

# Chiropractic Personal Injury and Workers' Compensation Evaluations: Challenges and Needs

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*Editor's note:* "Forensic Chiropractic Algorithm" is a new column for 2001. Dr. Preston Fitzgerald Sr. is the founder and president of the National Board of Forensic Chiropractors, Inc. He is the co-author of the postdoctoral seminar series on the Independent Forensic Chiropractic Medical Examination, and serves on the Medical Advisory Committee for the South Carolina Workers' Compensation Commission. He has over 18 years of extensive clinical, consulting, administrative, teaching, and courtroom experience as a nationally recognized expert witness in litigation. He has consulted to plaintiffs and defense counsel and to state agencies as an expert in forensic chiropractic.

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Attorneys, judges, workers' compensation commissioners and insurers often think that cases involving chiropractic evaluation, examination and treatment are difficult. This is because many of them do not understand the role that chiropractic plays in the treatment of musculoskeletal problems. The chiropractic profession is still to some extent steeped in controversy. More important, 10-15 percent of personal injury cases involve chiropractic care. There are significant challenges and rewards for chiropractors that participate in forensic evaluations. The increasing recognition of the cost-effectiveness of chiropractic care and the increased utilization of chiropractic services make it even more important for everyone involved in these cases to understand chiropractic examination and treatment.

This article provides a practical approach for those chiropractors interested in understanding impairment and disability systems.

## Develop Medical/Legal Contacts

Your initial contact with medical groups must center on musculoskeletal pathology, forensic investigation, impairment, and disability conclusions. Young practitioners (up to five years in practice) need to know that they should approach the personal injury marketplace beyond the standpoint of providing excellence in health care. Narrative reports; an adequate physical examination; coming to a reasonable diagnostic conclusion; undergoing an appropriate clinical

course of treatment; contacting and consulting with specialists, if required; and delivering important requested medical documentation in a timely manner are also important. These initial contacts are the basis for your working forensic network.

To gather the requisite information, you will need many medical reports. When you refer to a specialist, examine a report and keep detailed records about how the conclusions are made. Keep detailed reports of how the forms and narrative reports were documented. The plaintiff and defense counsel will send you voluminous materials. You must study every page. Details win the engagement. It is the up-front time you spend that allows you to make credible decisions.

Be very careful during your initial contacts with medical and legal groups. These people are very busy. You should "get in and get out" quickly. I learn everything I can about a firm or medical practice and its training, to discover for what they are looking; I often refer out to second-opinion evaluators.

After we've discussed the complex pathology in question at length, I ask groups if they have training in impairment rating, or if they know about forensics. If they don't, I send information on my training, education and background, and copies of functional capacity evaluations and narratives. I offer to assist them with their patients to provide independent medical exams to determine impairment. They are looking for forensic evaluators to assist them in coming to conclusions. You should understand their needs and listen carefully to what they tell you.

Contacts are one of the most important elements of the forensic examiner's business; without them, you will not prosper. These include defense and plaintiff attorneys; psychiatrists/psychologists; mental health clinics; orthopedists; pediatricians; neurologists; physiatrists; hospitals; etc. These individuals will not only refer patients to you; they will also take referrals from you. Once specialists become aware of your forensic expertise, they will seek you out and refer independent evaluations to you.

You must not overstep the bounds of experience and training. Proper and timely referrals increase your credibility. If you attempt to treat a patient for long periods without clinical correlation, the patient will not get optimum results, and you will be marked by insurers as someone who "pads" your bills.

### Create a Client-Centered Practice

The client is the center of your practice. Taking the time to explain the injury or disease in simple terms will greatly enhance understanding and compliance to procedures. No two patients are alike; what seems overly simple to you may make no sense to the client. Explain each procedure step by step. Listen very carefully to what the patient tells you. Read between the lines.

If the client does not progress as anticipated, or you know that past medical history indicates it will be a complicated case, inform the patient that you will seek an evaluation from a specialist.

Explain the rules of protocol to a client referred to you for independent evaluation. Explain that you are not establishing a doctor/patient relationship. You must be very clear about this with the client.

Remember that your client is your business. You are working for this individual, and of course, the individual who referred him or her. All of your allotted time should be devoted to this client. If the client leaves unsatisfied, you have lost both the client and any referrals that person might have made.

### Dress for Success

You must create a professional image. Dress is as important as a brief CV. "Professional" means ultraconservative clothing and grooming. Go to a professional clothier and have a complete courtroom wardrobe fitted and custom-made. Dressing in this manner is an outward sign of success, as are your hair, fingernails, and all the other elements of personal grooming.

The latest in fashion statements should not even be considered. And no ponytails, earrings, jewelry of any sort, other than a wedding ring, should be worn.

#### Win Most, Lose a Few

Occasionally, a client will lose. Do not be discouraged. Do not lose your confidence or your control. Every case is a learning experience. Every case goes before a jury, judge, or similar legal panel. Those are the people who make the ultimate decision. The attorney is the leader or case manager. Whatever part you play, the case is not yours to win or lose.

It may be that your representation was right on. Losses often occur, however, when the forensic examiner tries to bolster his or her position, bandies about with the lawyer, or does anything other than provide expert neutral witness-appropriate comments.

You have to acquire enough skills in the courtroom with as many cases as possible to be a good forensic examiner. Forensic examiners seek only the truth. They conduct evaluations, examinations and inquiries, and they report the true results of their findings in an unbiased and objective manner.

