Marquette Law Review

Volume 50
Issue 3 *April 1967*

Article 3

Medical Evidence

Adrian P. Schoone

Terence T. Evans

MEDICAL EVIDENCE

ADRIAN P. SCHOONE* AND TERENCE T. EVANS**

INTRODUCTION—STATEMENT OF THE PROBLEM

Wisconsin trial attorneys have been receiving with increasing frequency the following type of physician's opinion:

> It is my opinion this patient has developed a low back syndrome which is now a chronic lumbosacral strain. I do not believe he has a herniated disc. I believe he will continue to have his subjective complaints of low back tenderness, although he has no neurological changes whatever. I believe that his complaints of pain, continuing for the year and one-half I have treated him, will be permanent and that he has sustained a certain amount of permanent disability.

Medical opinions of permanent disability or of a reduced ability to engage in gainful activity[1] are being rendered solely on the basis of the *subjective* complaints of the patient—without any *objective* signs of injury or disability.[2] One of the more common instances is in the case of the claimed low back strain, perhaps initially accompanied by contusions and spasms which will have disappeared entirely by the time of trial.[3] Notwithstanding the absence of any basis in signs perceptible to him, the physician may wish to advance the opinion that the low back discomfort, claimed to have persisted since the trauma, is now a static and permanent condition .Such an opinion is sometimes followed by an expression of disability in terms of percentages, as in Workmen's Compensation cases where the schedule in the Workmen's Compensation Act[4] is then employed.

Some physicians have taken the position that, while there may be no objective manifestation of the cause of their patients' continuing complaints, they have no reason to disbelieve them. Hence, they opine that the condition of pain will be permanent. In short, the medical profession appears to have abandoned the entity of *malingering* and abdicated it to the legal profession.[5]

---

* Editor-in-Chief, Marquette Law Review, 1958-59; Practicing Attorney, La France, Thompson, Greenquist, Evans & Dye, Racine, Wisconsin.
** B. A., Marquette University (1963); candidate for J.D. degree, Marquette University (1967).

[1] This is a standard suggested by the American Medical Association Committee on Medical Rating of Physical Impairment. See 177 A.M.A.J. 489 (August 19, 1961).

[2] For a discussion of the distinction between subjective and objective symptoms, see 50 MARQ. L. REV. 158, 159-60 n. 6 (1966), analyzing Rivera v. Wollin, 30 Wis.2d 305, 140 N.W.2d 748 (1966), discussed *infra* at p. 521.

[3] See the description and hypothetical colloquy in 2 AM. JUR. PROOF OF FACTS *Back Injuries* 308-14 (1959). The narration which there appears is taking on a familiar ring in Wisconsin personal injury trials.

[4] WIS. STAT. §102.52 (1965).

[5] Houts, *Malingering: The Lawyer's Exclusive Problem*, 8 Trauma No. 4, p. 2 (Dec. 1966).

But does the law permit a medical expert to express an opinion of permanent disability predicated solely on the subjective complaints of the patient? (Trial lawyers have long recognized that the recital of personal symptoms by the plaintiff are sometimes quite unreliable.[6]) The purpose of this article is to examine relevant Wisconsin Supreme Court decisions which indicate an equivocal answer to date, and to consider foreign authorities which have examined the question.

"EXPERT PROOF MUST SUPPORT AN AWARD FOR FUTURE PAIN"—

FROM DIEMEL, AROUND LUCAS, TO RIVERA.

The obvious assertion that a doctor opining permanent disability purely upon the complaints of his patient is merely lending credence to these complaints—and not operating within his area of expertise—was advanced in a sense in the early case of *Quaife v. Chi. & N.W. Ry.*[7] There, a plaintiff was examined by a panel of medical experts midway during a trial. She complained of pain in her hip, but nothing accounting for it was detected. One of the experts related that when he struck the bottom of her foot, she appeared to have pain in the hip joint. On appeal, it was claimed that since that expert had found no physical condition indicating the existence of pain, his answer could only be an opinion of the veracity of the plaintiff, presumably not a medical issue. The supreme court disagreed:

> . . . The experts examine the limb and hip, and find no such appearance as would indicate lameness and pain. Yet, the patient insists upon the fact of lameness and pain. It becomes then a question with the experienced physician, whether such pains and lameness are imaginary, feigned or real; and, to determine this, he must resort to other evidences than those to be derived from an examination of the limb itself. And in such case *we think it is clearly competent for the expert to give an opinion from the general appearance, actions and looks of the patient, and what she says at the time in regard to her condition.* (Emphasis added)[8]

