Dynamic Chiropractic

PERSONAL INJURY / LEGAL

Quis Custodiet Custodes Ipsos? -- Who Will Watch the Watcher?

Arthur Croft, DC, MS, MPH, FACO

We built our country on the firm foundation of democracy, enshrining the principles of freedom of speech, freedom of religion, and a fair and equitable justice system. Often, however, the courts must rely on expert testimony from the scientific community in order to decide a point of law. And in doing so, the courts expose the vulnerability of a system waiting to be violated. Should a Ph.D in organic chemistry, earned 20 years ago, qualify as an "expert" to testify about the safety of toxic waste disposal and its impact on the environment based only on his degree? Should an orthopedic surgeon be permitted to comment on the safety of an upper cervical manipulation? The stakes riding on answers to questions like these may involve millions of dollars, the health of innocent citizens, and the reputations and careers of physicians and scientists.

In civil court, as pointed out by author Peter W. Huber, in his book Galileo's Revenge: Junk Science in the Courtroom, evidentiary standards have declined even though the standards for liability itself have grown more strict. Courts today tend to operate on the "let it all in" approach, assuming that 12 reasonable lay jurors will be capable of sorting between truth and perhaps carefully couched science fiction.

But the burning question remains: How carefully should the courts screen "experts?" A neurologist testified to the reasonableness and necessity of care rendered by a chiropractor in a medical malpractice case involving spinal manipulation. Without any formal training in chiropractic or spinal manipulation, and qualifying his testimony with only "it is my opinion," the neurologist succeeded in convincing the jury that the adjustment had been contraindicated, negligent, and had caused injury to the plaintiff.

In other instances, the "expert's" qualifications may be acceptable while the foundations of the arguments may be dubious. In a case similar to the one above, a chiropractor testified against another chiropractor accused of malpractice. He testified that the defendant doctor was negligent because he failed to perform the George's test prior to manipulation of the cervical spine. While George's test is universally considered a sine qua non prelude to this procedure, there is virtually no compelling scientific evidence to support this view. And, while the masses of chiropractors may pass this courtroom calamity off as one doctor's misfortune, they should instead listen for the howls of the hounds off in the distance. Trials like these produce case law which may be used as yardsticks for future cases.

Courts likewise allow "experts" to transgress the bounds of their own knowledge, while offering little in the way of support for their opinions. Many is the time I've listened to orthopedists assure jurors that soft tissue injuries from whiplash accidents are self-limiting and heal within 6-12 weeks. Despite the virtual vacuum of support for these fantasies and the overwhelming evidence to the contrary, the court usually asks for no verification of the "expert's" opinions.

Some courts have recognized the need to use "experts" from the same discipline (i.e., DCs testifying for or against DCs) but in some cases have burst through the envelope of reasonableness. A chiropractor in Michigan "testified" on a videotape in a personal injury case in which a California chiropractor had been the treating doctor. Although the Michigan doctor had not seen the history form, exam form, x-rays or the plaintiff, he testified confidently that the treating doctor's opinions were erroneous and that his treatment was excessive and unnecessary.

Recently, the director of one of the largest medical review companies attempted to foist upon me some imaginary "research" concerning CAD trauma and the need for care, stating that the 80th percentile figure for treatment of an 847.0 (cervical strain/sprain; whiplash) diagnosis was three visits! When we challenged him for his "research," he quietly backed down. Unfortunately what passes for "science" or "research" is already being decided by judges and juries, while the fates and futures of real scientists, physicians, and patients hang in the balance.

In the midst of this legal/scientific imbroglio we, as physicians, must be diligent in our efforts to bring to light the truths of our science, while the courts, if they truly aspire to attain that irrefragable justice for all must require an acceptable and credible foundation of support for an "expert's" opinion beyond the mere qualification of the "expert," by virtue of the initials behind his name. This foundation should be based upon research and learned treatises, not personal opinions or observations. If we fail, we in the chiropractic community may find that our standard of care and scope of practice has been decided for us already, through the courts, by a nonchiropractic and nonscientific fringe group.

Arthur Croft, D.C., M.S., FACO
Coronado, California

Editor's Note:

For more on personal injury, consult Dr. Croft's video, "Advances in Personal Injury Practice," #V-435, on the Preferred Reading and Viewing List, pages xx.

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