

IN THE SUPREME COURT OF MISSISSIPPI

THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER

APPELLANT

V.

CASE NO. 2007-TS-00114

**JOHN HENRY MARTIN, Individually and on Behalf of
Wrongful Death Beneficiaries of Martha Martin,
YASHICA GOOD, Individually**

APPELLEE

**APPEAL FROM THE
CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI**

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED BY APPELLANT


PREPARED AND SUBMITTED BY:

**JOSEPH LERAY MCNAMARA, MSB # [REDACTED]
STEPHANIE C. EDGAR, MSB # [REDACTED]
COPELAND, COOK, TAYLOR & BUSH
Post Office Box 6020
Ridgeland, Mississippi 39158-6020
Telephone: (601) 856-7200
Facsimile: (601) 856-7626**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellant certify that the following listed persons and public entity have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Dennis Sweet
2. Warren L. Martin, Jr.
3. John Henry Martin
4. Yashica Good
5. John Dwaine Martin
6. Renette Veal
7. Valerie Grace
8. Vicky Taylor
9. Tenisha Martin
10. J. Leray McNamara
11. Stephanie C. Edgar
12. Copeland, Cook, Taylor & Bush, P.A.
13. University of Mississippi Medical Center
14. Frederick Barnett Carlton, Jr., M.D.
15. Lisa DeFord Anderson, M.D.
16. The Honorable Winston Kidd



Joseph Leray McNamara
Stephanie C. Edgar
Attorneys for University of Mississippi
Medical Center

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STATEMENT OF ISSUE

- I. Whether the Court erred in accepting and relying heavily upon the expert testimony of Dr. William Truly, which was both scientifically unreliable and demonstrative of his lack of expertise in the field of emergency medicine?

STATEMENT OF THE CASE

A. FACTS

This lawsuit arises from the death of Mrs. Martha Martin, which allegedly occurred as a result of the University of Mississippi Medical Center's failure to diagnose a pulmonary embolus. On September 29, 2001, Mrs. Martin and her daughter, Yashica Good, were traveling on Interstate 20 when they were involved in an automobile accident. R.E. 2¹. During this accident, the air bags deployed and the seat belt bruised Mrs. Martin's chest. *Id.* Both women were transported to the emergency room at the University of Mississippi Medical Center ("UMMC") and arrived at approximately 8:30 p.m. *Id.* Mrs. Martin was under the care and treatment of Dr. Rick Carlton and Dr. Lisa DeFord Anderson, a UMMC resident. *Id.*

During her approximately seven-hour stay at UMMC on the evening of September 29, 2001, and the morning of September 30, 2001, Mrs. Martin was constantly observed and evaluated. *Id.* She underwent a battery of testing, including an electrocardiogram, chest x-ray, head CT scan and a head-to-toe physical examination. *Id.* By 4:00 a.m. on September 30, 2001, Mrs. Martin's only symptom of concern, a sporadic cough, had resolved itself. *Id.* As a result, Mrs. Martin was discharged home with very clear instructions to return to the UMMC emergency room should she begin coughing up blood or have other symptoms of distress. *Id.* No one from Mrs. Martin's family contacted anyone at UMMC following her discharge.

In the early afternoon of October 1, 2001, Mrs. Martin was found non-responsive by family members in her Jackson home. Some thirty-six hours after her UMMC discharge, Mrs. Martin was

¹References to Record Excerpts are designated herein as "R.E." R.E. 1 is the trial court docket. References to the trial transcript are designated herein as "T." References to the trial court record are designated herein as "R."

returned to UMMC where she was pronounced dead. R.E. 3. Dr. Steven Hayne autopsied the body and determined the immediate cause of death to be a saddle-type pulmonary embolus. R.E. 4.

B. COURSE OF PROCEEDINGS AND DISPOSITION BELOW

Following Mrs. Martin's death, her husband, John Henry Martin, individually and on behalf of Mrs. Martin's wrongful death beneficiaries, and her daughter, Yashica Good, filed this case on September 24, 2002. R. at 6. This lawsuit named UMMC; Toyota Motor Sales, USA, Inc.; Hallmark Imports, Inc.; and Dr. Rick Carlton. *Id.* UMMC answered on October 31, 2002, denying liability. R. at 14. On May 16, 2003, Appellees amended their Complaint to include claims against Toyota Motor Corporation of Japan. R. at 27. On May 29, 2003, UMMC answered Appellees' Amended Complaint and denied liability. R. at 36. On June 11, 2003, the trial court entered an Agreed Order dismissing Dr. Carlton from this action by virtue of his employment with UMMC. R. at 48. Likewise, on October 10, 2003, the trial court entered an Agreed Order of Dismissal as to the Appellees' claims against Toyota Motor Sales, USA, Inc.; Hallmark Imports, Inc. and Toyota Motor Corporation of Japan. Thereafter, this case proceeded to trial against the remaining defendant, UMMC, on April 12 and 13, 2005.

