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## Oregon Court of Appeals Widens the Door to Expert Testimony Regarding Medical Causation

By R. Daniel Lindahl

In a decision issued February 12, 2020, the Oregon Court of Appeals reiterated that, in Oregon, an expert witness may testify to a theory of medical causation that lacks support and general acceptance within the medical community.

In *Miller v. Elisea*, the plaintiff suffered a neck injury in a minor car accident caused by the defendant. Several months after the accident, the plaintiff began having symptoms that were eventually diagnosed as fibromyalgia.

The plaintiff proposed to call two physicians to testify at trial that the physical trauma of the car accident caused the fibromyalgia. But the trial judge ruled that the evidence was not admissible because there is no scientific support, and no medical consensus, for the theory that physical trauma can cause fibromyalgia.

The Oregon Court of Appeals reversed the trial judge's decision and ruled that the judge should have allowed the plaintiff's witnesses to testify to their theory of medical causation.

The appellate court's analysis began by noting earlier Oregon appellate decisions holding that "the general acceptance of a theory of causation in the medical community is certainly relevant to the determination of the scientific validity of a theory, but its absence is not disqualifying." Thus, Oregon's courts hold the view that a theory of medical causation is not inadmissible just because the medical community has not widely accepted the theory as scientifically valid.

The court then looked at the evidence supporting the experts' theory, and found it was sufficient to allow a jury to hear the testimony. The court noted (1) the physicians' clinical experience that there is a high correlation between physical trauma and fibromyalgia; (2) peer-reviewed literature that speculates about a possible connection between physical trauma and fibromyalgia; (3) the appearance of the plaintiff's fibromyalgia within a few months after the car accident; and (4) the absence of the plaintiff's fibromyalgia before the car accident.

The court acknowledged that the defendant's expert disagreed with the plaintiff's experts, but noted those disagreements were for the jury to sort out when weighing the differing testimony.

For at least 20 years, Oregon's appellate courts have been generally receptive to allowing expert testimony in support of novel theories of medical causation that are not widely accepted in the medical community. The *Miller* decision builds on those earlier cases and signals that it will be even more difficult in the future for defendants to prevent testimony in support of novel theories of medical causation.