

When Genetics Meets Birth Trauma: Jacob D. Fuchsberg Law Firm Breaks Down Who Decides What Injured a Newborn's Brain

New York City, New York Oct 26, 2026 ([Issuewire.com](https://www.issuewire.com)) - Bradley S. Zimmerman, an attorney at Jacob D. Fuchsberg Law Firm, has published a commentary on how New York's Frye standard applies when a defendant in a birth injury case points to genetics as the cause of a child's brain injury. The article, titled "When genetics meets birth trauma: Frye, medical causation, and the brain-injured newborn," appeared in Westlaw Today's Practitioner Insights Commentaries on Sept. 17, 2026 (2026 PRINDBRF 0419).

Why Genetic Defenses Are Increasingly Raised

Birth injury claims turn on whether medical care departed from accepted practice and whether that departure caused a child's permanent neurologic impairment. The commentary notes that plaintiffs have long argued that a delayed cesarean delivery caused hypoxic-ischemic encephalopathy (HIE), a brain injury resulting from reduced oxygen and blood flow around birth. Defendants traditionally responded that no such event occurred or that the injury began before labor.

Newer testing has added another defense. Chromosomal microarray analysis detects small missing or extra pieces of chromosomes, and whole-exome sequencing examines the protein-coding regions of the genome. According to the commentary, defendants now frequently cite such results to attribute a child's impairments to a congenital or genetic disorder.

What the Frye Standard Requires

Frye v. United States, 293 F. 1013 (D.C. Cir. 1923), requires that a scientific principle underlying expert testimony have gained general acceptance in its field. The commentary explains that New York has not adopted the federal Daubert standard, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and that Frye focuses on an expert's methodology rather than conclusions. Courts do not resolve disputes between competing experts at this stage. Questions of weight remain with the trier of fact.

Two Second Department Decisions

The commentary contrasts two decisions of the Appellate Division, Second Department. In *Lugo v. New York City Health & Hospitals Corp.*, 89 A.D.3d 42 (2d Dep't 2011), a trial court excluded expert testimony that an infant's neonatal hypoglycemia caused periventricular leukomalacia, a form of brain injury. The Second Department reversed, reasoning that experts may rely on a synthesis of accepted science even when no study matches the exact facts.

In *Terehoff v. Frenkel*, 248 A.D.3d 1308 (2d Dep't 2026), a claim linked preterm labor management to a child's autism. The commentary reports that the court found too great a gap between statistical association and the expert's causation theory because the mechanism is unknown. Read together, the author writes, the decisions show that Frye allows reasoned synthesis of accepted science but not association or diagnostic labels alone.

Why Genetics Is Not Causation

The central argument is that a genetic diagnosis identifies a condition but does not show that the condition caused a particular child's injuries. The commentary notes that many genetic disorders involve incomplete penetrance, meaning a person with a disorder-causing variant may not develop the disorder, and variable expressivity, meaning people with the same disorder can show different symptoms. A child may carry a genetic variant and also sustain an oxygen-deprivation injury during labor. A genetic condition may add developmental vulnerability without explaining findings such as metabolic acidosis, seizures soon after birth or imaging that shows acute hypoxic injury.

Questions for Evaluating Competing Opinions

The commentary proposes that courts ask whether an expert identifies a mechanism linking the proposed cause to the injury, whether the opinion rests on peer-reviewed literature or only observational association, whether it cites markers of birth trauma such as fetal monitoring, cord blood gases, Apgar scores, seizures and neuroimaging, and whether it separates medical diagnosis from legal causation. It stresses that these questions do not require a court to decide which expert is correct.

"A diagnosis is not a causation opinion," Zimmerman wrote. He describes a genetic diagnosis as "the beginning of the inquiry" rather than a substitute for a reliable causation analysis, and he concludes that a court's role is to confirm that each medical theory has a demonstrable scientific foundation before it reaches a jury.

About Jacob D. Fuchsberg Law Firm

[Jacob D. Fuchsberg Law Firm](#) is a New York personal injury and civil rights law firm. Its practice includes medical malpractice, birth injuries, hospital negligence, misdiagnosis and wrongful death. The firm serves clients across the five boroughs and Long Island, offers free consultations and handles injury cases on a contingency fee basis.

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