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KEITH KARR

Chiropractors as Experts

> *"A review of [the]law supports a chiropractic physician's right to testify as an expert."*

I. INTRODUCTION

The use of chiropractic treatment for health care management has steadily increased in recent years. There have been numerous studies conducted determining the effectiveness of chiropractic treatment in many different areas, including acute, chronic, and general low-back pain, neck pain, headaches, carpal tunnel syndrome and fibromyalgia.[1] These studies often conflict with the perception of some within the legal and medical communities that chiropractic treatment fails to provide sustained benefit.

In 1994, the U.S. Department of Health and Human Services, Agency for Health Care Policy and Research, issued its groundbreaking Report that evaluated various treatments for acute low-back pain. The Report surprised many in its findings that spinal manipulation was considered an effective and widely accepted form of treatment for acute low-back pain.[2] Further research, such as the 1998 study published in the *Annals of Internal Medicine,* found that "spinal manipulation offers both pain relief and functional improvement."[3] Other studies comparing accepted forms of treatment for chronic and general low-back pain by medical practitioners have determined that chiropractic treatment, such as mobilization and spinal manipulation, are just as effective, if not more so, than medical treatment.[4]

Despite the widespread acceptance of chiropractic as a legitimate form of treatment, chiropractic doctors are sometimes challenged as to their qualifications to testify as experts in personal injury cases. A review of applicable statutes, rules and case law supports a chiropractic physician's right to testify as an expert witness.

II. ADMISSION OF EXPERT TESTIMONY UNDER STATUTE

An analysis of this issue begins with the general principles set forth in Evidence Rule 702, which states that witness qualification as an expert requires the possession of specialized knowledge or skill, and that expert testimony will be admitted only if used to explain matters beyond the common knowledge of lay persons. Expanding upon this definition, the Fourth District, in *Faulkner v. Pezeshki,* stated that "[t]he real [test is] whether a particular witness offered as an expert will aid the trier of the facts in its search for the truth. It is a general rule that it is not required that such witness be the best witness on the subject."[5] Thus, a chiropractic physician must possess "specialized knowledge" as a prerequisite to testifying as an expert. This requirement is easily satisfied as demonstrated in the discussion that follows.

III. CHIROPRACTIC PHYSICIAN TESTIMONY AS TO CAUSATION

Demonstrating the causal link between an act and an injury is central to every personal injury case. The Ohio Supreme Court, in *Darnell v. Eastman,* specified that causal connections between injury and subsequent disability must be established by "medical witnesses" unless it was "so apparent as to be matters of common knowledge".[6] In 1992, the Ohio Supreme Court expanded upon its previous decision in *Darnell* by holding that experts may include individuals who are not classified as physicians but are capable of giving evidence relevant to diagnosis of a medical condition. These witnesses are able to offer expert testimony as to a medical condition so long as the testimony relates to and is within the area of expertise of the witness.[7] In *Shilling,* the expert testimony offered was by a Ph.D. who specialized in neurotoxicology. The testimony was offered to prove that ingestion of gasoline caused injury to the plaintiff's brain and nervous system.[8]

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The Ohio Supreme Court's decision in *Darnell* was consistent with the 1982 case of *Shackelford v. Cortec, Inc.*, in which the Twelfth District Court of Appeals held that chiropractic testimony was admissible. The court stated that "[t]he practice of chiropractic falls within the general definition of the practice of medicine, albeit, a very limited area of such a practice."[9] The court added that "[a] licensed chiropractor is qualified to give an opinion 'to a reasonable degree of medical and chiropractic certainty' relative to the diagnosis of occupational injuries."[10]

In the 1991 case of *Green v. BWC*, the Seventh District Court of Appeals interpreted the Ohio Rules of Evidence to allow a chiropractic physician to testify as an expert when basing testimony as to causation on a "reasonable degree of medical certainty."[11]

Because licensed chiropractic doctors are qualified to give an opinion to a reasonable degree of medical and chiropractic certainty relative to the diagnosis of occupational injuries pursuant to R.C. § 4734.15, it logically follows that they should also be permitted to testify as to the causation of that condition.[12] Although *Shackelford* concerned a workers' compensation claim, a treating chiropractic doctor's opinion as to causation does not change in substance and/or admissibility merely because the testimony is solicited in a workers' compensation case rather than a cause of action involving a personal injury.

