

Duties and Professional Opportunities, Part II

Preston Fitzgerald, Sr., DC, CDE-I, CICE, CIFCME

What Forensic Chiropractors Do

The forensic chiropractor must have a solid understanding of clinical skills to perform a thorough orthopedic and neurological examination, using medically accepted references and algorithms.^{4,11}

Use of the *AMA's Guides to the Evaluation of Permanent Impairment*, 5th edition¹² is a must! If something is not documented (in writing), it (*de facto*, or "in reality") never happened. Therefore, it is imperative that the forensic chiropractor documents everything.

The legal requirements for qualifying as an expert forensic examiner witness include knowing and understanding the Federal Rules of Evidence, rule 702:

"If scientific, technical, or other specialized knowledge will assist the trier of fact (judge/gatekeeper) to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, expertise, training, or education, may testify thereto in the form of an opinion or otherwise. The forensic chiropractor (witness/expert) must be qualified by knowledge, skill, expertise, or education and assist the trier of fact to understand the evidence and determine the fact in an issue."

This is why we need to know our stuff.¹³ The issues of an expert's qualifications must be determined on a case-by-case basis.

What are the reasons that each judge and court will examine your qualifications in each case?

1. Each case is different and has different medical issues to be decided.
2. Forensic experts, like all other expert witnesses, will not be permitted to testify in areas outside their scope of expertise.

As a forensic chiropractic examiner, you must have specialized knowledge to offer the trier of fact. You can discuss issues such as diagnosis; prognosis; causation; impairment; and disability (in some cases). Qualifying is the concern and problem of counsel, who takes a hard look at the forensic issues in the case. The attorney must decide what kind of doctor is needed to testify; what training and experience are needed; and whether you are qualified to testify. It is very important that you give the attorney complete and precise information. Your *curriculum vitae* should be accurate and complete, with no "fluff".

The basic common-sense rule to follow as a forensic chiropractic examiner is: If you don't feel comfortable "in your gut," refuse the case and refuse to testify.^{14,15,16} It is important that an expert chiropractic/medical witness understands issues raised in the *Daubert* case (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786, 1993). The Supreme Court held that the trial court as the so-called "gatekeeper" under Rule 702, "must ensure that any and all scientific testimony or evidence is not only relevant, but reliable," and that there must be a "grounding in the methods and procedures." The knowledge "must be derived by the scientific method" to establish reliability,

and the knowledge may be "relevant" to the facts of the case. The further you stray from your area of expertise and accepted traditional cases and opinions, the more likely you are to be found unqualified to testify. Under *Daubert*, a physician will no longer be able to testify to causation in these cases based solely on his or her medical degree. The forensic chiropractic examiner's methodology in arriving at the opinion will be examined by the judge as a threshold matter.

Investigative Professional Opportunities

Certified independent forensic chiropractic medical examiners (CIFCME) are currently employed as consultants and examiners in a variety of capacities for government agencies; lawyers; public and other health care providers; criminal investigative organizations; and the insurance industry. Additional forensic chiropractic evaluation opportunities are available for the investigation of suspicious chiropractic medical claims.

There is an unidentified group of health care providers who are interfering with the public's trust and right to receive competent examinations, diagnostic studies and treatment. This group represents a waste of public health care dollars being spent today.

Every person pays for the price of unnecessary health care treatment, examinations and other schemes and scams. These include abusive, overutilized and fraudulent billing procedures.

Fraud in health care may potentially be reaching epidemic proportions. This can occur in the areas of diagnostic testing, upcoding and "unbundling," overutilized or abused diagnostic procedure codes. Not only have these suspicious medical claims become an arena for entrepreneurs without any chiropractic background, they become a source of income for treating chiropractors through various "kickback schemes."

CIFCMEs offer training and health care fraud investigation for patients, attorneys, criminal investigators, government agencies, special investigative units and insurers in the following areas:

- the technical aspects and proper chiropractic protocols of diagnostic testing;
- identifying chiropractic providers who use the procedure coding system to their financial advantage;
- forensic chiropractic peer review of diagnostic tests and procedures that can be cost-effective and stop the "churning" of the file;
- identifying medically unnecessary chiropractic diagnostic tests and procedures that can drastically cut cost in organizations;
- how the forensic chiropractic investigation and review of suspect files can benefit the claimant or patient;
- identifying warning signs from coding and billing practices that can alert the adjuster or SIU to potential misuse;
- identifying certain chiropractic providers who are intentionally and consistently cheating the health care system; and
- identifying appropriate chiropractic forensic investigative procedures to successfully combat the problem.

