

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KATHLEEN MOLLER,
Plaintiff,

v.

MARTIAN SALES, INC.; JOPEN,
LLC; JOHNSON FOODS, LLC; LP
IND., LLC; CAG HOLDINGS, LLC;
RMH HOLDINGS, LLC; ABC
INSURANCE COMPANY and John
Does 1-4,
Defendants.

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CIVIL ACTION NO.
2:24-CV-228-WBV-DPC
THE HONORABLE WENDY B. VITTER
MAGISTRATE JUDGE DONNA PHILLIPS
CURRAULT

**DEFENDANT’S MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE
PLAINTIFF’S EXPERT CHRISTOPHER WILLIAMS
UNDER FED. RULE OF EVID. 702**

Defendant JOpen, LLC (“Defendant” or “JOpen, LLC”) hereby files this Motion to Exclude Plaintiff’s Expert Witness Christopher Williams under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and incorporated memorandum of law.

I. INTRODUCTION

Dr. Williams’ opinions and testimony regarding 7-Hydroxymitragynine (“7-OH” or “7HMG”) are irrelevant, confusing, and not helpful for the trier of fact, and should thus be excluded. First, Dr. Williams’ opinions and testimony only relate to synthetic 7-OH, which is an entirely different substance than the mitragynine in natural kratom products such as O.P.M.S. Silver kratom, the only product at issue in this case. Thus, the pharmacological effects of synthetic 7-OH are irrelevant in determining whether O.P.M.S. Silver had any effect on Harmony Moller’s cause of death on February 6, 2023. And second, as Dr. Williams testified, there are only trace amounts of 7-OH in O.P.M.S. kratom products, comprising less than 1% of kratom alkaloid

constituents. And as such the pharmacology of 7-OH is irrelevant to the pharmacology of kratom as a whole.

II. FACTUAL BACKGROUND

A. Plaintiff's claims and allegations.

This is a products liability case in which Plaintiff alleges that O.P.M.S. Silver kratom caused Harmony Moller's death on February 6, 2023. Specifically, Plaintiff claims that Defendant designed an inherently and unreasonably dangerous product, that Defendant failed to adequately warn of the dangers associated with O.P.M.S. Silver kratom, and that Defendant failed to provide adequate instructions on how to avoid such risks. *See* Dkt. 100, at ¶ 61.

B. Dr. Williams

Dr. Williams is a pharmacologist who was retained by Plaintiff "to provide the scientific background on the pharmacological activity of Kratom (*mitragyna speciosa*) alkaloids, and the mechanistic underpinnings of its drug-like effects when consumed or utilized as a so-called nutritional supplement or food." Ex. 1, Expert Report of Christopher Williams, PhD. Defendant JOpen, LLC deposed Dr. Williams on February 9, 2026. The Court should limit Dr. Williams' opinions and testimony for the reasons set out below.

III. ARGUMENT

A. Standard for admissibility.

The district court has considerable discretion to admit or exclude expert testimony under Fed. R. Evid. 702. *See, Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 138–39 (1997); *Seatrax, Inc. v. Sonbeck Int'l, Inc.*, 200 F.3d 358, 371 (5th Cir. 2000); *Tajonera v. Black Elk Energy Offshore Operations, LLC*, Civ. A. No. 13-0366, 2016 WL 3180776, at *8 (E.D. La. June 7, 2016) (Brown, J.) (citing authority). The burden rests with the party seeking to present the testimony to show that

the requirements of Rule 702 are met. *Moore v. Ashland Chemical, Inc.* 151 F.3d 269, 276 (5th Cir. 1998). Rule 702 provides that an expert witness “qualified ... by knowledge, skill, experience, training or education may testify in the form of an opinion” when the following requirements are met:

- (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 has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702. Rule 702 codifies the Supreme Court’s opinion in *Daubert*, which charges district courts to act as “gatekeeper” when determining the admissibility of expert testimony. *Tajonera*, 2016 WL 3180776, at *8. The purpose of a *Daubert* motion is “to ensure that only reliable and relevant expert testimony is presented to the jury.” *Rushing v. Kansas City S. Ry. Co.*, 185 F.3d 496, 506 (5th Cir. 1999) (superseded by rule on other grounds) (citing *Daubert*, 509 U.S. at 590–93).

