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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

<b>Jacob Amrani,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>2:12-cv-2583 JWS</b>
	)	
<b>vs.</b>	)	<b>ORDER AND OPINION</b>
	)	
<b>United States of America,</b>	)	<b>[Re: Motion at docket 189]</b>
	)	
<b>Defendant.</b>	)	
	)	

**I. MOTION PRESENTED**

At docket 189 plaintiff Jacob Amrani (“Dr. Amrani”) asks the court to preclude testimony from Dr. Shayam Shridharani (“Dr. Shridharani”) about Dr. Armani’s earning potential on the grounds that he is not competent to offer opinion testimony pursuant to Federal Rule of Evidence 702. Defendant United States of America (“United States”) opposes at docket 192. No reply has been filed. Oral argument would not assist the court.

**II. BACKGROUND**

Dr. Amrani is a board certified orthopedic surgeon who specialized in spine surgery. He practiced for many years in Kansas, but moved to Phoenix in 2006. Dr. Amrani’s practice in Phoenix was conducted at his own clinic, the Deer Valley Spine

1 Center. Because he is a veteran, Dr. Amrani is eligible to receive his own medical care  
2 from the Veteran's Administration ("VA").

3 Dr. Amrani had been an avid weightlifter and injured his right shoulder lifting  
4 weights. At first, Dr. Amrani avoided seeking care from another physician. Eventually  
5 Dr. Amrani sought treatment at the VA hospital in Phoenix. Dr. Amrani was placed  
6 under the care of Dr. Cranford, a board certified orthopedic surgeon employed by the  
7 VA hospital. On November 17, 2011, Dr. Cranford performed right shoulder rotator cuff  
8 surgery on Dr. Amrani. The surgery included excision of a soft tissue mass in the  
9 shoulder. As a result of the surgery, Dr. Amrani experienced some degree of damage  
10 to the axillary nerve. Dr. Amrani claims that the excision of the soft tissue mass was  
11 undertaken without his consent, was performed negligently, and resulted in the nerve  
12 damage. Dr. Amrani claims that as a result of the medical negligence of Dr. Cranford,  
13 he has experienced a substantial loss of function in his right shoulder and right arm  
14 which has deprived him of the ability to practice spine surgery and has generally  
15 interfered with his enjoyment of life. Dr. Amrani seeks in excess of \$6.2 million in  
16 damages.  
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20 The United States retained Dr. Shridharani to determine and offer opinion  
21 testimony relating to Dr. Amrani's earning capacity. Dr. Amrani asks the court to  
22 preclude the opinion testimony on the grounds that Dr. Shridharani does not qualify to  
23 offer such testimony under Federal Rule of Evidence 702.  
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1 **III. STANDARD OF REVIEW**

2 Rule 702 permits opinion testimony by an expert when the witness is qualified  
3 and the witness’s opinion is relevant and reliable.<sup>1</sup> With respect to Rule 702, “a district  
4 court’s inquiry into admissibility is a flexible one.”<sup>2</sup> The purpose of the district court’s  
5 inquiry is “to screen the jury from unreliable nonsense opinions” and not to “exclude  
6 opinions merely because they are impeachable.”<sup>3</sup> The district court functions as a  
7 “gatekeeper, not a fact finder.”<sup>4</sup>

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9 Under Rule 702, a witness “is qualified as an expert by knowledge, skill,  
10 experience, training, or education.”<sup>5</sup> “Expert opinion testimony is relevant if the  
11 knowledge underlying it has a valid connection to the pertinent inquiry. And it is reliable  
12 if the knowledge underlying it has a reliable basis in the knowledge and experience of  
13 the relevant discipline.”<sup>6</sup> The district court’s task in screening a scientific opinion for  
14 reliability has been explained in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*<sup>7</sup> and its  
15 progeny. “The court must assess the expert’s reasoning or methodology, using as  
16 appropriate criteria such as testability, publication in peer-reviewed literature, known or  
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21 <sup>1</sup>Fed. R. Evid. 702.