Regrettably, the *Quaife* decision contained no indication of the emphasis placed by the court on the reaction resulting from tapping the plaintiff's heel. The case is not squarely germane to the issue here considered, because it dealt with the doctor's opinion as to pain sensation rather than permanent disability. It has not since been cited in any Wisconsin case involving that question. However, it has been repeatedly

---

[6] *E.g.*, GOLDSTEIN & SHABAT, MEDICAL TRIAL TECHNIQUE, p. 176 (1957):
Injuries and diseases of the back, particularly of the lower back, present disturbing problems to both doctors and lawyers because (a) it is often difficult to distinguish legitimate claims from fraudulent, (b) some X-rays give little aid in diagnosing certain types of back injuries, (c) in making a diagnosis it is often necessary to rely almost wholly upon the history and the sometimes unreliable recital by the patient of his subjective symptoms.

[7] 48 Wis. 513, 4 N.W. 658 (1880).

[8] *Id.* at 523, 4N.W. at 663.

mentioned in cases where the physician sought to relate the history obtained from the patient.[9] The *Quaife* case has also been popular outside of Wisconsin concerning the issue of whether a physician may state pain exists based on the complaints of his patient (which is apart from the problem of whether that pain is permanent).[10]

Significantly one treatise writer states:

> The decision in Quaife v. Chicago & N.W. R. Co. (citation omitted), perhaps goes as far as any which has been examined in holding that, even in the absence of any such external appearance as would indicate lameness or pain, examining physicians of experience may express their opinions, from the general appearance, actions, and looks of the patient, whether the pains complained of are imaginary, feigned, or real.[11]

Apart from any intimations of *Quaife,* the first Wisconsin decision actually focusing upon the precise topic under present discussion is *Diemel v. Weirich.*[12] There, the plaintiff alone testified about the difficulty she was having at time of trial as a result of the bruises and sprains sustained in the collision. Although she was treated by two physicians for those injuries, no expert medical testimony was offered in her behalf. Counsel for the defendants asked the trial court to instruct the jury that no damages were allowable for future pain and suffering or for permanent disability. The trial court rejected the request and instructed the jury in effect that it might award damages for future pain and suffering, but not for permanent disability. On appeal, the defendants relied upon *Wenneman v. Royal Indemnity Co.*[13] There, the court held that in the absence of proof "otherwise than unsupported subjective statements of plaintiff," there could be no award for future pain and suffering.[14]

The court, in *Wenneman,* did not consider whether a physician could express his opinions as to future pain and suffering or permanent disability based purely on such statements by a plaintiff.

But, in the *Diemel* case, after making reference to the holdings in *Landrath v. Allstate Ins. Co.,*[15] and *Karsten v. Meis,*[16] the court laid down the following rule:

---

[9] Of course, the hoary distinction between symptoms related for treatment and also for trial preparation was obliterated in Ritter v. Coca-Cola Co., 24 Wis. 2d 157, 128 N.W.2d 439 (1964). Wegerer v. Koehler, 28 Wis.2d 241, 137 N.W.2d 115 (1965). And, see, in general, Arnold, *Medical Evidence in Wisconsin 1956-1966,* 49 MARQ. L. REV. 657, 665-669 (1966).

[10] See Annots., 28 A.L.R. 362 (1924), 97 A.L.R. 1284 (1935). Both annotations cite and discuss the *Quaife* case.

[11] Annot., 28 A.L.R. 362 (1924).

[12] 264 Wis. 265, 58 N.W.2d 651 (1953).

[13] 251 Wis. 630, 30 N.W.2d 250 (1947).

[14] *Id.* at 634, 30 N.W.2d at 252.

[15] 259 Wis. 248, 48 N.W.2d 485 (1951).

[16] 263 Wis. 307, 57 N.W.2d 360 (1953).

