Dynamic Chiropractic

PERSONAL INJURY / LEGAL

The Legal Anatomy of a PI Lawsuit

Under state tort law, if "Mr. Smith" is injured in an automobile accident, he can recover damages if it is proved that the other driver's negligence caused Mr. Smith's injuries. Damages include medical/chiropractic expenses, loss of income, and past and future pain and suffering. The purpose of the tort system is to provide victims a monetary award, essentially putting them back in the position they were in prior to the accident.

The injured party must prove by a preponderance of evidence (51%) that the other driver: (1) owed a duty; (2) breached that duty; (3) and that the breach was both the actual and proximate cause of the plaintiff's injuries. In most cases, plaintiffs need to proffer expert testimony to fulfill the causation and damage elements of their claim. Here, the chiropractor's notes, narrative reports and testimony come into play.

The Chiropractor as an Expert Witness

Damages

Federal Rules of Evidence 702, which many states emulate, states: "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise."

Under this standard, chiropractors, by their education and training, clearly qualify as expert witnesses. Being a qualified expert allows a chiropractor to testify on the nature and extent of the plaintiff's injuries, the treatment rendered, and the degree of permanent impairment. This testimony provides the necessary evidence to fulfill the "damage" element of the plaintiff's case. Following the testimony explaining the patient's injuries, the doctor is asked for an opinion of the cause of the patient's injuries. The question is usually framed: "Can you state to a reasonable degree of medical certainty what caused the patient's injuries?" At this point, the defense attorney has challenged the treating doctor's qualifications as an expert.

Causation

As previously noted, the plaintiff has to proffer evidence that the defendant was the actual cause of the injuries. In a case that has medical and scientific issues, expert testimony is necessary. In the 1993 case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* the U.S. Supreme Court addressed the reliability of expert scientific testimony.[1] The court held that there is no one specific test to determine scientific validity. However, it did set factors to be used by the trial court judge in determining whether to allow testimony. These factors include: (1) whether the theory or technique at issue can be (and has been) tested; (2) whether the theory or technique has been subjected to peer review and publication; and (3) whether the technique or theory is generally accepted within the relevant scientific community.[2]

Regarding scientific reliability of medical causation issues, the federal appellate courts have asked whether the expert rendering the opinion has successfully ruled out other possible causes of the

injury for which the plaintiff seeks redress.[3] Because of these rulings, the defense's trend is to challenge the treating physician's expertise on causation. If the physician cannot testify on causation in a complex matter, their patient's case will fail even though the patient was hurt. A local trial court judge recently said to me, "Guy, I am really frustrated by parties coming into my court room with their experts, both sides who are well qualified. The plaintiff's expert says the accident definitely caused the plaintiff's injuries, and the defense expert says no way."

A recent case decided in Indiana illustrates this point. In January 1988, the plaintiff slipped and fell over a vacuum cleaner hose at a Sears store.[4] The plaintiff hit his head when he fell and began to suffer from headaches and dizziness. Eventually, he was diagnosed with postconcussion syndrome.

At trial, the plaintiff called two expert witnesses: his psychiatrist and an emergency room doctor. These doctors clearly met the requirements of Evidence Rule 702 and were qualified as experts. They both testified on the nature and extent of the patient's injuries without any objection from the defense. However, when asked their opinions on the cause of the injuries, the defense objected. After a brief hearing, the trial judge allowed the testimony and the jury returned an award of $1.4 million. Sears appealed.

In overturning the jury verdict and remanding the case for a new trial, the Indiana Appellate Court reviewed the experts' testimony and found that the cause of the patient's injuries was not sufficiently reliable because the experts did not testify to the process used to arrive at their conclusion. The court stated that one expert should have attempted to rule out other possible causes of the plaintiff's injuries "in order to support his opinion with the degree of scientific reliability demanded by Evidence Rule 702."[5]

The handwriting is on the wall. When chiropractors are called as expert witnesses for causation, they must have their ducks in a row.

The following steps will allow you, the DC expert, to opine on causation:

- Acquire postgraduate training in the biodynamics of automobile injuries.
- Review and digest the literature pertaining to your patient's diagnosis.
- Review past medical records.
- Articulate a differential diagnosis in your records and rule out potential organic causes of the patient's condition.
- Formulate a plan to explain how and why your conclusions were reached, step by step.

Conclusion

Many chiropractors are the primary treating physicians for patients injured in automobile accidents. As such, they must possess the knowledge and skill to adequately perform in the medical-legal arena.

References

1. *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 509 U.S. 579 (1993).
2. Ibid, 593-594.
3. *Porter v. Whitehall Laboratories, Inc.* 791 F. Supp. 1335; affd. 9 F.3d 607, 613 (7th Cir., 1993).
4. *Sears, Roebuck & Co. v. Manuilov.* 700 N.E.2d (Ind. Ct. App. 1999).
5. Ibid.