A MONTHLY REVIEW OF EXPERT PRACTICE ATTORNEY EDITION NUMBER 4

The Vident Review



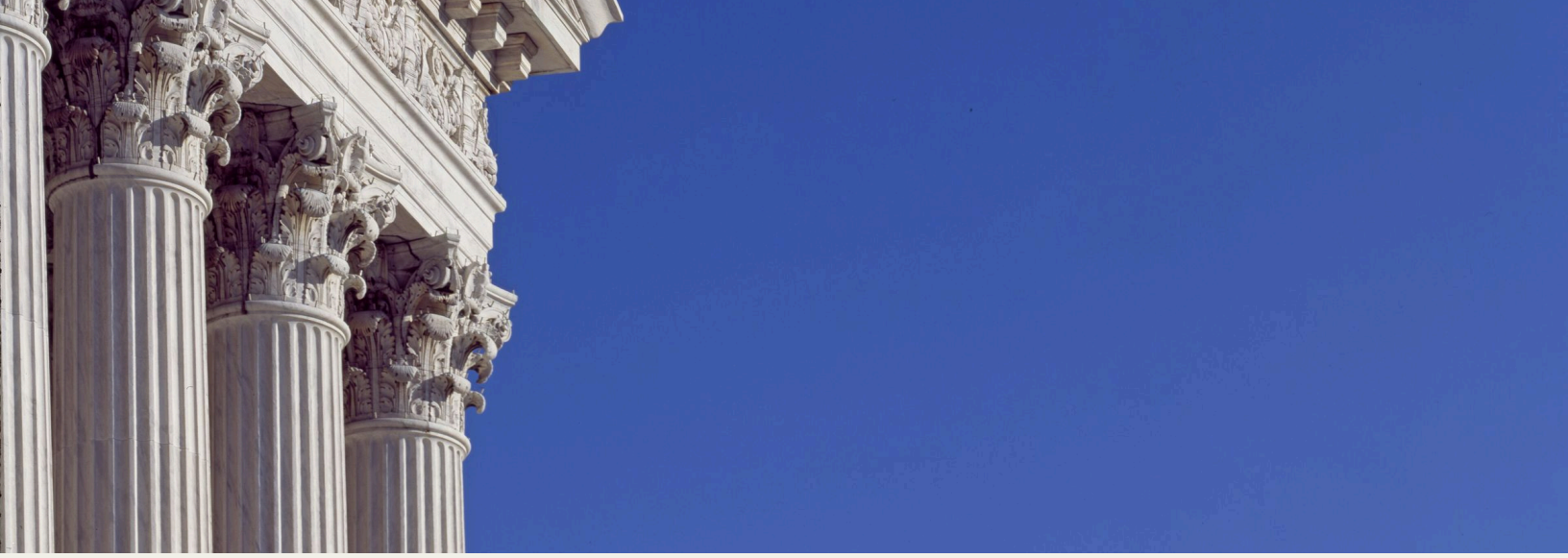
Who wrote the report?

Rule 702, the results-driven opinion and what an expert's AI logs can show.

THE STANDARD
Why a postmortem number is not a cause of death

EXPERT PROFILE
The physician and the chemist behind the Synthetic Opioid Project

FOR COUNSEL
Ask about AI before the deposition



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FROM THE EDITORS

An opinion has to be the expert's own

Courts have always asked whether an opinion rests on reliable work. Rule 702 now says who has to show it, and the arrival of generative AI has given that question a new edge.

This issue starts with the rule, follows it into the file, and ends with a place where the rule has real teeth: the toxicology number that looks like an answer. The two experts who anchor that subject close the issue.

The Vident Review is published monthly by Vident Partners, Dallas, Texas, for the attorneys who retain experts and the experts they retain. **Managing Partner** Arie S. George, J.D. videntpartners.com



The judge is the gatekeeper again

Since December 1, 2023, the proponent has to show the court that an expert's opinion is reliable. An expert's method now includes every tool the expert used.

Arie George called the amendment to Federal Rule of Evidence 702 "the most consequential change to expert practice in a generation." It says nothing new about what an expert must be.

It says who has to prove it, to whom, and how sure the court must be. Its reach now includes the expert who lets a chatbot draft the report.

