

ISBA Tort Trends
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**No medical testimony?
No problem... or is it?**

In *Turner v. City of Chicago*, 95 Ill. App. 2d 38, 39 (1st Dist. 1968), the following colloquy at the close of plaintiff's evidence:

The Court:	Do you have any medical testimony?
Plaintiff's attorney:	No.
The Court:	Finding for the Defendant, if there is no medical.

The appellate court in *Turner* reversed the judgment of the circuit court and remanded the case for a new trial. Plaintiff testified as to his pain and suffering in connection with the fall on the sidewalk. The plaintiff further testified to the medical treatment he received including a description of having his arm placed in traction. The uncontradicted trial testimony was that the plaintiff suffered pain in his arm and shoulder. As the *Turner* court noted. "[t]hese facts constitute a *prima facie* showing of the injuries." *Turner*, 95 Ill. App. 2d at 40-41.

There are a number of Illinois decisions which allow a jury instruction for future pain and suffering or other noneconomic elements of damage absent opinion or expert testimony. For example, in *Yates v. Chicago National League Ball Club*, 230 Ill. App. 3d 472 (1st Dist. 1992), the instruction allowing the plaintiff to recover for future pain and suffering. Defendant asserted that no competent medical testimony was presented to show that the plaintiff's headaches were likely to continue into the future. Conversely, plaintiff testified that his headaches were recurring at the time of trial. The court held that the plaintiff's testimony *alone* was sufficient to support the instruction for future pain and suffering. *Yates*, 230 Ill. App. 3d at 489.

In *Mesick v. Johnson*, 141 Ill. App. 3d 195 (1st Dist. 1986), the First District Appellate Court reversed the lower court and held that plaintiff should have been permitted to present evidence relating to her injuries. At trial, the plaintiff testified to being thrown forward against the dash board and described the facial swelling, pain, nasal bump, blockage and sinus problems that developed as a result of the collision. Plaintiff testified to the treatment she received as a result of the occurrence. Additionally, her husband testified that he observed the bump on her nose immediately after the collision which she did not have prior to the collision. The trial court struck all evidence relating to the nasal injuries. The court acknowledged that there is no requirement a plaintiff produce medical testimony concerning the nature and consequences of injuries

sustained so long as the witness is competent to testify about such injuries. Moreover, the appellate court noted:

[I]t is our view that the jury in the instant case could of concluded that the nasal condition s at issue were caused by the collision and... its exclusion was error. *Mesick*, 141 Ill. App. 3d at 205.

In *Wiacek v. Hospital Service Corporation*, 15 Ill. App. 3d 698 (1st Dist. 1973), a husband and wife brought an action to recover under their respective policies for hospitalization expenses of the wife due to food poisoning. Mrs. Wiacek ate some food at a restaurant and minutes later became sick and collapsed and hit her head. The trial court entered a judgment in favor of defendants finding the plaintiff's only evidence of the nature of her illness was hearsay.

Both plaintiffs testified from personal knowledge that Mrs. Wiacek was in good health prior to eating certain food. After eating the food, she suddenly became ill and collapsed. When she fell, she struck her head and was taken to the hospital and examined by a doctor. The appellate court reversed and remanded and held that the manifest weight of the evidence contradicted the trial judge's finding.

In *Chapman v. Foggy*, 59 Ill. App. 3d 552 (5th Dist. 1978), the appellate court affirmed the trial court and held that the testimony of a physician was not required in order to support an award of damages. Plaintiff sustained injuries when she placed her right arm on a black painted rail. She felt something go into her forearm. A jury found for the plaintiff. Although no physicians testified, the appellate court noted:

The testimony here did not require an opinion calling for specialized, scientific or medical expertise. The plaintiff and the witnesses related plainly how she received the injury and what medical treatment was received as a consequence of it. The injury complained of was not remote in time from the accident, nor was it shrouded in controversy as to the origin. Lay testimony was therefore sufficient to establish the causal relationship. *Chapman*, 59 Ill. App. 3d at 558.

The *Chapman* decision clearly points out the parameters of what a plaintiff can testify to regarding his or her own injuries. If the injuries require an opinion calling for specialized, scientific of medical expertise, it is clear that some type of medical testimony is needed. If the injury complained of was not remote in time from the accident, it would appear that he plaintiff is more likely to be allowed to testify on that subject as opposed to some remote occurrence. If the evidence is "shrouded in controversy as to origin," it appears as if medical testimony would be needed... ON BOTH SIDES!

Recently, the Fifth District Appellate Court came down with an important ruling on prior injuries that impacts both sides of the trial bar. In *Brown v. Baker*, 284 Ill. App. 3d 401 (5th Dist. 1996), plaintiff claimed injuries in his neck and lower back. The treating physician testified that the plaintiff had herniated the disk in his lower back. Defense counsel inquired on cross-examination whether the physician had treated

plaintiff for a previous back problem prior to the accident. The physician replied affirmatively over plaintiff counsel's objection. The record indicated defense counsel failed to elicit testimony to suggest that plaintiff's current ailments were causally related to plaintiff's prior back problem.

The appellate court stated:

{I}f a plaintiff suffers a cut in an accident, the jury can readily determine without expert testimony that the accident cause the cut. But, if the nature of plaintiff's injury is complex or if the condition could be a result of some event or condition other than the accident in question, then expert testimony may be needed to establish the particular event that caused the pain and the underlying medical condition. This proof of causation is usually accomplished by presenting testimony from a physician on the causation issue. *Brown*, 284 Ill. App. 3d at 404 (emphasis added).

More importantly, the appellate court recognized that when a defendant attempts to introduce evidence regarding a preexisting condition, Illinois courts typically focus on whether the prior injury and present injury were to the same part of the body. The *Brown* court addressed this issue and announced the following:

If a prior injury has long since healed and has show no recurring symptoms, a defendant should not be able to introduce evidence of the prior injury without establishing causation. If a plaintiff would be required to present expert testimony on causation, the defendant should also be required to do the same. Thus, even if the plaintiff injured the same part of his body which he had injured previously, if defendant wishes to claim that the present problem is related to the prior injury, the same standard applicable to a plaintiff proving causation should be applied to defendant's attempt to prove causation. Accordingly, the court erred in admitting evidence that plaintiff had suffered a prior back injury solely on the basis that involved the same part of the body, *Brown*, 284 Ill. App. 3d at 405.