UMMC moved, prior to trial in a reply brief to Appellees' motion for summary judgment response, to either exclude or limit the expected testimony of Appellees' sole medical expert, Dr. William Truly. R. at 93. This motion was denied. R. at 101. At trial, UMMC voir dired Dr. Truly and moved that his opinions be excluded on the grounds that he was unqualified in the field of emergency medicine. T. at 27-33. The trial court, however, denied UMMC's motion to exclude Dr. Truly's testimony finding that he was an expert in the fields of both family and emergency medicine. T. at 33-34; R.E. 5. At trial, in addition to Dr. Truly, Appellees called Dr. Steven Hayne. T. at 122. Also, UMMC moved for the bench trial equivalent of a directed verdict at the close of the Appellees'

case-in-chief. T. at 190. This motion was also denied. *Id.*; R.E. 6. During its case-in-chief, UMMC called Dr. Frederick Carlton, Dr. Lisa DeFord-Anderson, Dr. Sara Broom and Dr. James Jefferson. T. at 192, 268, 293 and 310. Immediately after the trial of this case, UMMC renewed its Motion to Exclude Testimony of Plaintiffs' Expert, William Truly, M.D. and its Motion for Judgment under Rule 41(b). R. at 146.

Thereafter, some eighteen months following the two-day trial of this matter, the trial court issued its Opinion and Order, which relied heavily upon the faulty and unreliable opinions of Dr. Truly. R. at 166; R.E. 7. The Appellees were awarded \$500,000 in damages. *Id.* In the Court's Opinion and Order, the Court correctly noted that the Appellees relied solely on Dr. Truly "to testify regarding UMC's violation of the standard of care and the proximate cause of Mrs. Martin's death." *Id.* at ¶ 10. The Appellees also called Dr. Steven Hayne to testify as an expert, and the Court correctly noted that Dr. Hayne testified that the immediate cause of Mrs. Martin's death was a saddle-type pulmonary embolus. *Id.* at ¶ 14.

On October 13, 2006, the trial court entered its Final Judgment in favor of the Appellees. R. at 172; R.E. 8. Following the Court's entry of the Final Judgment, on October 18, 2006, UMMC timely filed a Motion to Alter or Amend Judgment Pursuant to Rule 59(E), which addressed the arguments raised in this appeal. R. at 174. This motion was brought on for hearing on January 8, 2007. R. at 311. This motion, too, was ultimately denied. R. at 313; R.E. 9. Following the trial court's denial of UMMC's post-trial motion, this appeal was perfected in a timely manner. R. at 314.

SUMMARY OF THE ARGUMENT

The trial court erred in allowing Dr. Truly, unqualified in the area of emergency medicine, to testify as to the standard of care for an emergency room physician. Such error was further compounded when Dr. Truly purported to offer “expert” testimony, which was at odds with every other expert called by both Appellees and UMMC. Even Dr. Steven Hayne, designated and called by the Appellees, substantiated the testimony of UMMC’s experts by opining that the pulmonary embolism at issue could not have been present during Mrs. Martin’s September 29-30, 2001, UMMC admission.

Dr. Truly is, at best, only marginally qualified as a medical expert. Further, if Dr. Truly, as a family practitioner, is permitted to testify against UMMC emergency room physicians, any doctor can effectively testify against any other doctor no matter the specialty or sub-specialty, without restraint. Dr. Truly’s testimony was wholly unreliable under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and Rule 702 of the Mississippi Rules of Evidence, and Dr. Truly’s testimony should not have been considered by the trial court in its judgment for the Appellees. The trial court’s reliance upon Dr. Truly’s testimony was severely misplaced and not supported by substantial, credible or reasonable evidence.

STANDARD OF REVIEW

“A circuit court judge sitting without a jury is accorded the same deference with regard to his findings as a chancellor and his findings are safe on appeal where they are supported by substantial, credible, and reasonable evidence.” *City of Jackson v. Perry*, 764 So.2d 373, 376 (Miss. 2000). Further, an appellate court will not disturb the trial judge’s findings “unless they are manifestly wrong, clearly erroneous, or an erroneous legal standard was applied.” *Id.*

ARGUMENT

I. Whether the Court Erred in Accepting and Relying Heavily upon the Expert Testimony of Dr. Truly, which was both Scientifically Unreliable and Demonstrative of His Lack of Expertise in the Field of Emergency Medicine?

