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The "Personal Injury" Chiropractor: Increasing Your Value

By Lawrence Newman, DC, Esq.

As a chiropractor and an attorney, I have played the personal injury game from multiple perspectives. As a chiropractor, I have testified as a treating doctor and an expert witness. As a lawyer, I have deposed and cross-examined everyone from police officers to doctors, and presented jury trials.

Lawyers and the courts respect language. Careful and thoughtful communication can make the difference between success and failure in the legal arena. Much as a blacksmith bends and forges iron into various shapes, a lawyer is a "wordsmith" who uses vocabulary to persuade and influence. Words can evoke emotion; they can elicit memories; they can connote deep meaning and create pictures. Above and beyond their literal definitions, words are powerful tools for communication on and off the page. Winning at personal injury litigation requires language precision.

Many chiropractors feel that attorneys want voluminous notes, records, and documentation. In truth, the quality of medical records, documentation, and services is always a more important determinate of case value. It is time for chiropractors to increase their value within their offices as well as the courtroom.

Who Is an Expert?

Expert opinions go back thousands of years. In Rome, philosopher and poet Virgil said "*Experto credite*," or "Believe an expert." Many cases hinge on the value of expert opinions. In most cases, evidence of damages cannot be brought into evidence and thus presented to a jury without the use of experts.

So often I meet chiropractors who do not see themselves as experts at anything. This inferiority complex makes them discount and devalue their services. Worse yet, they wrongly believe only "real" doctors with a "real" education can testify. This is just not true!

Under the Federal Rules of Evidence, a court is primarily concerned with whether an expert's knowledge is such that his or her opinions can assist the "trier of fact": the jurors. Under Pennsylvania law, for example, and in most jurisdictions, a person is qualified as an expert by his or her knowledge; skill; experience; training; or education. This person is qualified and may testify in the form of an opinion. In many states, the expert may only use facts or information to render an opinion, based upon facts and data reasonably relied upon by experts in his or her particular field.

Chiropractors can testify and render opinions because of their knowledge; skill; experience; training; or education. These opinions do not have to be limited to the spine, although most people see the chiropractor as simply the "back doctor." For example, a DC who has diagnosed, evaluated and rendered care to people with carpal tunnel syndrome (CTS) is imminently qualified to testify and give an expert opinion in that area. Juries are made up of everyday people; those in search of help value experience over training and education. If a doctor has diagnosed and treated 50 people with CTS, he or she has more "hands-on" knowledge and expertise than a doctor who has not. Jurors will generally give that doctor's opinion greater weight than an Ivy League professor with no patient contact.

Opinion Basics

A doctor must use the magic legal words when rendering opinions: "All opinions are within a reasonable degree of medical/chiropractic certainty/probability." This phraseology must be used because a trial is based upon a standard of proof. Juries most often act as the fact-finders and interpreters of the law. Juries must weigh evidence. Your opinions are evidence or proof of damages from an event. The weight or value of an expert opinion is based in probability and certainty. Juries must evaluate these medical/chiropractic-educated, experienced opinions.

The following seven opinion areas are simple. That is why they are commonly overlooked by doctors.

1. Dynamic diagnoses that evolve from case presentation to final discharge. These are prioritized, supported, and take into account all prior underlying medical and/or accident history.
2. All treatment rendered was necessary, reasonable, and customary for these conditions/injuries.
3. All treatment is related to the accident.
4. Any and all permanency or disability is related to this accident, if not apportionment.
5. Any and all restriction or limitation is related to this accident, if not apportionment.

6. Prognosis and likelihood of future problems, costs associated with future treatment.
7. All injuries and/or conditions are related to the accident.

You can only increase in value when you see yourself as valuable. See yourself for what you truly are: an expert in multiple areas - anatomy, physiology, function and dynamics; an educated, skilled and experienced practitioner of chiropractic. I believe DCs should affirm their expertise and be proud of their specialized art and science.

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