On appeal, courts “review the admission or exclusion of expert testimony for an abuse of discretion.” *Braggs v. BP Expl. & Prod., Inc.*, No. 23-30297, 2024 WL 863356, at *2 (5th Cir. Feb. 29, 2024) (quoting *Huss v. Gayden*, 571 F.3d 442, 452 (5th Cir. 2009)). Courts “will not find error unless the ruling is *manifestly erroneous*.” *Guy v. Crown Equip. Corp.*, 394 F.3d 320, 325 (5th Cir. 2004). This provides courts with “wide latitude in determining the admissibility of expert testimony.” *Watkins v. Telsmith, Inc.*, 121 F.3d 984, 988 (5th Cir. 1997)

B. Christopher Williams’ testimony regarding 7-Hydroxymitragynine is irrelevant and will not help the trier of fact understand the evidence.

The Court should exclude Dr. Williams' opinions and testimony regarding 7-OH for two reasons. First, Dr. Williams opines on synthetic 7-OH, which is not in O.P.M.S. Silver. And second, there are only trace amounts of 7-OH in O.P.M.S. Silver, and as such Dr. Williams' opinions and testimony regarding the pharmacological effects of kratom as a whole based on the 1% of 7-OH are misleading and would confuse the jury.

1. Dr. Williams' testimony regarding synthetic 7-Hydroxymitragynine is irrelevant.

O.P.M.S. Silver kratom, the only product at issue here, does not contain synthetic 7-OH, which is the subject of Dr. Williams' opinions and testimony. Dr. Williams opines that "*7HMG has 10-fold greater potency than morphine[.]*" Ex. 1, at 2 (emphasis in original). However, Dr. Williams' testimony on this opinion was as follows:

Q. Here, when you state that 7-OH is tenfold more potent than morphine, you're referring to purified, experimentally administered 7-OH, correct?

A. Correct.

Q. And that's a considerably higher concentration than 7-OH found in natural Kratom, correct?

A. By definition, because it's purified.

Q. Are you familiar with the products at issue in this lawsuit?

A. The OPMS product?

Q. Yes.

A. To the extent that I need to be for this particular case.

Q. Then you're familiar that the OPMS Silver products have considerably less just trace amounts of 7-OH, correct?

A. Correct.

Ex. 2, Excerpts from C. Williams Dep. Tr. at 51:15–25. Synthetic, "purified experimentally administered 7-OH" is an entirely different substance than found in natural kratom. While there are many products on the market that are pure synthetic 7-OH products, which may be the products on which Dr. Williams is opining, O.P.M.S. Silver kratom is not one of them. *See* Ex. 3, Excerpts from M. Huestis Dep. Tr. at 73:2–14 (in discussing the various formulations of kratom, Dr. Huestis notes that she is most familiar with the "dried kratom leaf powder, the extract, and the isolate," but

“there are synthetic 7-hydroxymitragynine products that are on the market now and they are not from the natural tree”); Ex. 4, Excerpts from C. McCurdy Dep. Tr. at 25:17–26:3 (being questioned about a “separate category of 7-hydroxymitragynine that’s fully synthetic, meaning it’s synthesized in a chemistry laboratory and sold, unfortunately, as -- as pure kratom.”).

It is undisputed that O.P.M.S. Silver does not contain synthetic 7-OH, which is the only alkaloid that Dr. Williams opines on. Despite as much, Dr. Williams concludes that this synthetic “7HMG has tenfold greater potency than morphine” and thus “studies demonstrate that Kratom contains *alkaloids which rival the potency of clinically available opioids like morphine* in experimental models.” Ex. 1, at 2. For Dr. Williams to conclude that kratom exhibits “significant *opioid-like activity*” and “functions through opioid-like mechanisms,” Ex. 1, at 2, based only on his understanding and opinion on synthetic 7-OH, is irrelevant, as it does not have “any tendency to make a fact more or less probable than it would be without the evidence.” Fed. R. Evid. 401(a); *see also Miller ex rel. Miller v. Ford Motor Co.*, No. 2:01CV545FTM-29DNF, 2004 WL 4054843, at *16 (M.D. Fla. July 22, 2004) (granting a motion to exclude evidence regarding the Ford Bronco II when only the Ford Explorer was at issue because “the Bronco II is not a substantially similar vehicle, and ... evidence about it is generally not relevant.”); *State Farm Fire & Cas. Co. v. Black & Decker, Inc.*, No. CIV.A. 02-1154, 2003 WL 103016, at *4 (E.D. La. Jan. 9, 2003) (disallowing discovery into other product models “where there has been no suggestion that other models share pertinent characteristics with the products at issue”).

2. Dr. Williams’ testimony regarding 7-Hydroxymitragynine is irrelevant because there are only trace amounts of 7-OH in natural kratom products, and the amount of mitragynine in Harmony’s blood was extremely low.

Dr. Williams’s testimony and opinions are irrelevant for the additional reason there are only trace amounts of 7-OH in natural kratom products, and that trace amount is biologically irrelevant.