A. Scientific Invalidity of Dr. William Truly's Expert Opinion and Testimony

This case is premised upon the issue of whether UMMC failed to diagnose a saddle-type pulmonary embolus on September 29-30, 2001. While the trial court correctly noted that Dr. Steven Hayne, an expert called by Appellees, testified that the immediate cause of Mrs. Martin's death was a saddle-type pulmonary embolus, the trial court incorrectly stated in its Opinion and Order that Dr. Hayne was of the opinion that the pulmonary embolus was developed when Mrs. Martin was involved in the accident immediately prior to her death. R. at 166 at ¶14. In actuality, Dr. Hayne testified that the embolus could not possibly have been present while Mrs. Martin was being treated at the UMMC Emergency Department because Mrs. Martin's vital signs, especially her oxygen saturation, were normal while she was at UMC. T. at 138-140. Dr. Hayne explained that if the embolus had been present, Mrs. Martin's oxygen saturation would have been fifty percent or less, and more than likely would have been zero. T. at 139. In other words, since Mrs. Martin's oxygen saturation and blood pressure were normal while she was at UMMC, then according to Dr. Hayne, the embolus had not developed yet. *Id.* If it had, her oxygen saturation would have been fifty percent or less and her blood pressure would have been low. *Id.*

Five out of the six medical experts, Dr. Frederick "Rick" Carlton, Dr. Lisa DeFord Anderson, Dr. Sara Broom, Dr. James Jefferson and Dr. Steven Hayne, agreed that this is the science of a pulmonary embolus. T. at 138-140, 208-210, 273-274, 276, 299, 304-306, 317. Dr. Truly was the only expert who claimed that a patient's vital signs and oxygen saturation can be normal when they

are experiencing shortness of breath and chest pain stemming from a saddle-type pulmonary embolus. T. at 161-162. Conversely, every other expert, including Dr. Hayne, testified that the patient's blood pressure and oxygen levels would be extremely low. T. at 138-140, 208-210, 273-274, 276, 299, 304-306.

Further, all other experts, save for Dr. Truly testified that if Mrs. Martin's symptoms were being caused by a saddle-type pulmonary embolus, she would have died within thirty minutes to two hours of the onset of these symptoms. T. at 140, 240, 291, 299, 317. Again, even Dr. Hayne, who was called by the Appellees, agreed with this scientific fact, and even went so far as to explain that once these symptoms are experienced, "[I]t's time to get the priest, sir." T. at 139. Further, Dr. Carlton, called by UMMC and board-certified in emergency medicine, testified that a huge pulmonary embolism such as that found at autopsy with Mrs. Martin "is a sudden catastrophic event." T. at 208. In addition, Dr. DeFord-Anderson, another expert called by UMMC, explained that the symptoms of a massive pulmonary embolism such as that involved in this case, are "unmistakable. Generally, if they're conscious, their respiratory rates can be as high as sixty to eighty times per minute, they're sweating profusely, gasping for air, things of this nature, often unable to speak." T. at 276. Moreover, Dr. Broom, board-certified in internal medicine, pulmonary diseases and sleep medicine, testified "[A] saddle pulmonary embolus is a massive pulmonary embolus. It's a catastrophic event. A person often falls out, has a blackout. Blood pressure is very low, often less than 90 systolic, the upper number on the blood pressure, is often less than 90, unconscious and frequently dies." T. at 299. Finally, Dr. Jefferson, testifying on behalf of UMMC, testified as follows:

Well, if I'm understanding Dr. Truly's opinion, he's saying that the pulmonary embolus was already present when this lady presented to the emergency room. I don't agree with that. . . Well, knowing that it's a saddle pulmonary embolus. That is a catastrophic event. When that occurs, you have maybe 30 minutes to a couple hours to live. It is

sometimes—you know it's happening and you cannot even get the therapy that is required to save the individual's life because it is that quick in taking you to heaven. It is a horrible disease. Pulmonary embolus comes in all shades so to speak. But this particular type, a saddle embolus, is the worst kind.

T. at 317. Thus, all experts except Dr. Truly testified that the reliable nationally known medical fact is that people with a saddle-type pulmonary embolus almost always die immediately, and at best, they live no more than two hours after the onset of symptoms.