WHAT CHANGED IN RULE 702

The Advisory Committee's note explains why the rule moved. Many courts had held that the sufficiency of an expert's basis and the application of the expert's methodology "are questions of weight and not admissibility." The amendment answers that the proponent must show each condition to the court, and "more likely than not" is the test.

Arie George read the practical effect this way in August 2026: "Gatekeeping is back, and it is being enforced." Opinions developed for the purpose of testifying face harder scrutiny than opinions grown from independent professional work.

THE RESULTS-DRIVEN OPINION

The hired gun rarely announces himself. He arrives as an opinion that reached its conclusion first and worked backward. George lists the tells, familiar to anyone who has read enough Daubert rulings:

- Contrary data ignored without explanation
- Study criteria or definitions quietly adjusted mid-analysis
- Opinions that stray beyond the witness's actual field
- Positions that shift, case to case, in whichever direction the retention letter points

Any one can be cross-examined. Together they are grounds for exclusion, and in healthcare, product liability and other technically dense litigation, exclusion can end the case on summary judgment.

> "The hired gun was always a bad investment; he is now a dangerous one."
>
> ARIE S. GEORGE, AUGUST 11, 2026

FEDERAL RULE OF EVIDENCE 702

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

As amended effective December 1, 2023.

THE NEW TELL

Who wrote the report?

In a Texas trial in 2026, an opposing attorney spotted an attachment in an expert's file in a format he recognized as machine generated, and demanded the prompts. The deposition stopped for three hours while they were gathered. What came back was roughly 350 pages of chatbot logs.

The attorney walked the jury through them. Arie George reported on them in September 2026: the prompts told the model to reach a conclusion favorable to the party that retained the expert, before any real analysis. The expert conceded at trial that most of the report had been generated. He and his firm maintained that the opinions and the judgment were his own.

Two lessons reach every expert engagement. Prompts and drafts generated through AI tools can be treated like an expert's notes, drafts or communications: fair game in discovery. And an instruction to a model to reach a specific conclusion is exactly the bias cross-examination is built to expose.

A court's question stays the same as it was before these tools existed. Courts still expect "a human expert who has personally reviewed the record, applied reliable methods, and can defend every opinion under dynamic questioning."

> "Independence is no longer a soft preference. Under the amended Rule 702, it is a durability requirement."
>
> ARIE S. GEORGE, AUGUST 11, 2026

WHAT AI DOES WELL

Used well, these tools surface patterns and inconsistencies in large records and can stress-test a report for weak assumptions before anyone steps into a deposition room. Arie George calls AI an efficiency tool that can "torpedo an expert's credibility" when used blindly.

THE BETTER EXPERT

"The better expert is, and always was, the one who tells retaining counsel early and clearly where the record does not support the theory." That expert is harder to find, and that is the one Vident is looking for.

Arie S. George, "The Demise of the 'Hired Gun' Expert," August 11, 2026; "The impact of AI on expert witness testimony," June 30, 2026; "'Show How 3M Is 0% at Fault,'" September 8, 2026, which names the case and its sources. All on Vident Insights. Fed. R. Evid. 702 and 2023 Committee Note, law.cornell.edu/rules/fre/rule_702.

Ask about AI before the deposition

The worst time to learn how a report was written is when opposing counsel asks for the prompts.

1 **Ask early and explicitly.**
How does this expert use AI, on what parts of the work and with what tools? Ask at retention, in writing.

2 **Require human verification.**
Every AI-generated citation, dataset or calculation gets checked by a person before it reaches a report.

3 **Document the use.**
Record it so it can be explained coherently in discovery and at a hearing.

4 **Put it in the engagement.**
Vident's September 2026 article raises the open question of whether engagement agreements addressed AI use at all. Decide what yours says before the issue comes up mid-deposition.

5 **Treat prompts as part of the file.**
Assume they can be requested the way notes and drafts are, and advise the expert accordingly.

IN ONE TRUST ACCOUNTING DISPUTE

A New York court excluded an expert's testimony after he used a generative AI tool for financial calculations yet could not explain or replicate its methodology. The first three items above come from the guidance Arie George summarized in June 2026.