Independent Medical Examination and Medical/Legal Professional Opportunities

The CIFCME performs consulting services to clarify complex issues, such as impairment; work restrictions; maximum medical improvement; apportionment; causation; multifactorial causation; stability of condition; prognosis; risk factor identification; sensitivity; specificity; predictive value positive; stability over time; test acceptability; variability; regression to the mean; problems of interpretation; and predicting risk procedures for the following medical, legal, state or government

actions:

- Department of Transportation examinations;
- Federal Aviation Agency examinations;
- independent medical evaluations;
- medical malpractice and affidavit;
- standards of care issues;
- question preparation for depositions and trials;
- medicolegal research and testimony for plaintiff and defense; and
- sexual assault and battery investigations.

Author's note: Special thanks go to Roy Tolman, DC, of Albany, Georgia, who assisted in the preparation of this article; Dr. Dana Lawrence, dean of postgraduate and continuing education at the Lincoln College of postprofessional, graduate and continuing education, a division of the National University of Health Sciences; and James Winterstein, DC, president of the National University of Health Sciences, Lombard, Illinois. All of these people have provided academic advice and the educational transcripts to make the forensic chiropractic program possible. I also thank the Foundation for Chiropractic Education and Research for providing the research that is necessary for forensic chiropractic algorithms.

References (1-3 refer to Part I)

1. Fitzgerald PB. *Introduction to Forensic Examination*. National Board of Forensic Chiropractors Publications, 2001.
2. Expert Evidence: *A Practitioner's Guide to Law Science, and the FJC Manual*. St. Paul, Minnesota, West Group, 2000.
3. Federal Judicial Center (1994). *Reference Manual on Scientific Evidence*. Clark Boardman Callaghan, a division of Thomson Legal Publishing, Inc., 1995.
4. Bickley LS. *Bates Guide to Physical Examination and History Taking*, seventh edition, Lippincott, 1999.
5. Yeomans SG. *The Clinical Application of Outcomes Assessment*, Appleton & Lange, 2000.
6. Eder M, Tilscher H. *Chiropractic Therapy Diagnosis and Treatment*, Aspen Publishers, Inc., 1990.
7. Hoppenfeld S. *Physical Examination of The Spine and Extremities*, Appleton & Lange, 1976.
8. Cipriano JJ. *Photographic Manual of Regional Orthopaedic and Neurological Tests*, third edition, Baltimore, Williams & Wilkins, 1997.
9. Evans RC. *Illustrated Orthopedic Physical Assessment*, second edition. Mosby-Year Book, Inc., 2001.
10. Lawrence DJ. *Fundamentals of Chiropractic Diagnosis and Management*, Baltimore, Williams & Wilkins, 1991.
11. May VR, Martelli MF. *Guide to Functional Capacity Evaluation with Impairment Rating Applications*, Richmond, Virginia, The National Association of Disability Evaluating Professionals Publications, 1999.
12. Cocchiarella L. Andersson GBJ. *Guides to the Evaluation of Permanent Impairment*, fifth edition, Chicago, Ill, American Medical Association, 2001.
13. Babitsky S, Mangraviti J, Todd CJ. *The Comprehensive Forensic Services Manual: The Essential Resources for All Experts*, SEAK, Inc., 2001.
14. Black B, Lee PW. *Expert Evidence: A Practitioner's Guide to Law, Science, and the FJC Manual*, St. Paul, MN, West Group, 1997.
15. Faigman DL, Kaye DH, Saks MJ, Sanders J. *Modern Scientific Evidence: The Law and Science of Expert Testimony*, volume 1. St Paul, MN, West Publishing Co, 1997.
16. Faigman DL, Kaye DH, Saks MJ, Sanders J. *Modern Scientific Evidence: The Law and Science of Expert Testimony*, volume 2. St Paul, MN, West Publishing Co., 1997.

Preston Fitzgerald Sr.,DC,CDE-I,CIFCME
Manning, South Carolina
omyback@gte.net
www.forensicexaminers.org

(Editor's note: This is the second of two parts. Part I can be found at
www.chiroweb.com/archives/20/13/03.html

SEPTEMBER 2002

©2024 Dynamic Chiropractic™ All Rights Reserved