By contrast, Mrs. Martin lived almost thirty-six hours after she was discharged from UMMC. Ex. 3. This fact, when coupled with the fact that her vital signs remained absolutely normal during the entire time she was at the UMMC Emergency Department, belies the first flaw in the Appellees' use of Dr. Truly as an expert in this case. Dr. Truly's opinions were unreliable because they were patently scientifically invalid, and the science upon which he relied was not applied reliably to the facts of this particular set of circumstances.

Mrs. Martin's symptoms were either being caused by an embolus, or by the trauma of the automobile accident she was in prior to admission. As noted above, five out of the six experts who testified at trial, except Dr. Truly, were positive that scientifically and medically speaking, if Mrs. Martin had presented to the UMMC Emergency Department with a saddle-type pulmonary embolus, her vital signs would have shown it. T. at 138-140, 208-210, 273-274, 276, 299, 304-306, 317. All of the experts, except Dr. Truly, agreed that at the very least, if Mrs. Martin's embolus had been present while she was at UMMC, her oxygen saturation would have been fifty percent or lower, and her blood pressure would have been abnormally low. *Id.* Again, even Dr. Hayne, who had been called by the Appellees, agreed that these are simply the medical and scientific facts. T. at 138-140.

If the embolus is present, it shuts down the blood flow causing a drop in blood pressure and oxygen saturation. If Mrs. Martin's symptoms were being caused by the embolus, then, as all the

experts except Dr. Truly agreed, her vital signs would have given some clue as to the embolus' presence. T. at 138-140, 208-210, 273-274, 276, 299, 304-306, 317. However, Mrs. Martin's blood pressure and oxygen saturation were normal the entire time she was present at UMMC. Thus, the embolus could not have been present while she was a patient at UMMC on September 29-30, 2001.

Dr. Truly repeatedly opined that Mrs. Martin developed the embolus before her arrival at UMMC, and that it was present and diagnosable while she was in the UMMC Emergency Department. T. at 55-58, 151. No other expert believed this to be true. Dr. Sara Broom, a pulmonologist called by UMMC, did say, that it was possible that Mrs. Martin already had a *clot* in her leg prior to admission, but she testified that even as a board-certified pulmonologist, she would not have suspected a *pulmonary embolus* given Mrs. Martin's vital signs, and clinical presentation. T. at 302, 306. A blood clot in one's leg and a diagnosable pulmonary embolus are two entirely different medical phenomena. T. at 298.

Dr. Truly was the Appellees' sole expert on the issues of the standard of care, breach of the standard of care, and proximate cause, and, as shown above, his opinions were not reliable and actually revealed a scientific impossibility. Under Mississippi law, "[t]o be relevant and reliable, the testimony must be scientifically valid and capable of being applied to the facts at issue." *Moss v. Batesville Casket Co., Inc.*, 935 So.2d 393, ¶ 34 (Miss. 2006)(citing *Mississippi Transportation Comm'n v. McLemore*, 863 So.2d 31, 36 (Miss. 2003)). See also *Poole ex rel. Poole v. Avara*, 908 So.2d 716, 721-25 (Miss. 2005). And, when applying the science to the facts involved in the case, the *Poole* Court held, "[t]he rule is that the expert must exercise the same level of intellectual rigor that characterizes the practice of an expert in the relevant field. *Poole*, 908 So.2d at ¶ 16 (citing *McLemore*, 863 So.2d at 37-38).

Dr. Truly's testimony and opinion that Mrs. Martin presented to the UMMC Emergency Department with a saddle-type pulmonary embolus was not scientifically valid. T. at 151. No expert, including Appellees' other expert, Dr. Hayne, felt that this was scientifically possible given the medical facts of the case. T. at 138-140, 208-210, 273-274, 276, 299, 304-306, 317. Even the pulmonary specialist called by UMMC testified that she saw no reason to even test for an embolus based on Mrs. Martin's symptoms. T. at 306. Yet, Dr. Truly contends that UMMC is liable for not discovering this embolus, which scientifically could not possibly have been causing Mrs. Martin's chest pain and difficulty in breathing. If the embolus had been causing these symptoms, all of the experts (except Dr. Truly) agreed that Mrs. Martin's vital signs would have been low and she would have died within thirty minutes to two hours. T. at 138-140, 208-210, 240, 273-274, 276, 291, 299, 304-306, 317. Since Mrs. Martin's vital signs were normal at UMMC and she lived over thirty-six hours after she was discharged, Dr. Truly's opinion is scientifically flawed on a fundamental basis.

