

I was the treating physician called by the patient's attorney to testify as an expert in a personal injury case recently reported in the *The Chiropractic Journal* (January 1995, Vol. 9 No. 4, "Proof of the VSC leads to \$105,000 legal award").

I have received numerous calls from doctors around the country asking for information about what I did to prepare for this hearing and how we accomplished the results.

My first piece of advice is always to obtain the thorough training and preparation provided by the DACS (Diplomate in Applied Chiropractic Sciences) program. It will enable you to more effectively treat your patients and teach you to identify the various components of the VSC and develop the objective evidence necessary to verify your findings in court.

The following is a "timeline" for preparing yourself to present "expert" chiropractic evidence of the VSC.

VSC training and confidence

DACS training gave me confirmation that the Vertebral Subluxation Complex is a demonstrably objective condition that is well documented in many scientific journals. More than merely providing me with a review of scientific literature, DACS has helped me truly comprehend the VSC, which in turn has helped me provide credible testimony about my patients' condition.

The purpose of building professional credibility is not only to impress the public and legal system; but to reinforce the doctor's belief and confidence. In order to be believed, witnesses have to be passionate about their findings and about the truth of the presence of subluxation.

It's been said that enthusiasm is the outward expression of honest belief and conviction. If chiropractors are the experts in art, science and philosophy of the Vertebral Subluxation, they must have a complete picture of the VSC in their mind, and be able to communicate the concept using lay terms.

Knowing you are going to be cross-examined means you must have the resources to back up your opinions. Post graduate education gives you these resources. There are some wonderful courses available in the profession today. I felt that the DACS was fantastic in that it gathered the most renowned experts in our field and presented them as instructors in each of their respective fields of expertise.

Of particular benefit was the course work offered in imaging and in electrodiagnostics. In short, DACS required graduates to master information from such teachers as Dr. Chris Kent, Dr. Dan Murphy, Dr. Malik Slosberg, just to name a few. This, in addition to course work in videofluoroscopy conducted by John Fisk, M.D. (Washington State Spinal Health Institute) armed me with the knowledge to better understand my patient's condition and to communicate that understanding with credibility.

Review properly documented chart notes and records

As a starting point, I began to review my patient's file several days in advance of the hearing. I made sure that I reviewed my initial report of findings and read thoroughly, carefully, each entry made in

his chart notes.

I then reviewed plain films and the results of the outcome assessments which I had performed on the patient during the course of his treatment.

I also reviewed plain films I had taken of the patient and compared them with films that I had obtained from the emergency room where he had been admitted several months prior to my first seeing him.

Earlier, the patient's attorney had

were able to get to the crucial stuff in this case very early without spending a lot of time on the minutiae.

We then began the task of looking at the issues in this case. I had previously identified the controversial matters in my patient's case.

For example, there had been a delay in patient's treatment prior to his seeing me. There were, however, minimal postural changes seen in plain radiographic films

Proof of the VSC: The physician's perspective

by Bret MacDermott, D.C. DACS

called me for a consultation. By the time we met, I was well versed in my understanding and could completely recollect details of my patient's case.

Dialogue with attorney

The key in this case was the harmonious understanding between the testifying doctor and attorney. All too often

taken the night of the accident and when I first saw him. These films had to be compared with the videofluoroscopy taken subsequently which showed the presence of degenerative changes. By making this comparison I was able to testify that the degenerative process began back at the time of the accident, despite my patient's not having treated with me dur-



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during testimony, time is laboriously devoted to minor details, with key crucial issues being thrown in only at the end. Controversial issues must be brought right out in the open and attacked with clear, convincing testimony and documentation.

I met with the patient's attorney and briefed him in detail on the patient's

ing the interim.

After briefing the attorney of my findings, I then provided him with my opinions about my patient's condition — specifically those which I thought would be challenged by opposing counsel.

In particular, I spent additional time with the attorney going over the defense medical examination conducted on my

Coming Up: The Attorney's Perspective

progress from beginning to end. In particular, I described my findings, diagnosis and prognosis. Because I employed a number of outcome assessment tools in my patient's case, I made sure that the attorney understood the significance and results of each test.

We then spent a good deal of time actually looking at the various test results and imaging studies. It took some time to correlate the imaging studies with the test results, but after we were through with our review, we had a very good understanding about which of the outcome assessments we were intending to refer to during the hearing, as well as the sequence which we were going to employ.

By deciding beforehand on the sequence of how we were going to discuss the introduction of the various outcome assessments, I was able to present my testimony in a very efficient manner and we

patient. In response, the attorney then discussed his views of the "issues" as to the facts of my patient's condition and their legal significance.

This attorney had previously submitted a written list of questions which he intended to ask at hearing. He asked me to review the list and to be prepared to respond. We reviewed the line of questioning and the answers I intended to give to each question.

Of particular importance were questions pertaining to "causation," that is, whether the patient had experienced a "lighting up" of pre-existing, asymptomatic degenerative disc disease.

Several of the attorney's questions needed to be broken down in a way that would allow me to give detailed answers to the sub components of each question.

After we were able to go through these questions, one by one, I felt that the

attorney was well prepared to provide me with the opportunity at the hearing to discuss in detail each of the components of the VSC and make it easy for a lay person to understand my findings.

In this particular case, we built a strong foundation consisting of objective findings upon which we placed and identified each component of the Vertebral Subluxation Model in its respective place, which then supported my opinions as to permanent impairment and disability.

We concluded with a review of the Insurance Medical Examination that had been performed on my patient. In reviewing the findings of the orthopedic physician who conducted the test, I was able to understand the arguments going to be presented by the other side.

I discussed these points and concluded my preparation by giving the attorney suggestions as to how he could best cross-examine the orthopedist.

Conclusion

I spent approximately seven hours preparing myself and the attorney to make an effective presentation at this hearing.

My testimony lasted approximately one and a half hours and it is at this crucial point where I feel many cases are lost. Physicians have their own objectives and views of the case; attorneys have theirs. In this 90 minutes, both need to communicate with one another and with the judge or other mediator.

If the attorney does not allow the physician an opportunity to explain the VSC and its components, the heart of the case will be lost. The case will be clubbed to death on minor, insignificant points.

If the physician doesn't listen to the attorney in how he or she sees the structure of the case, the physician runs the risk of failing to establish crucial, foundational facts necessary in order of proof.

Because we had thoroughly reviewed each aspect of my testimony beforehand, I was completely comfortable with the hearing. Because the attorney knew in advance what my responses were going to be, he was able to ask questions that best permitted me to expound on the important aspects of the case.

As to the trivial matters, we were able to get past those points very efficiently. By thoroughly preparing, I entered the hearing confident and focused on providing information clearly and intelligently.

After only about ten minutes into the hearing I focused my testimony on the results of outcome assessments and their significance. By giving testimony on my objective findings, I built a broad base for my opinions as to causation.

I led the panel of judges through my findings, giving specific, detailed responses to the questions I knew were going to be asked. We moved quickly and efficiently to a discussion about the results of the plain films and videofluoroscopy and at that point I actually conducted a "seminar" showing in graphic terms what I was saying about the effects of the vertebral subluxation complex.

Having measured it, and shown it, I was able to convince the panel of judges that the VSC existed; this endeavor became for me an education exercise and a wonderful opportunity to further my profession's credibility. □