

December 2005

Health Care Law

## **Liberalization of expert testimony admissibility – N.Y.**

*By Richard E. Lerner*



The New York Appellate Division, First Department, appears to have relaxed the standards for the admission of expert scientific testimony. Under the *Frye* rule (*Frye v. United States*), admissibility of evidence depends on whether the expert's testimony is based on scientific principles or procedures or whether the testimony has sufficiently gained general acceptance in its specific field.

The *Frye* test underlies New York's two-part test on the admissibility of scientific expert testimony. This requires the testimony to be 1) based on scientific knowledge not within the scope of the juror's knowledge, and 2) based on scientific principles or procedures, comporting with the general acceptance test.

In recent decisions by the lower courts, the requirement for a general-acceptance test for expert scientific testimony has become more lenient, allowing "some support" that looks scientific to be admissible. It will ultimately be up to the Court of Appeals to resolve the *Frye* issue. In the meantime, litigants should preserve the record for future review by the Court of Appeals.