Vetting has moved past the CV

Sophisticated litigators now ask four things before they retain anyone.

1

PRIOR TESTIMONY HISTORY

Where they have testified, for which side, and what they said.

2

CONSISTENCY ACROSS MATTERS

Whether positions shift with the retention letter.

3

EXCLUSION RECORDS

Whether a court has limited or excluded the opinion, and why.

4

WHETHER THEY HAVE SAID NO

The honest question of whether the expert has ever told a retaining party no.

An excluded expert does not just lose a battle over one witness.

ARIE S. GEORGE, AUGUST 11, 2026

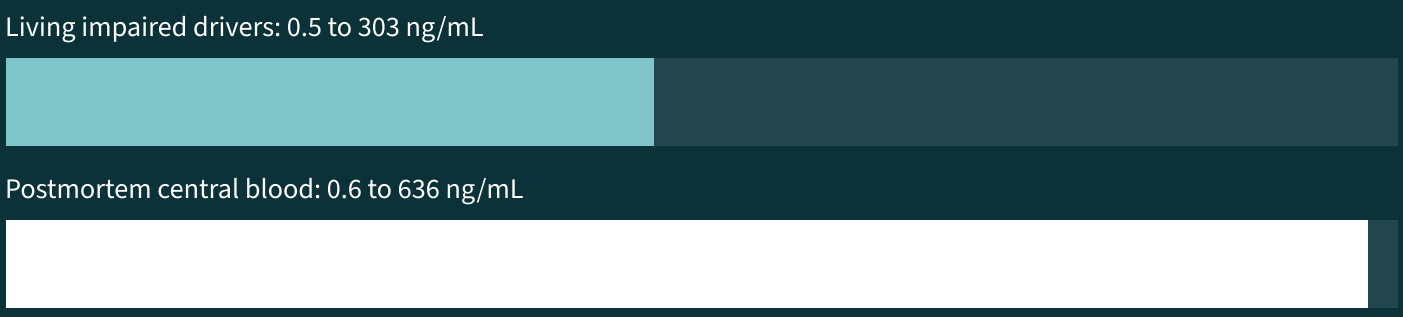
Vident's referrals start with the record and with experts whose work stands apart from litigation: active professional practice, disclosable testimony histories and the independence to tell you early where the facts do and do not support your theory.

THE STANDARD

A postmortem number is not a cause of death

A fentanyl level reads like an answer. The living and the dead overlap almost entirely.

BLOOD FENTANYL, TWO YEARS OF COUNTY LABORATORY CASES



Orange County, California. Havro V, et al., *J Anal Toxicol* 2022;46(8):875–881.

9 times

How much higher postmortem fentanyl concentrations have measured than in vivo serum at the same dose, with no clear correlation between dose and concentration.

Postmortem redistribution alters drug concentrations after death. Lipophilic, highly protein-bound drugs with a large volume of distribution are most affected, and cardiac blood is unreliable next to peripheral blood. Sampling site alone can produce an erroneous interpretation. Tolerance widens the overlap further.

WHERE RULE 702 MEETS THE NUMBER

Since the December 1, 2023 amendment, the proponent must show it is more likely than not that "the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." In synthetic opioid litigation that lands squarely on overstatement.

An expert who converts one postmortem concentration into a cause-of-death conclusion, or a population-level lethal-dose figure into an individualized opinion about a tolerant decedent, is asserting more than the underlying method can carry.

The Center takes no side on this. It is a limit on what the number can prove, and it binds prosecutors, defense counsel and civil litigators alike.

THE LEGAL TEST IS BUT-FOR CAUSATION

Under 21 U.S.C. § 841(b)(1), the enhancement applies when "death or serious bodily injury results from the use of such substance." In *Burrage v. United States*, 571 U.S. 204 (2014), the Court held that, at least where the drug is not an independently sufficient cause, the enhancement does not apply "unless such use is a but-for cause of the death or injury." State drug-induced homicide laws differ, and none is automatically bound by the federal rule.

WHAT TO ASK OF ANY LEVEL

- Peripheral or cardiac blood?
- How long after death was it drawn?
- What was the person's tolerance?
- What else was in the sample?
- Does the clinical picture fit?

