The chiropractic provider characterizes the doctor-patient relationship by being an advocate for the patient. In the workers’ compensation arena, advocacy is a growing concern directed toward the chiropractic profession. The profession has seen a significant drop in revenue due to managed care organizations (MCOs) and a tremendous increase in newly graduated providers who are trying to cope with not only the current reimbursement environment but also large student loan and practice-opening debt.

Many of these chiropractic providers will sign papers excusing the patient from work because of the subjective complaints of pain (without outcome assessment tools or objective findings verification), or they will prolong care by continuing to schedule patients one to three times a week for months, or even years. Some would suggest that these practice tendencies are more for economic gain on the part of the provider, rather than for the benefit of the patient.

Forensics is the science that deals with the application of medical facts to legal issues and proceedings including workers’ compensation. If forensic examiners have the knowledge, skill, training, or experience within the area in controversy, they may be retained as an expert witness by opposing parties in workers’ compensation (legal) disputes. The witnesses assist the trier of fact before a case enters a workers’ compensation hearing. The expert evaluation and/or opinion is based on scientific or document investigation, not circumstantial evidence or the unreliable testimony of witnesses (junk science). The forensic examiner can contribute to procedural processes by using science in the search for facts in workers’ compensation matters.

It has been pointed out that keeping a worker off the job on the average costs about $200 a day. It is well known that the longer (>90 days) a person is out of work, the more unlikely it is that he will return to the work force. Over the years, many forensic examiners have observed that individuals with delayed recoveries had a tendency to acquire learned illness behavior and provider dependence. Subsequently, there continues to be a need for an independent medical/chiropractic examination (IME/ICE) or defense/plaintiff medical examination (DME/PME) by a provider not involved in the patient’s care, particularly in cases where causality, treatment, prognosis, return to work and work capacity are in question.

In the United States, federal and state agencies, as well as workers’ compensation insurance entities, routinely use independent medical examinations. IMEs (forensic evaluations) are defined in Federal Rule 35, and are important components of almost all workers’ compensation statutes. They are routinely used to obtain a realistic diagnosis, to determine whether additional diagnostic or treatment measures need to be done, to clarify causality, and to assist in determining the maximum degree of medical improvement and permanent impairment estimates leading to adjudication of disability.

If the attending doctor of chiropractic has overstated the nature of the injuries, has a questionable opinion as to causation, or has grossly over-reported the temporary or permanent impact of the patient’s (claimant’s) condition, an IME can potentially be a basis for the containment of the claim. An IME can reveal inconsistencies in the patient’s total medical history or ferret out underlying problems/issues and/or course of treatment. This is apparent when treatment has been primarily afforded by medication, modalities, procedures, etc.—where the treatment regime has been palliative and repetitive, rather than curative. If it appears, months following an occurrence, that the claimant is merely continuing with regular “adjust-
ments” or “treatments,” and no other specialist has been consulted, an IME may well be desirable to evaluate the validity of further care and treatment.

The IME creates the opportunity to make available to the patient and potentially to the trier of fact the opinion of an “actual” expert. The selection of the examiner is crucial. Factors to be considered are the type of specialty (chiropractic orthopedics, neurology), forensic ability and skills, and credentials. Additionally, selection criteria should include board certification in a sub-specialty (Diplomate American Board of Forensic Professionals; DABFP), practical experience regarding treatment of patients with similar injuries, and the willingness to undertake a thorough document review. This review affords a unique opportunity for significant discovery without the formal (legal) constraints (recorded statements, interrogatories, or depositions).

The provider performing independent medical evaluations faces potential legal liabilities that may or may not be defined within the scope of chiropractic practice as outlined by individual state laws or examining boards. The circumstances of performing an IME are unique, and recent national protocols (see #1 below) are not included within the training received through chiropractic college(s) and most diplomate programs. Some issues are frequently encountered throughout the chiropractic profession and indicate a lack of expertise and training in current and upgraded evidence-based IME concepts:

1. Incorrect usage of a narrative report format (medical report), rather than the recommended IME report formatting espoused by the Council on Forensic Sciences (CFS), American Board of Independent Medical Examiners (ABIME), and as outlined in the AMA Guides to the Evaluation of Permanent Impairment, 5th edition.

2. Inclusion of quality assurance and utilization management (retrospective review of previous care and treatment) and/or functional/work capacity (FCE) procedures within an IME report.

3. Providing IME services that directly or indirectly compromise the examiner’s ethics, capabilities, and/or integrity.

4. Providing information directly to the examinee (of a non-emergent nature), thus voluntarily altering

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the perception of the examiner’s role (establishing a provider/patient relationship).

5. Providing libelous (written defamation) statements concerning the examinee, other providers, and other participants.

In Daubert v. Merrill Dow Pharmaceuticals, Inc., the U.S. Supreme Court reminded federal trial courts that under the Rules of Evidence they should “ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.” It has now become standard operating procedure for a defendant to ask the trier of fact to use Daubert’s suggested analysis on any and all expert testimony, even when the classic methodology–differential diagnosis along with other reliable factors to determine the cause of a patient’s injuries–is used. The above-listed issues, in a post-Daubert era, highlight the necessity for upgrading and/or obtaining specialized forensic science knowledge, skill, training, and/or experience for the providers who want to serve as IME experts.

The Council on Forensic Sciences (CFS) offers traditional postdoctoral and online educational programs, including license renewal, national sub-specialty certification, board certification [diplomate], and/or re-certification in forensic sciences. The CFS is a subsidiary of the Council on Chiropractic Orthopedics (CCO) of the ACA. Its niche is independent examinations, impairment and disability systems, and any federal program that requires an evaluation/physical assessment, functional (FCE)/work capacity, return to work and fitness for duty (DOT) assessment, as well as fraud and abuse investigation. The courses lead to the status of diplomate of the American Board of Forensic Professionals (DABFP). The ABFP is a non-profit corporation recognized by the ACA as the examining and certification body for the CFS. Currently, the ABFP offers diplomate certification in chiropractic forensic sciences (DABFP); and certification in DOT and impairment rating based on the current (5th) edition of the AMA Guides to the Evaluation of Permanent Impairment. The ABFP currently has candidate status with the National Organization of Credentialing Agencies (NOCA) and is a member of the National Commission of Credentialing Agencies (NCCA).

The CFS advocates that diplomats in other chiropractic specialties advance their diploma by obtaining an additional board certification in forensic science. To this end, their educational programs consist of activities that build and maintain a basic foundation in forensic knowledge, skills, and attitudes among forensic professionals; explore new knowledge, new skill sets, and current ethical dilemmas inherent in each diplomate; and encourage the dissemination of forensic science problems and solutions. Contact the American Chiropractic Association, National University of Health Sciences (NUHS) postgraduate department (IME; and orthopedic diplomate programs), and/or the University of Bridgeport College of Chiropractic postgraduate department for details on the CFS or ABFP.

It is of utmost importance for IME providers to take risk management measures, through educational processes and resultant certification, to protect themselves from claims due to losses incurred because of negligence or failure to exercise an acceptable degree of professional skill, knowledge, and/or training in this forensic sub-specialty—the IME.

References