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## **A Few Common Cross-Examination Questions**

By Arthur Croft, DC, MS, MPH, FACO

'Tis the season (or at least approaching the season) for closing out the year's medicolegal cases. Many of your PI cases will be settling, arbitrating, or going to trial, so I thought I'd take the opportunity to mention just a few of the common medicolegal cross-examination questions likely to be coming your way soon.

Most of these questions are the same old utilitarian nuts and bolts legalese lawyers have used to gainsay chiropractors for years. The questions continue to be effective precisely because they continue to trip up doctors in predictable ways. Thus, knowing what to expect offers a huge strategic advantage to the field practitioner: developing effective and concise answers before these questions are ever asked is infinitely more satisfying than realizing an hour after your testimony what would have been the best answer. Without further fanfare, here are a few of the more common questions, followed by some ideas on how to best construct your answers to them.

Q: "Do you have any degrees in engineering or biomechanics, or are you an accident reconstructionist?"  
(Sometimes you are asked to reaffirm a negative statement: "Doctor, you're not an engineer or an accident reconstructionist, are you?")

This question is designed to preempt your later comments regarding causation between motor vehicle crashes (MVC) and alleged injuries. If the court allows such testimony from you, it will at least carry less weight coming from someone without engineering or related credentials.

The solution to this common problem would actually have started with a solid direct examination. Your patient's lawyer would have asked you if you had any training in biomechanics. You would have answered in the affirmative since you studied biomechanics, essentially, throughout chiropractic school, including some courses bearing that title. Moreover, you could recite the relevant postgraduate courses you had attended, as well as the scientific literature and other learned treatises you had studied.

Q: "Doctor, isn't it true that D.D. Palmer was a fish peddler before he became a chiropractor?"

This is one of my favorites. When you are asked questions like this one, it usually means that the lawyer asking them doesn't have anything of great substance, otherwise he wouldn't waste time with this genre of muckraking. Most jurors, after all, will see it as just that, and there's little to be gained by risking the jury's disapproval.

A student of mine told me that he had been asked this question once. When I was asked the question years later, I was floored, but amused. After a moment's reflection, I answered that I didn't know D.D. Palmer's personal history well enough to answer the question, but if it were true, it would be a thing he shared with Hippocrates -- the father of modern medicine. I think that evened the score, since neither the lawyer nor I really knew whether either Palmer or Hippocrates ever really sold a fish, but it was certainly too late to look up.

Q: "What books did you consult in diagnosing this patient's condition (or in arriving at the opinions you are expressing in this case)?"

I think that the truthful answer most of the time is going to be, "None, actually." Usually, we don't need to consult with a textbook in making our diagnoses. A rare form of pheochromocytoma, yes. Lumbar disk herniation, no.

Incidentally, when you are asked how you formed your opinions, or what your opinions are based upon, the best (and clearly most accurate) answer is, "My opinion is based on my training as a chiropractic physician (or doctor of chiropractic, if you prefer), my experience with similar cases (or patients, if you refer) and the books and scientific/clinical papers I've read (and, of course, any other training or experience you might have had)."

Q: "You're not a medical doctor, are you?"

Depending on the degree of invective thrown your way, this might even be "You're not a real doctor" or "You're not a doctor, are you?" It usually comes attached to a string of similar questions designed to impugn your second-class standing in the medical community, such as, "You don't have any formal medical training, do you?" or "You never went to medical school, did you?" or "You're not a member of any recognized medical association, are you?" This continues on with hospital privileges, membership in the AMA, the privileges of prescribing medication and so on.

The implication seems to be that medical doctors must have a monopoly on knowledge and wisdom. Therefore, whatever your opinion might happen to be, their expert medical opinion will always eclipse yours, a handy thing indeed if their experts know nothing about the subject at hand.

This problem is again best handled during the direct examination, which precedes the cross-examination. Here the patient's lawyer asks you about your training: how many years of college you had before chiropractic school; how many years in chiropractic school; what subjects did you study; what is the philosophy of chiropractic (i.e., drugless, non-surgical); what does a chiropractor actually do for patients such as yours; why does it work; how do we know it works; etc.

By the time this is finished, most jurors will realize that you were the right choice of provider and had the most to offer. And needless to say, those cross-examination questions will no longer be effective, because the jury will already know that you don't, for example, prescribe drugs. In fact, they'll now know why you don't! And in case you haven't noticed, drugs and surgery have become progressively declassé. Alternative medicine is in.

(It's been interesting for me to be a part of this profession at this watershed of general acceptability. When I was a new DC, we really didn't have much in the way of high-quality scientific validation. So when our detractors argued that we were unscientific and unproven, we really didn't have any stinging riposte to send their way. Gradually, though, the shoes have changed feet. While almost all medical remedies for back pain have failed to pass scientific muster, chiropractic continues to come up smelling like roses. Now when I go to medical conferences, I sense a big change in attitude -- a positive change.)

Q: "Chiropractors read/interpret x-rays differently than medical doctors, don't they?"

The words "see things that really aren't there" hang gravidly, yet unspoken, in this question. My answer is that with regard to pathology, there shouldn't be any difference at all in the interpretation between DCs and MDs. After all, we study mostly from medical textbooks of radiology. However, when it comes to spinal biomechanics, chiropractors do usually take more of an interest in subtle lesions. Still, when it comes to spinal biomechanics, not all of our medical brethren are voiceless. White and Panjabi<sup>1</sup> have spent considerable time in this area. Griffiths, et al.<sup>2</sup> have more recently validated a radiographic procedure for analyzing whiplash trauma.

## **Final Thoughts**

As is illustrated in two of these questions, a careful direct examination must precede your cross-examination. Without it, you are essentially a sitting duck. Do you suppose they teach lawyers how to conduct a direct examination of a chiropractor in law school? Needless to say, a chiropractic case is nearly antipodal to a medical case, and this means you must sit down with the lawyer long before a trial or arbitration and discuss the best ways of bringing forth your testimony.

## *References*

1. White AA, Panjabi MM (eds.) Clinical Biomechanics of the Spine, second edition. Philadelphia, J.B. Lippincott, 1990.
2. Griffiths HJ, Olson PN, Everson LI, Winemiller M. Hyperextension strain or "whiplash" injuries to the cervical spine. Skel Radiol 1995;24(4):263-266.

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