Additionally, the First District Court of Appeals, in *Fiorini v. Whiston*, held that chiropractic treatment expenses are included in calculation of damages arising from personal injury.[13] Specifically the court admitted chiropractic treatment bills into evidence under R.C. § 2317.421, which states in pertinent part:

> In an action for damages arising from personal injury or wrongful death, a written bill or statement or any relative portion thereof itemized by date, type of service rendered, and charge, shall, if otherwise admissible, be prima-facie evidence of the reasonableness of any charges and fees stated therein...

These decisions are reflective of the broad scope of chiropractic practice set forth in R.C. § 4734.09, which reads in pertinent part:

> [P]ractice as a chiropractor means utilization of the relationship between the musculoskeletal structure of the body, the spinal column and the nervous system in the restoration and maintenance of health, in connection with which patient care is conducted with due regard for first aid, hygienic, nutritional and rehabilitative procedures and the specific vertebral adjustment and manipulation of the articulations and adjacent tissues of the body. **The chiropractor is authorized to examine, diagnose and assume responsibility for the care of patients.** [Emphasis added.]

In addition, OAC § 4734-1-06(A), states in part:

> It shall be the objective of a chiropractic college approved by the Chiropractic Examining Board ("Board") to prepare the Doctor of Chiropractic as a **primary health care provider, as a portal of entry to health care delivery system**, ... [Emphasis added.]

Confusion surrounding the ability of a chiropractic physician to testify as to causation in personal injury cases stems largely from a ruling by Judge Bond on a *Motion in Limine* that excluded chiropractic expert testimony. *Shartes v. Senz*, unreported, Case No. CV 97 01 1126, Court of Common Pleas Summit County (1999). Judge Bond's ruling focused on the inability of the chiropractic doctor to offer an opinion based upon "reasonable medical certainty." Two years later, Judge Spicer of the same court parted with Judge Bond and allowed the admission of chiropractic expert testimony.[14] The court stated:

> [I]n a personal injury action in which the only testimony is that of the chiropractor, the testimony based upon the chiropractor's examinations and treatment of the Plaintiff goes to the weight of evidence and may be considered by the jury as to the nature and extent of Plaintiff's injuries after the accident, Defendant's *motion in limine* is denied.[15]

Judge Spicer's decision appears consistent with case law, statutes and administrative code provisions.

V. CHIROPRACTIC PHYSICIAN TRAINING, REASONABLE TREATMENT, AND COST EFFECTIVENESS

A. What Training Must Chiropractic Physicians Receive?

As exemplified by Judge Bond's ruling, the position of parties asserting that doctors of chiropractic do not fall within the legal definition of an "expert" most often hinges on the assumption that chiropractic physicians do not receive sufficient training to render opinions on causation. Such a view of chiropractic training is more often based upon perception than fact. For instance, R.C. § 4734.15 provides that a licensed chiropractor is "authorized to examine, diagnose, and assume responsibility for the care of patients." This high standard of care requires chiropractic physicians to have an understanding of all types of human conditions, including those that are beyond their authority to treat.[16]

The laws governing chiropractic education are extensive and include four thousand hours of class time in subjects such as anatomy, biochemistry, physiology, microbiology, pathology, public health, laboratory diagnosis, gynecology, obstetrics, pediatrics, geriatrics, dermatology, roentgenology, psychology, dietetics, orthopedics, and rehabilitative procedures.[17] The National Board of Chiropractic Examiners reports that both government inquiries and independent investigations show that, by current standards, chiropractic training "is of equivalent standard to medical training in all pre-clinical subjects."[18]

B. What Constitutes Reasonable Treatment Under Accepted Guidelines?

Reasonableness of treatment is an important issue that arises with respect to the duration of care rendered by chiropractic doctors, especially in personal injury cases. The Ohio State Chiropractic Association (OSCA) publishes recommended guidelines[19] pertaining to this issue that are supplemental to what are referred to as the Mercy Guidelines.[20] Each of these publications specifies accepted treatment parameters for patients. For example, the OSCA recommends

one to six weeks of treatment with a frequency between one and three treatments per week for relief from an acute lumbo-sacral sprain/strain when the diagnosis is mild.[21] Each set of guidelines serves as a helpful tool in assessing the reasonableness of care when utilizing chiropractic physician testimony.

