

1.13 EXPERT TESTIMONY¹ (Approved 4/95)

D. Optional Charge Concerning Statements from Publications

You will recall that statements were read in connection with the direct or cross-examination of *[insert name of expert witness]*. These statements were contained in a (reference or professional publication, journal, pamphlet or periodical).²

However, merely because a publication has been read to you does not mean that you must accept it as binding on any of your decisions. You may give the statement(s) discussed in the publication whatever weight you believe it (they) deserve(s) using your reason, judgment and common sense.

¹ In the following instances, the Committee has approved specific charges on expert testimony and these charges should be given instead of the general charge on expert testimony:

5.50	Medical Negligence
5.51	Legal Malpractice
5.52	Professional Liability of an Architect/Engineer
9.10	Condemnation

² Before any statements contained in a publication can be read into evidence or referred to by an expert, there must be a determination by the judge that the publication is a reliable authority. That foundation may be established in a variety of ways. For example, an expert may establish that an article in a periodical is a reliable authority by testifying that it is one of the sources the expert uses in keeping up to date in the expert's field of expertise. A publication also can be admitted as a reliable authority because the expert or the court has recognized the authoritative stature of the writer or the acceptance of the article itself by the profession. A text may also qualify as reliable authority if it represents the type of material reasonably relied on by experts in the field.

Sources: *Federal Rules of Evidence* 803 (18); *N.J. Rules of Evidence* 803(c)(18); *Jacober v. St. Peter's Medical Center*, 128 N.J. 475 (1992); 11 *Moore's Federal Practice*, Art VIII (2d ed. 1989); *Schnieder v. Revici*, 817 F.2d 987 (2d Cir. 1987); *Allen v. Safeco Ins. Co. of America*, 782 F.2d. 1517, 1519 (11th Cir. 1986); *Tart v. McGann*, 697 F.2d 75 (2d Cir. 1982); *Meschino v. North American Drager, Inc.*, 841 F.2d 429, 434 (1st Cir. 1988).