B. Dr. William Truly's Lack of Emergency Medicine Expert Qualification

The second flaw in the Appellees' use of Dr. Truly as an expert concerns his lack of qualification to offer testimony against an emergency room physician. Dr. Truly admitted that he is not board certified in emergency medicine, and that he had not worked in an emergency room since approximately 1997. T. at 28, 29. He could not even clearly remember when he last worked in an emergency room and testified "the last time when I was a full emergency room physician was I think, if I recall correctly, in the late 90s, maybe '98, '99, in which I was really on schedule doing a lot of emergency medicine." T. at 28. Despite the fact that Dr. Truly had not practiced emergency medicine for a great while, he, nevertheless, attempted to opine that he was familiar with the 2001 standard of care in emergency rooms he "observe[s] the operation of the emergency department everyday. My office is in the juxtaposition to the emergency room department at Madison County

Medical Center.” T. at 31. Thus, in essence, Appellees asked the trial court to qualify Dr. Truly as an emergency room expert, not because he was an expert in the field of emergency medicine, but rather, because he practiced close to an emergency room. However, while he is a family practitioner and admits patients as a family practitioner, Dr. Truly does not stand in the trenches of a modern emergency room treating patients. And, Dr. Truly did not lay a proper foundation for familiarity with the standard of care in a modern emergency department in a large teaching hospital such as UMMC during the year 2001.

Dr. Truly has not exercised the same level of intellectual rigor that characterizes the practice of an expert in the field of emergency medicine. Instead, he is a family practitioner, who not having practiced in the emergency room setting in many years, provided a scientifically flawed opinion. As mentioned above, Dr. Truly admitted that he is not board certified in emergency medicine, and that he had not worked in an emergency room since approximately 1998. T. at 28, 29. Dr. Truly did not participate in an emergency medicine residency and, in fact, did not do a residency in any type of medicine. T. at 25. Dr. Truly could not even clearly remember when exactly the last time he worked in an emergency room was. T. at 28. Dr. Truly attempted to opine that he is familiar with the current standard of care in emergency rooms because his office located close to an emergency room, but he did not lay a proper foundation for familiarity with the standard of care in a modern emergency department in a large teaching hospital such as UMMC during the year 2001. T. at 31. Adding insult to injury, Dr. Truly even went so far as to discount the value of a physician’s actual physical evaluation of a patient in the following exchange with counsel for UMMC:

- Q. And, so – I mean it’s an obvious conclusion though that you were not involved in the treatment of this patient and you did not have the opportunity to observe the patient in a clinical setting, correct?

- A. That's correct. But, for the record, we as physicians in the practical world always rely, in many instances, on medical records, on the history and physical of a patient, laboratory findings of a patient. And so we as physicians, believe it or not, are able to look at data as it relates to a history and physical and as it relates to actually the action of the physician as he or she has encounter or an interface with the patient. So we are able to go back and review records and give an opinion. It is known practice in the medical community.
- Q. Well, would you at least agree with me that it's a good thing to have a live patient there to examine?
- A. Is it a good thing to have a live patient?
- Q. To have a patient there to examine?
- A. Well, sure. It is a good thing to have a live patient to examine particularly for an example of a patient who might be an asthmatic, but the issue is whether or not the physician who is alive and this patient is alive, whether or not that patient was treated appropriately. So what we do is that we read the record and we make decisions based on literature and based on what should have been done as it relates to the standard in the community.
- Q. All right. But a physician must rely upon the clinical presentation and the signs and symptoms presented to him in order for him to make a clinical judgment, correct?
- A. That's correct. But for the record, medicine is not black and white. Oftentimes, what you see in the medical field, for an example, if you take a patient who has abdominal pain, you can very well diagnose that patient as having gas. But what you have to do as a prudent physician.

T. at 143, 145, 146. Even a cursory review of the foregoing exchange reveals that Dr. Truly's testimony was at best, nonsensical. What Dr. Truly did do was an excellent job of sounding as if he was familiar with the applicable standard of care. That is, until one compares Dr. Truly's testimony to the testimony of *every* other expert called at trial. While the general rule as to expert testimony in medical malpractice actions is that a specialist in a particular branch within a profession is not always required, this Court must "limit an expert's testimony to matters within his demonstrated area of expertise." *General Motors Acceptance Company v. Baymon*, 732 So. 2d 262, ¶ 49 (Miss.

