requirement of admissibility of the expert testimony as evidence is ensured by the observance of rigorous procedural rules of the appointment of the expert, collection and verification of the data by the expert and under certain conditions guarantees the reliability of this proof. For example the impartiality of the expert is one of the requirements of admissibility, but it also provides an impartial approach to expert examination and finally secures the reliability of the testimony. The absence of such a complex set of procedural guarantees in the case of other sources of evidence (e.g. so-called “skilled witness” opinion) affirms the inadmissibility of a replacement of expert opinion with any other evidence in “medical malpractice cases”.

From an objective point of view, the procedure of expert examination, both within criminal and civil cases of medical malpractice, is uniform according to its nature, mission, objectives and methods of investigation. Therefore, its formal aspects should satisfy the uniform specific standards of the implementation and criteria of assessment. Concerning the complex set of the uniform criteria of admissibility of expert testimony, it should include the following:
1. Independence of the expert.
2. Competency of the expert.
3. Objectivity, scientific validity and completeness of the expert examination.
4. Compliance with the procedural rules of the expert’s appointment and expert examination.
5. Respect for human and civil rights and freedoms within the procedure of appointing the expert and expert examination.

The Independence of the Expert

The Criminal Procedure Code of the Czech Republic in § 105 Art. 2 states that “when choosing the person to be appointed as an expert, it should be taken into account the reasons for which an expert should be excluded under the special law”. It should be considered whether the person from whom the expert opinion is required is not impartial with regard to his relation to the defendant, to other persons involved in the criminal proceedings, or to the whole case.

The Act on Experts and Interpreters No. 36/1967 Coll. states in § 11 that an expert should not give his opinion, if there are doubts about its impartiality in his relation to the matter, the authorities in charge of the proceedings, the parties or their representatives. Once the expert has knowledge of facts, which could lead to his exclusion, he is obliged to announce it immediately. The same obligation is on the parties in the case. Whether an expert is excluded is decided by the authority who has appointed the expert[23-27].

An analogous standpoint is expounded in American Federal Rule 403 of Evidence: “expert’s opinion may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice”. The expert testimony is presumptively unreliable if the research was conducted in anticipation of, rather then independent of, the litigation.

Based on these common principles, the set of requirements can be formulated to secure an expert’s independence in “medical malpractice cases”:

a) the absence of any dependence of the medical expert on officials, legal persons or individuals who are involved in the specific criminal or civil case proceedings, or are interested in the outcome of the expert examination,

b) the formulation of the expert opinion only on the basis of the results of examinations in accordance with specific knowledge in a certain field of medicine,

c) the prohibition of any influence on the expert from officials, legal persons or individuals who are involved in the specific criminal or civil case proceedings, or are interested in the outcome of the expert examination,

d) the real possibility for the case parties to participate in the procedure of the appointment and exclusion of the expert,

e) the publication of information about the rate and the order of remuneration of the expert for his testimony.

The Competence of the Expert

The competence is one of the most significant criteria in the assessment of the admissibility of expert opinion. Formal properties of competence are commonly stated in law, as it is in § 4 of the Act on Experts and Interpreters No. 36/1967 Coll.: “The person can be appointed as an expert if he or she:

a) has Czech citizenship,

b) has the required knowledge and experience in the field where he will act as an expert,

c) has such personal characteristics, which give a presumption of ability to properly perform the expert activity,

d) agrees with the appointment as an expert”.

In American Federal Rule 702 of Evidence (edition 2001), it is stated: “If scientific, technical, or
other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if

(1) the testimony is based upon sufficient facts or data,
(2) the testimony is the product of reliable principles and methods, and
(3) the witness has applied the principles and methods reliably to the facts of the case.”

It is the task of the judge to assess the expert’s qualifications on the basis of the facts contained in the record or the attorney’s offer of proof. Non-observance of the criteria of expert competence may be manifested in different ways. The obvious case is when the expert does not have expertise in a certain field of medicine, but answers questions in this field. For example within the clinical assessment of the case of the unfavorable outcome of an operational intervention, the expert in the field of surgery answers questions concerning the quality and sufficiency of anaesthesiologic medication. In this case, the testimony is outside the expert’s expertise. The expert must have “sufficient specialized knowledge to assist in deciding the particular issue in the case”[28-33].

There are possible cases when several doctors with different specialisations were involved in the patient’s treatment. Then the assessment of the correctness, completeness and timeliness of diagnostic and therapeutic measures goes beyond the competence of any individual expert. Therefore in such cases a collective report of the group of experts with appropriate specialisations must be prepared.

The limits of an expert’s competence lie within the scope of professional medical knowledge, so it is important to exclude from his task the resolution of questions requiring only nominal “common knowledge or intelligence” or “decisions as a matter of law”. These two clusters of questions are within the competence of the judge. This position is shared by the judicial practice. The courts take the point that the opinions of experts, which intrude on the province of the jury to draw inferences and conclusions are “both unnecessary and improper”. The expert testimony should assist the trier of fact in understanding the issues at hand and leave the province of the jury undisturbed.