22 <sup>2</sup>*City of Pomona v. SQM North America Corp.*, 750 F. 3d 1036, 1043 (9th Cir. 2014).

23 <sup>3</sup>*Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc.*, 738 F.3d 960, 969 (9th Cir. 2013).

24 <sup>4</sup>*Primiano v. Cook*, 598 F.3d 558, 565 (9th Cir. 2010) (internal quotation omitted).

25 <sup>5</sup>Fed. R. Evid. 702.

26 <sup>6</sup>*Primiano*, 598 F.3d at 565 (internal quotation omitted).

27 <sup>7</sup>509 U.S. 579 (1993).

1 potential error rate, and general acceptance.”<sup>8</sup> When non-scientific testimony is at  
2 issue, the “*Daubert* factors (peer review, publication, potential error rate, etc.) simply  
3 are not applicable . . . .”<sup>9</sup> The reliability of such non-scientific testimony depends more  
4 “on *the knowledge and experience* of the expert, rather than the methodology or theory  
5 behind it.”<sup>10</sup>  
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#### 7 IV. DISCUSSION

8 Dr. Shridharani is a board certified orthopedic surgeon who has completed a  
9 fellowship in spine surgery. He is currently an assistant professor of orthopedic surgery  
10 at the University of Arizona College of Medicine in Tucson. His curriculum vitae is  
11 lengthy and impressive. His training and experience as a spine surgeon establish that  
12 Dr. Shridharani is qualified to testify about what medical and surgical procedures fall  
13 within the ambit of orthopedic spine surgeons. Furthermore, his deposition testimony  
14 shows that he is familiar with the particular surgical procedures Dr. Amrani has  
15 performed subsequent to his own shoulder surgery. The deposition testimony also  
16 shows that Dr. Shridharani is familiar with the use of spinal injections in the treatment of  
17 back problems. Dr. Shridharani is of the opinion that Dr. Amrani is capable of  
18 administering spinal injections despite the sequella of his own surgery.  
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24 <sup>8</sup>*City of Pomona*, 750 F.3d at 1044.

25 <sup>9</sup>*Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1017 (9th Cir. 2004) (quoting  
26 *United States v. Hankey*, 203 F.3d 1160, 1169 (9th Cir. 2000)).

27 <sup>10</sup>*Id.*

1 Dr. Shridharani's opinion is based on his own training and experience as an orthopedic  
2 spine surgeon.

3 Dr. Amrani's principal objection to Dr. Shridharani's qualification is that he is not  
4 a vocational rehabilitation specialist. That objection misses the point. Dr. Shridharani is  
5 not offering an opinion about vocational rehabilitation. His opinion is directed at the  
6 services Dr. Amrani can actually provide as an orthopedic spine surgeon. That is an  
7 area in which Dr. Shridharani is obviously qualified.

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9 Dr. Amrani also points out that Dr. Shridharani has only six years of experience  
10 as an orthopedic surgeon, that he has generally worked as an employee in large  
11 practice groups rather than as a surgeon with his own private practice, such as the one  
12 Dr. Amrani has operated, that he has never practiced in Phoenix, and that he is  
13 unfamiliar with the market for surgeons in Phoenix. These concerns go to the weight of  
14 Dr. Shridharani's testimony, not its admissibility.

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16 Dr. Shridharani's testimony will not address all of the issues relating to  
17 Dr. Amrani's earning capacity. Nevertheless, what he has to say about the kind of  
18 services that could be provided to patients by Dr. Amrani will be helpful to the trier of  
19 fact. Dr. Shridharani will be allowed to offer opinion testimony under Rule 702.

## 20 **V. CONCLUSION**

21 For the reasons above, the motion at docket 189 is DENIED.

22 DATED this 10<sup>th</sup> day of December 2014.

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26 /s/ JOHN W. SEDWICK  
27 SENIOR UNITED STATES DISTRICT JUDGE