1999)(citing *Seal v. Miller*, 605 So. 2d 240, 247 (Miss. 1992). Further, in order for any medical expert to testify, they must exhibit a familiarity with the relevant standard of care. *Cheeks v. Bio-Medical Applications, Inc.*, 908 So.2d 117, ¶ 9 (Miss. 2005).

Moreover, the facts of the case at bar are on par with those involved in the recent opinion of *Troupe v. McAuley*, 955 So.2d 848 (Miss. 2007). In *Troupe*, the plaintiff's expert, a neurosurgeon, was called to testify against the defendant-physician, a neuro-otolaryngologist, regarding an alleged breach of the standard of care in middle ear surgery. *Id.* at ¶ 10. The *Troupe* Court found that Plaintiff's expert was wholly unqualified because he had no board certification in either otolaryngology or neuro-otolaryngology, last performed surgery in December of 1999, was not actively practicing medicine at the time of his testimony, was unqualified to conduct middle-ear surgery and had published no articles regarding otolaryngology or neuro-otolaryngology. *Id.* at ¶ 24.

Likewise, Dr. Truly wholly failed to demonstrate that the matters involved in this trial, including the diagnosis of a saddle-type pulmonary embolus, or the standard of care for an emergency room physician practicing under the same or similar circumstances present at the emergency room at UMMC on November 29, 2001, are within his demonstrated area of expertise. In fact, Dr. Truly lacked specialized knowledge with which to assist the trier of fact in understanding the science of a pulmonary embolism. While Dr. Truly sounded legitimate in the beginning, it became very clear very quickly, that either Dr. Truly did not know what he was talking about, or that he was simply using hindsight to hold UMMC to an impossible standard—that of predicting that Mrs. Martin would develop a pulmonary embolus after she was discharged. Only through hindsight and/or the application of flawed science to selective facts is Dr. Truly's conclusion possible. Even the pulmonologist who testified at trial, Dr. Sara Broom, said that with her advanced training and

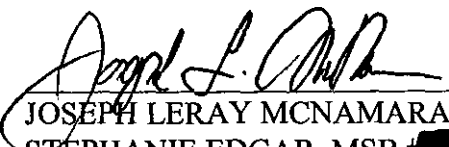
specialized skills she could not have predicted that Mrs. Martin would develop an embolus. T. at 306.

Trial courts are expected, "to act as a gatekeeper, ensuring that expert testimony is both relevant and reliable." *Poole*, 908 So.2d at ¶ 15. By relying on Dr. Truly's opinions, rather than all other experts who testified contrary to Dr. Truly's opinion at trial, the trial court erred in this regard.

V. CONCLUSION

Dr. Truly's testimony was not scientifically valid, and Dr. Truly was not adequately familiar with the relevant standard of care to testify against UMMC in this case. Dr. Truly's shortcomings, and the fact that his opinions were scientifically flawed should be obvious based on an analysis of the testimony presented at trial by all other medical experts, including those called by the Appellees. Since it is clear that the sole expert upon whom the Appellees relied to establish three of the elements of their *prima facie* case was not reliable and was not properly qualified, UMMC respectfully submits that the trial court's Opinion and Order and Final Judgment are not supported by substantial, credible or reasonable evidence and as such, the trial court's findings were manifestly wrong and clearly erroneous. UMMC respectfully requests that this Court reverse and render judgment in its favor, and UMMC further requests any additional relief this Court deems appropriate.

RESPECTFULLY SUBMITTED, this the 27th day of November, 2007.


JOSEPH LERAY MCNAMARA, MSB # [REDACTED]
STEPHANIE EDGAR, MSB # [REDACTED]
ATTORNEYS FOR THE UNIVERSITY OF
MISSISSIPPI MEDICAL CENTER

OF COUNSEL:

COPELAND, COOK, TAYLOR & BUSH

Post Office Box 6020

Ridgeland, Mississippi 39158-6020

Telephone: (601) 856-7200

Facsimile: (601) 856-7626


CERTIFICATE OF SERVICE

I, J. Leray McNamara, do hereby certify that I have this day caused to be mailed by United States Mail, postage prepaid, a true and correct copy of the above and foregoing document to:

Honorable Winston Kidd
Hinds County Circuit Court Judge
P.O. Box 327
Jackson, MS 39205-0327

Dennis C. Sweet, III, Esquire
Warren L. Martin, Jr., Esquire
Sweet & Associates
Suite 200 North Tower
200 S. Lamar Street
Jackson, MS 39215

This the 27th day of November, 2007.



J. LERAY MCNAMARA