In addition, Harmony had a very low amount of mitragynine in her blood at the time that she died, rendering even that trace amount even more biologically irrelevant. It is undisputed that natural 7-OH “is present in trace amounts [in kratom products] that are below the limit of detection.” Ex. 4, McCurdy Dep. Tr. at 262:3–8; *see also* Ex. 5, Excerpts from E. Boyer Dep. Tr. at 115:16–17 (“the amount of mitragynine was non-detectable”). Despite this undetectable amount, Dr. Williams opines on the “pharmacologically active alkaloids in kratom,” including mitragynine, which “represent[s] over 60% of the alkaloid content in most extracts,” and 7-OH, which “represents a minor component (less than 2%) of the alkaloid content of leaf extracts.” Ex. 1, at 2. Indeed, Dr. Williams agreed in his deposition “that mitragynine, not 7-OH, is the dominant alkaloid in the Kratom products at issue in this lawsuit[.]” Ex. 2, at 54:2–5. Despite claiming that that 7-OH is a “minor component” of the products at issue in this lawsuit, and further admitting that “7HMG only represents about 1% of the total alkaloid content in Kratom,” Dr. Williams makes conclusions regarding the overall pharmacological effects of kratom based on the trace amounts of 7-OH.

These conclusions are wrong and have no basis in science. Even the FDA has emphasized the distinction between kratom and 7-OH, and “issued a warning specific to 7-OH, distinguishing this chemical, from ‘kratom,’...[the] FDA was careful to make clear that its actions pertain to 7-OH products, which ‘no longer represent botanical kratom.’” Ex. 6, Expert Report of Jack Henningfield, at ¶ 161 (quoting U.S. Food and Drug Administration. (July 29, 2025a), FDA takes steps to restrict 7-OH opioid products threatening American consumers). Moreover, the FDA Commissioner stated that “7-OH is found in trace amounts in the kratom plant leaf. But this is not our focus. Our primary concern is the concentrated form of 7-OH. This is an important distinction. These concentrated 7-OH opioid products are far more dangerous than traditional kratom leaf

products.” Ex. 6, at ¶ 162 (quoting U.S. Food and Drug Administration, Author: Makary, M. A. (July 29, 2025c), Dear colleague letter: Warning about 7-hydroxymitragynine (7-OH)). As such, even the natural form of 7-OH is not relevant to the products that Harmony Moller allegedly ingested, O.P.M.S. Silver kratom capsules and powder, because of the undetectable amounts in the products. Dr. Williams’ opinions and testimony would mislead the jury and would not “assist the trier of fact to understand the evidence or to determine a fact in issue.” *Daubert*, 509 U.S. at 591.

Additionally, Harmony was reported to have 150 ng/mL, as reported by NMS Labs, or 158 ng/mL, as reported by UCSF. *See* Ex. 7, ST. TAMMANYCORONER_MOLLER00014, 00019. This amount of kratom “is so low,” and is much lower even than the studies conducted on kratom. Ex. 3, Huestis Dep. Tr. at 53:2; *see also* Ex. 4, McCurdy Dep. Tr. at 54:4–15; Ex. 5, Boyer Dep. Tr. at 182:1–8. This exceedingly low amount, in conjunction with the trace amounts of 7-OH in natural kratom products as a whole, makes Dr. Williams’ opinion on 7-OH even less relevant.

Dr. Williams’ opinions and testimony on 7-OH should be excluded because he focuses on synthetic, purified 7-OH, which is irrelevant as it is not present in the product at issue here. Less than 1% of the alkaloids of O.P.M.S. Silver kratom capsules and powder, the only products at issue here, are natural 7-OH, and thus the pharmacology of kratom as a whole is not determined by the pharmacology of the trace amounts of 7-OH. Allowing Dr. Williams’ opinions and testimony on 7-OH to be presented at trial would not “assist the trier of fact to understand the evidence[.]” *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 245 (5th Cir. 2002) (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 591).

IV. CONCLUSION

For the foregoing reasons, the Court should exclude the testimony of Dr. Christopher Williams relating to 7-Hydroxymitragynine. Defendant requests a hearing for argument on this motion prior to trial in this case.

Dated this 2nd day of March, 2026.

Respectfully Submitted

By: /s/ Gwendolyn C. Payton

Gwendolyn C. Payton (*pro hac vice*)

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CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of March, 2026, a copy of the foregoing document was filed with the Clerk of Court and served on all counsel of record via the Court's ECF System.

/s/ Gwendolyn C. Payton

Gwendolyn C. Payton