Together with the formal side of expert competence, the substantial one has also great importance. The focus of substantial side is not simply raw qualifications in the abstract, but qualifications to testify reliably in the specific subject issue. From a substantial position, the competence of the expert should include following elements:

a) the presence of sufficient personal practical experience in the implementation of certain diagnostic and therapeutic interventions, in the application of modern medical equipment and technologies, new drugs, operating methods, etc.

The expert should have enough personal experience with dealing the similar clinical cases, similar diagnostic and therapeutic approaches as well as sufficient knowledge of the problem to make his opinion regarding the facts in hand admissible. “The expert in question must demonstrate expertise with the treatment, diagnosis, or use of the medical equipment at issue, his involvement with similar injuries, illnesses, or conditions”. Otherwise the judge infers that “the expert lacks the qualifications to express the opinion for which the testimony was offered”. 

b) sufficient knowledge of relevant information and data in professional (scientific) publications, which contain the world’s experiences and generally accepted views on the problem. An “analytical gap” between the expert opinion and the scientific knowledge and data is one of the reasons for the court to exclude the expert testimony.

c) sufficient knowledge and experience in the general methodology of scientific examination and methodology of expert analysis.

The methodology that an expert uses must reasonably support his conclusions. If the methodology of expert examination is flawed, it is a sufficient reason for exclusion of expert testimony or of its portions. “Any step that renders the analysis unreliable ... renders the expert's testimony inadmissible. This is true whether the step completely changes a reliable methodology or merely misapplies that methodology”. The way of demonstrating expertise in a certain field may vary, but the court “must ensure that it is dealing with an expert, not just a hired gun”.

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Objectivity, Scientific Validity and Completeness of Expert Examination.

To ensure the objectivity of expert examination, the procedural law commonly provides the expert a wide spectrum of rights. For example, according to § 107 of Criminal Procedure Code of the Czech Republic, the expert should be provided with all necessary information from the case materials. When it is necessary for testimony the expert should be allowed to examine the case materials in person. The expert has the right to assist at the interrogation of the defendant and witnesses and to ask questions relating to the subject matter of his examination. In justified cases, it should be allowed for him to participate in the implementation of other acts of the criminal proceedings, if such acts are important for the expert’s testimony. The expert may also suggest that the circumstances important for his examination were clarified beforehand by other evidence. The expert appointed to submit testimony on the cause of death is entitled to require medical documentation relating to deceased person, in other cases he may require medical documentation under the conditions set by law.

Objectivity of the expert’s opinion is achieved by the detailed description of the course of expert examination and analysis of the case. According to § 13 Art. 2 of the decree of the Ministry of Justice to implement the Act on Experts and Interpreters No. 37/1967 Coll. the expert must provide in his report “the description of the material examined, phenomena observed, summary of the facts taken into account within the examination, list of questions for resolution and the answers to these questions”.

To ensure the objectivity of expert opinion in “medical malpractice cases”, it is necessary to respect the following requirements:

a) confirmation and explanation of each fact ascertained by the expert only by the data obtained within the examination on the basis of generally accepted propositions of modern science and current medical practice,

b) implementation of expert examination strictly on the basis of expert analysis methodology,

c) formulation of inferences and conclusions on the basis of arguments that can be verified from positions of scientific validity and reliability,

d) unimpeded implementation by the expert of the elements of his procedural status,

e) application of the elements of collegiality to the process of expert examination when it is necessary.

Scientific Validity of Expert Examination.

The goal of these criteria is “to make certain, that the expert, whether basing testimony on professional studies or personal experiences, employs the same level of intellectual rigor that characterizes the practice of an expert in the relevant field”. The court may reject the expert opinion of questionable scientific validity, i.e. when the inferences and conclusions of testimony are “not supported by reliable procedure and scientific methodology” or “without sufficient evidentiary basis to be reliable”.

The scientific validity of expert testimony requires corroboration and a logically sequent explanation of each conclusion only by the data obtained within the expert examination on the basis of the provisions of modern science “generally accepted in the relevant scientific community”. The court assesses “whether the reasoning or methodology underlying the testimony is scientifically valid and whether the reasoning or methodology properly can be applied to the facts in issue”.

In American judicial practice since 1993 the so-called “Daubert factors” of reliability of the expert’s testimony that have been used include the following:

(1) whether the expert’s theory can be or has been tested, that is, whether the expert’s theory can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability;

(2) whether the expert’s theory has been subject to peer review and publication;

(3) the known or potential rate of error of the expert’s technique or theory when applied;

(4) the existence and maintenance of standards and controls;

(5) whether the expert’s technique or theory has been generally accepted in the scientific community.
One of the signs of scientific validity of testimony is the logical sequence of expert analysis and inferences, which entails the absence of contradictions between the content of the examination and the final conclusions of expert’s testimony. A distinct logical link must be present in the form of analytical reasoning joining the data obtained and the conclusions made. This requirement is not observed in the cases where “the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion”.