C. Is Treatment by Chiropractic Physicians More Cost Effective Than That of Medical Doctors?

Recent studies indicate that the cost-effectiveness of chiropractic treatment over that of medical or osteopathic physicians has risen.[22] For example, the results of a 1993 cost comparison study involving approximately 395,000 patients showed that those receiving chiropractic care incurred significantly lower health care costs than to patients receiving treatment by only medical or osteopathic physicians.[23] Another cost comparison study published in the *Journal of American Health Policy* in 1992, after surveying approximately 2 million chiropractic patients, reported that the use of chiropractic treatment diminished the need for both physician and hospital care.[24]

VI. CONCLUSION

Applicable statutes, rules and case law support a chiropractic physician's right to testify as an expert witness in personal injury cases. The Ohio Supreme Court has determined that persons classified as other than physicians are capable of testifying to causation, with appellate courts including chiropractic physicians under the ruling. These decisions, together with statutes, treatment guidelines, and chiropractic physician education and training support the admission of a chiropractic doctors' testimony as expert testimony.

[1] National Board of Chiropractic Examiners, "Studies on Chiropractic 2000", p. 3-9.

[2] Bigos, Stanley J., O. Richard Bowyer, G. Richard Braen, et al. 1994. *Acute Low Back Problems in Adults: Clinical Practice Guideline No. 14.* AHCPR Publication No. 95-0642. Rockville MD: Agency for Health Care Policy and Research, Public Health Service, U.S. Department of Health and Human Services.

[3] Micozzi, Mark. 1998. "Complementary Care: When is it Appropriate? Who Will Provide It?" *Annals of Internal Medicine* 129: 65-66.

[4] National Board of Chiropractic Examiners, "Studies on Chiropractic 2000", p. 4-5.

[5] *Faulkner v. Pezeshki* (1975), 44 Ohio App. 2d 186 at 193.

[6] *Darnell v. Eastman* (1970) , 23 Ohio St. 2d 13 at 17.

[7] *Shilling v. Mobile Analytical Services, Inc.* (1992), 65 Ohio St. 3d 252, citing to the Syllabus by the Court.

[8] *Id.*

[9] *Shackelford v. Cortec, Inc.* (1982), 8 Ohio App. 3d 418 at 419.

[10] *Id.* at 418, citing the Syllabus by the Court.

[11] *Green v. Administrator, Bureau of Workers' Compensation* (7th Dist., 1991), Case No. 593, *unreported.*

[12] *Cellarik v. Picoma Industries, Inc.* (7th Dist., 1989), Case No. 88-B-19, *unreported.*

[13] *Fiorini v. Whiston* (1993), 92 Ohio App. 3d 419. *See also, Rimsky v. Snider* (1997), 122 Ohio App. 3d 248.

[14] *Williams v. Bartley* (2001), Case No. CV 00 05 2278, *unreported.* Motion in Limine Ruling.

[15] *Id.*

[16] OAG Opinion 83 002.

[17] *See* 4734-1-06 OAC.

[18] National Board of Chiropractic Examiners, "Studies on Chiropractic 2000", p.14.

[19] Ohio State Chiropractic Association (1996) *Chiropractic Treatment Guidelines.*

[20] Haldeman, Scott, David Chapman-Smith and Donald M. Peterson, Jr. 1993. "Guidelines for Chiropractic Quality Assurance and Practice Parameters: Proceedings of the Mercy Center Consensus Conference."

[21] Ohio State Chiropractic Association (1996) *Chiropractic Treatment Guidelines,* p. 27.

[22] National Board of Chiropractic Examiners, "Studies on Chiropractic 2000", p.11.

[23] Stano, Miron (1993) "A Comparison of Health Care Costs for Chiropractic and Medical Patients, *Journal of Manipulative and Physiological Therapeutics* 16, No. 5:291-299.

[24] Stano, Miron, Jack, and Thomas J. Allenburg. 1992. "The Growing Role of Chiropractic in Health Care Delivery," *Journal of American Health Policy* (November/ December): 39-45.

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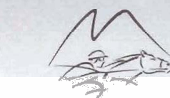

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