With adverse jury decisions, however, the forensic examiner must perform a detailed document review of the transcripts to reflect on how the testimony impacted the jury. There are many factors that can lead to an adverse jury verdict for your client. Obtain the transcripts from the entire case. If you act as only an advocate for the plaintiff or defense and the judges see that bias in your testimony, this bias will ruin your career as a forensic examiner over time. Biased, inadequate, superficial junk science testimony is unacceptable.

Judges use two methods to screen a forensic expert's qualifications: They either verify that the expert has taken a cram course in medicine, chiropractic, or any other discipline, depending on the cases' subject, or they hire an expert to evaluate the plaintiff and defense experts' credentials and proffered testimony. This expert is referred to as the "forensic" expert. His or her findings should favor neither side.

#### Avoid the Negative

Never make any negative comments in the legal arena. I would advise the jury that I respect another expert's integrity, but I disagree in certain aspects with his/her analysis. Be sure that you do not libel someone, or have your words misconstrued as libelous. The most appropriate comment is, "It is my impression that my forensic analysis was more evidence-based."

You may be asked to undermine the credibility of another physician. That is a dangerous game, and only with verifiable, transcriptable, didactic clinical training, would I suggest you pursue this course. In most cases, it will result in an immediate loss of the jury's confidence in you. Maintain your professional conduct when you're being questioned, either in front of a jury or in a deposition.

If you have difficulty controlling your temper, get a video camera and have a lawyer friend ask you some very pointed questions before the case so you can see how you react on film. I found that films were also important for gesture analysis. Certain gestures can be perceived as negative by others -gestures you are not even aware of making. Use technology; go to conferences; train

yourself; and listen to positive audiotapes.

### Be Caring, Compassionate and Impartial

The quality and tone of your voice will influence juries. Be kind, compassionate and objective. The plaintiff or the defendant has only one story: how lives were destroyed, altered, or affected by this one injury that brings him or her to you for an independent medical assessment, or in a treating capacity. Your mission is to provide an impartial foundation for understanding so juries or judges can come to an award for either party. Arrogance and an attack mode will lead to your demise in this business. People want a doctor to be friendly.

In court, or in a deposition, explain every situation carefully. Always counter with a professional demeanor when an attorney tries to make you sound like you're callous, arrogant, or just a "hired gun." Remaining objective, understanding and compassionate will help bring people back to you, and it will encourage referrals.

### Educate Yourself

- Postgraduate courses and continuing education are essential to the forensic chiropractor. A good lawyer will discredit you if you cannot back up your diagnosis and treatment with proper training. Experience is great, but you cannot expand your business without the appropriate courses. Impairment and disability courses are a must. There are many courses (NADEP, AMA, etc.) Take all of them and incorporate the best of what you learn into your forensic examiner business.
- Subscribe to forensic; spinal; orthopedic; radiology; and neurological journals. Devote one hour a day every day to reviewing these journals. This step is essential. No matter how busy your practice is, being current on the latest developments and trends will lead to a larger percentage of positive outcomes. You must be prepared-because the other side will be.
- Numerous texts on the market will enhance your business and make it thrive.

### Access State-of-the-Art Narratives, Case Notes and Independent Medical Reviews

Reports are the cornerstone of the forensic examiner's trade. They must be all- inclusive, so there will be no cause for speculation. A two-page report may suit some companies; however, to prove a case, documentation is essential. Any test or procedure that has not been documented in a report is worthless, because as far as the court is concerned, it never happened.

My "simple" negative report on a child involved in an automobile accident with a diagnosis of "within normal limits" is a minimum of four pages. Many people may think a one-page report is sufficient. My view is that if the child has been involved in an accident, so has someone else. If that other person's case goes to court, so does the child's case. Without a detailed report, you will most likely lose the case.

### Stay Ahead of the Crowd

Be sure to deliver independent medical reports within five to seven workdays after your evaluation. My comprehensive reports are usually ready to be delivered within 36 hours after the patient has left the office. Speed and thoroughness have increased the "independent evaluation" portion of my business.

## Build Your Reputation with Tough, Complex Pathology Issues

While easy cases can make you financially successful, it's the tough, complex cases that will build your reputation. With the increase of managed care, many insurers, lawyers, physicians, etc., require the assistance of a highly trained and skilled professional.

### Computerize

Computers are essential in the operation of a forensic business. You need to be able to develop your database, edit your documents, send e-mail and faxes, and be able to network when your business grows. A color printer is becoming state-of-the-art; however, a high-quality laser printer is appropriate.

A computer camera (typically using digital technology) is essential if you are going to be performing functional capacity evaluations. You will be able to document each test with a picture, along with the verbal description. The camera also will document cuts; abrasions; dressing; edema; etc., that can be downloaded into a report.

Using a networking system between workstations eliminates having to swap floppy disks between machines. This is particularly important if one person has to finish a report that someone else started.

### Market Yourself

Study the latest, best marketing techniques. Let patients know where you are. Remember that most patients won't know the difference between a forensic chiropractor and a regular chiropractor if you don't tell them. Market yourself. Make the decision early to commit the resources needed to develop your practice.

### Evaluate Your Staff, Clinic and Equipment

Staff is a key ingredient of any successful business. Make sure that all members of your staff act in a caring, concerned manner. Equipment and the location of your practice is key, as well. While it's hard to move your clinic, you can make it more accessible. Make sure you have state-of-the-art equipment.

### Get Ready for Combat

What you do in the courtroom is combat. The attorney against your client will try to make you appear incompetent. There will be many "expert witnesses" who will refute everything you say and do. The proper training, education, experience and background, coupled with a sharp image and composed attitude, will help in your endeavor. Forensic chiropractors are in a league of their own. They work hard to earn that privilege.

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