The absence of an expert analysis section in the expert’s report makes it possible to assess some conclusions as “based only on subjective belief or unsupported speculation”. In these cases, the court determines the expert testimony as unreliable because there is “too great an analytical gap between the data and the opinion proffered”. Nothing requires a court to admit the expert’s opinion “which is connected to existing data only by the ipse dixit of the expert”.

The Completeness of Expert Examination.
The requirement of completeness of expert examination is closely linked to the demand of compliance with relevant procedural and methodological rules of conduct of expertise and to the expert’s duty to formulate answers to all the proffered questions. This requirement also means that the examined material must be sufficient for the conclusions made.

The medical expert’s answers to the questions should be formulated with due regard for clarity and definiteness of statement of the facts as inherent qualities of complete examination. Clarity of explanation requires among other things refraining from professional terms in the text of report. When the need to use special terminology is inevitable, then the sense of each medical term must be interpreted by simple common language. Finally, the definiteness of expert explanation means such an approach to the exposition of information, which excludes any ambiguity of its interpretation.

The Compliance with the Procedural Rules of an Expert’s Appointment and Expert Examination
This stipulation is secured by:

a) the observance of the procedural rules regulating the process of the preparation of the case materials (such as the medical documentation) and the mechanism of providing the expert with it for further examination and analysis,

b) the observance of the procedural rules regulating the process of the expert’s investigation, preparation of the report and entering it in the court record,

c) the principle of the unbound assessment of expert testimony by the court as one piece of the evidence.

The Respect for the Human and Civil Rights and Freedoms within the Procedure of the Expert’s Appointment and during the Expert Examination
This prerequisite as the criterion for the admissibility of the testimony contains three main elements:

a) respect for the constitutional rights and freedoms of man and citizen,

b) respect for the fundamental principles of the criminal procedure legislation,

c) compliance with the regulations of other legal acts aimed at the protection of human rights and freedoms.

Article 10 of the Charter of Fundamental Rights and Basic Freedoms claims that everyone has the right to demand that his human dignity, personal honor, and good reputation be respected, and that his name be protected, everyone has the right to be protected from any unauthorised intrusion into her private and family life, everyone has the right to be protected from the unauthorised gathering, public revelation, or other misuse of his personal data.

This fundamental principle of respect for the rights and freedoms of man and citizen is given in § 2 Art. 4 of the Code of Criminal Procedure of the Czech Republic: “Criminal cases have to be investigated
with full observance of the rights and freedoms guaranteed by the Charter of Fundamental Rights and Basic Freedoms and the international conventions on human rights and fundamental freedoms, by which the Czech Republic is bound. In carrying out the acts of criminal proceedings, those rights of persons affected by such acts can be interfered only in substantiated cases, on the basis of law and to the extent necessary to ensure the purpose of criminal proceedings”.

The major institutes of implementation of this principle in the case of medical expertise include the conditions and the place of expert examination of the individuals (of the patients in the event of an adverse outcome of medical treatment), voluntariness and coercion in the implementation of expert examination, the reasons and the order of placing the individuals in hospitals for forensic purposes, the guarantees of the rights and lawful interests of the individuals during the medical expert examination, the conditions and guarantees of the rights of the individuals within psychiatric expert examination, etc.

**Conclusion**

The relevance and admissibility assessment of expert testimony in “medical malpractice cases” is a rather difficult aspect of the evidence evaluation that requires from the lawyer both a high level of legal competence and a good knowledge of the principles and methodology of expert analysis of the cases of adverse outcome of treatment. The multi-faceted framework of the assessment and evaluation of expert testimony in relation to malpractice cases rests upon three primary assumptions: (1) the nature and extent of relevance, (2) the significance and factors of admissibility, and (3) the reliability and usefulness of the data being employed in particular cases.

Assessing relevance requires understanding and applying the cognitive evidence gained from proper investigations of data through testimony, while considering all internal and external factors which may influence the outcome of the evaluation. The admissibility of a medical expert’s testimony is determined by the procedures used and the sources consulted for gaining the evidential information. This implies that certain scientific methods of acquiring the information have been followed in accordance with rigorous rules of the court concerning the collection, verification, and analysis of data. Being the most significant form of admissibility, the independence of the expert’s testimony and competency within the field, allow confirmation and explanation of all relevant facts and data. The objectivity and thorough investigation, along with the compliance with procedural rules affirm that admissibility is sufficient based on scientific validity. The final assurance of validity is made by confirming the respect for human civil rights and freedom during the process of examination[34].

These assumptions and applications ensure that the reliability of the objective methods of relevance and admissibility assessment are confirmed as consistent with the best judicial criteria. The proper application of the legal procedures of the expert’s appointment and conduct of the medical expertise in conjunction with the court practice of the design and modification of the standards for assessment on the basis of unified criteria and algorithms is the optimal approach to overcoming the “essential paradox” of expert testimony.

**References**