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## **EVIDENTIARY ERRORS CAUSE REVERSAL OF MEDICAL MALPRACTICE DEFENSE VERDICT**

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*Pipher v. Loo*

Ct. Appeals, Div. One, March 10, 2009

Authored by the [JSH Appellate Team](#)

Plaintiff sued a dentist alleging nerve damage from dentist's negligent administration of anesthetic. The jury returned a defense verdict. The court of appeals reversed due to the trial court's evidentiary error.

First, Loo's expert testified that in forming his opinions, he relied upon his own laboratory research regarding the cause of lingual nerve damage, his clinical experience with patients with this injury, and his interviews of patients with this injury and their dentists. He further testified that such epidemiological research, as well as laboratory and clinical research, was a legitimate branch of research. The dentist claimed this was inadmissible under Rule 703. The courts disagreed. There was no evidence that the expert's research, conducted in his field of study and in the normal course of his work, was unreliable or untrustworthy. By allowing the testimony, the trial court implicitly found his methods and data were reliable.

Second, the appellate court held, however, that it was error to preclude plaintiff's causation expert from testifying. The causation expert could properly mention the standard of care, and that defendant fell below it, as a predicate to his opinion that the dentist's violation of the standard of care caused plaintiff's injury. Also, the testimony was not speculative and did not lack foundation. Although the expert admitted there was no published scientific study to prove the validity of his opinion, he testified that his opinion was not speculation, but based on his experience and knowledge of the relevant literature. The court said objections to his testimony went to weight and not admissibility. Moreover, the erroneous exclusion of this evidence eliminated the plaintiff's causation testimony and prejudiced his presentation of his case.