> Living impaired drivers have tested at 303 ng/mL of fentanyl. A postmortem number, standing alone, is not a cause of death.
>
> FROM THE CENTER'S INTRODUCTION

ALSO IN THIS CENTER

Why fentanyl kills

The adulteration era: what naloxone cannot reverse

The reversal myth: renarcotization

Past fentanyl: the nitazenes

SOURCES As published in The Synthetic Opioid Project, videntpartners.com/network/synthetic-opioid-project, read November 5, 2026: Abdelaal GMM, et al., *Forensic Sci Med Pathol* 2023;20(4):1483–1490; Andresen H, et al., *J Anal Toxicol* 2012;36(3):182–194; Havro V, et al., *J Anal Toxicol* 2022;46(8):875–881; StatPearls, Opioid Toxicity, NCBI Bookshelf; Fed. R. Evid. 702.

A physician who treats the poisoning. A chemist who works on the molecule.

The Synthetic Opioid Project is anchored by two complementary authorities from Vident's expert network.



Stephen L. Thornton, M.D., FACEP

Medical Director, Kansas Poison Control Center. Triple board certified in emergency medicine, medical toxicology and addiction medicine.



Saadyah E. Averick, Ph.D.

Polymer chemist and pharmaceutical scientist. Ph.D. in chemistry from Carnegie Mellon, with 92+ peer-reviewed publications.

THE PHYSICIAN

Dr. Thornton leads the Kansas Poison Control Center and holds faculty appointments at the University of Kansas School of Medicine and the University of Missouri-Kansas City, where he directs toxicology research and education. He also practices at Children's Mercy Hospital and the Kansas City VA Medical Center, so his patients run from children to veterans.

His research covers synthetic drugs, opioid overdoses, envenomation and novel psychoactive substances, across 95 peer-reviewed publications. He has served as an expert for both plaintiff and defense, and specializes in translating complex toxicology findings into clear courtroom testimony.

In his 2020 Insights piece on what a medical toxicologist is, he writes that no other medical specialty "bridges the gap between the laboratory test and real-world effects" the way this one does.

THE CHEMIST

Dr. Averick earned his Ph.D. at Carnegie Mellon under Prof. Krzysztof Matyjaszewski and has more than 4,700 citations. At Allegheny Health Network's Research Institute he led translational research on long-acting naloxone nanoparticles and developed anti-fentanyl vaccine conjugates, work funded in part by the NIH.

He holds multiple U.S. patents in biomaterials, bioconjugates and opioid countermeasure technologies, and is a peer reviewer for the NIH and NSF. His expertise reaches pharmaceutical formulation, drug delivery, biotechnology patents and nanomedicine.

In his Insights piece on fentanyl he explains why it behaves as it does: designed "to be fast-acting, highly potent, and more readily synthesized than naturally occurring or semisynthetic opioids such as morphine."

One reads the patient. The other reads the molecule. A causation question can need both.

DR. THORNTON IS CALLED ON FOR

- Emergency medicine standard of care
- Fentanyl and synthetic opioids
- Drug and alcohol impairment
- Pediatric poisoning, envenomation

DR. AVERICK IS CALLED ON FOR

- Pharmaceutical formulation
- Opioid pharmacology and overdose treatment
- Vaccine development
- Biotechnology patent disputes

Full profiles: videntpartners.com/experts/featured/stephen-thornton and /saadyah-averick. Articles: Dr. Stephen Thornton, "What is a Medical Toxicologist?", June 30, 2020; Saadyah Averick, Ph.D., "Fentanyl: A Brief Introduction," April 21, 2026.

A TERM WORTH KNOWING

Results-driven opinion

A conclusion reached first, then reverse-engineered into a report. Contrary data ignored, definitions adjusted mid-analysis and positions that shift with the retention letter are the usual signs.

FURTHER READING ON INSIGHTS

The Demise of the “Hired Gun” Expert

Arie S. George, August 11, 2026

The impact of AI on expert witness testimony

Arie S. George, June 30, 2026

The Status of Daubert in Federal Practice

Arie S. George, March 9, 2026

What are you working on?

Reply to the email this review came with and it reaches Arie George.

NEXT MONTH

Daubert, state by state

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