

2023 PROP. 65 ANNUAL CONFERENCE

Plenary Panel on “Lab Consolidation: Problems with Conflicts of Interest, Certification and Accreditation”

Reference Materials

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Pertinent Case Law on Admissibility of Testing Evidence

Whether expert is qualified does not depend on third-party certifications, such as college degrees, publications, or professional memberships, so long as the expert has relevant experience. *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 293-97.

Expert may base opinions on scientific texts and articles, reports of other experts, testing done by others, calculations by others, etc. *LAOSD Asbestos Cases* (2020) 44 Cal.App.5th 475, 487.

Lab supervisor can rely on testing done by subordinates. *People v. Rutterschmidt* (2009) 176 Cal.App.4th 1047, 1074, *aff'd on other grounds*, 55 Cal.4th 650 (2012).

Kelly-Frye test on “scientific evidence” applies only to novel or nascent scientific techniques. *People v. McDonald* (1984) 37 Cal.3d 351, 373.

Kelly-Frye test does not apply to longstanding methods of analysis, even where they are applied to novel situations. *People v. Peneda* (1995) 32 Cal.App.4th 1022, 1030.

Kelly-Frye test does not apply to new devices that implement established scientific methods. *People v. Nolan* (2002) 95 Cal.App.4th 1210, 1215.

Where Kelly-Frye test is applicable, it allows admission only where (1) the technique is generally accepted as reliable in the relevant scientific community; (2) the witness who is testifying about the technique and its application is a properly qualified expert on the subject; and (3) the person performing the test in the particular case used correct scientific procedures. *People v. Stevey* (2012) 209 Cal.App.4th 1400, 1410.

Kelly-Frye test just requires reliability, not absolute perfection. *People v. Slone* (1978) 76 Cal.App.3d 611, 625.

The fact that some laboratories interpret results more conservatively than others does not indicate the absence of general acceptance of a particular scientific technique. *Stevy, supra*, 209 Cal.App.4th at 1418.

Variations in technique or procedure go to the weight of the evidence, not its admissibility. *People v. Cook* (2007) 40 Cal.4th 1334, 1345.

Lack of national or uniform guidelines is not fatal to admissibility under Kelly-Frye. *Stevey, supra*, 209 Cal.App.4th at 1417.

Absence of lab accreditation regime does not preclude admissibility under Kelly-Frye. *People v. Barney* (1992) 8 Cal.App.4th 798, 812.

Kelly-Frye test allows use of non-certified laboratory so long as reliable. *People v. Sangani* (1994) 22 Cal.App.4th 1120, 1137.