> The general rule followed in other jurisdictions as well as Wisconsin, is well stated in 20 Am. Jur., Evidence, p. 649, sec. 778, as follows:
>
> '. . .where the injury is subjective in character and of such nature that a layman cannot with reasonable certainty know whether or not there will be future pain and suffering, the courts generally require the introduction of competent expert opinion testimony bearing upon the permanency of such injury or the likelihood that the injured person will endure future pain and suffering before allowing recovery therefor.'
>
> We believe that sound public policy requires adherence to such rule. It is a rare personal-injury case indeed in which the injured party at time of trial does not claim to have some residual pain from the accident. Not being a medical expert, such witness is incompetent to express an opinion as to how long such pain is going to continue in the future. The members of juries also being laymen should not be permitted to speculate how long, in their opinion, they think such pain will continue in the future, and fix damages therefor accordingly. Only a medical expert is qualified to express an opinion to a medical certainty, or based on medical probabilities (not mere possibilities), as to whether the pain will continue in the future, and, if so, for how long a period it will so continue. In the absence of such expert testimony (which was the situation in the instant case) the jury should be instructed that no damages may be allowed for future pain and suffering.[17]

And so the supreme court appeared to answer affirmatively the basic question here considered, notwithstanding the following statement made by Mrs. Diemel's counsel on appeal:

> Plaintiff respectfully inquires whether a plaintiff to recover for personal injuries *must call a doctor* and finally under this type circumstances what conceivable value, a doctor's testimony on future pain could be, or what greater probative force it could have than plaintiff's own testimony of persistent continuing pain.
>
> We urge the negative otherwise the medical profession would unreasonably control litigant's basic rights.[18]

The suggestion that a doctor's opinion of future difficulty, predicated solely on subjective complaints of the patient, would be no more reliable than the patient's opinion has never since been expressly acknowledged by the Wisconsin Supreme Court. But, within a month after *Diemel,* the court took great care to emphasize the presence of *objective* signs of injury as the basis of an award for permanent injury in *Rasmussen v. Metropolitan Casualty Co.*[19] No reference to the *Diemel* case was made in the later case.

However, *Diemel* has been followed in many cases since it was decided. In the first such case, *Peterson v. Western Casualty & Surety*

[17] 264 Wis. 265, 268-69, 58 N.W.2d 651, 652-53 (1953).
[18] Brief of Respondent, p. 29, Diemel v. Weirich, *id.*
[19] 264 Wis. 432, 59 N.W.2d 457 (1953).

Co.,[20] the supreme court emphasized medical testimony that the reality of claimed pain couldn't be determined, and ordered a new trial because of excessive damages.

An aggravated instance in which the court gave at least tacit approval to an opinion of permanent suffering based entirely upon subjective complaints is *Crye v. Mueller*.[21] There, the quoted dialogue between attorney and physician provides an insight into the nebulous nature of such an opinion. A like case is *Powers v. Allstate Ins. Co.*,[22] where the orthopedic specialist called by the defense expressed an opinion of five per cent disability of the left knee—based on the "sincerity" of the patient in expressing her discomfort.[23] However, Mr. Chief Justice Currie did point out that there were some objective findings to buttress the opinion, such as atrophy of the leg and a clicking noise on flexion. The defense did not attack the substance of the medical evidence on permanent disability, but, relying on *Shields v. Fredrick*,[24] questioned the competence of the experts since they had been employed after suit had been commenced to give testimony instead of treatment. The court's terse response was, "once opinion evidence based upon subjective evidence gets into the record without objection it may be considered by the jury in making their findings."[25]

The next important case in the chronology of those using the *Diemel* rule to permit opinions of permanency without basis in objective signs, is *Albers v. Herman Mut. Ins. Co.*,[26] involving claimed injury to the fibrous or muscular tissue of the cervical spine. A short time later, Mr. Justice Wilkie wrote the decision in *Lucas v. State Farm Mut. Auto Ins. Co.*,[27] which, in the authors' judgment, placed a stringent limitation on the *Diemel* rule as it had been theretofore applied. In the *Lucas* case, the court stated:

> In analyzing the testimony as to the existence of any permanency of the injury or the likelihood that the injured person will endure future pain and suffering before recovery may be allowed therefor, *there should be competent objective medical findings* and the unsupported subjective statements of the injured party are not sufficient. *Diemel v. Weirich* (1953), 264 Wis. 265, 58 N.W. (2d) 651. (Emphasis added.)[28]

This language departs from the prior cases, in which medical opinions based purely on "unsupported subjective statements" of patients had been permitted; but the Wisconsin Supreme Court has not been

[20] 5 Wis.2d 535, 93 N.W.2d 433 (1958).
[21] 7 Wis.2d 182, 193, 96 N.W.2d 520 (1959).
[22] 10 Wis.2d 78, 102 N.W.2d 393 (1960).
[23] *Id.* at 83, 102 N.W.2d, at 396.
[24] 232 Wis. 595, 288 N.W. 241 (1939).
[25] 10 Wis.2d 78, 85-86, 102 N.W.2d 393, 397 (1960).
[26] 17 Wis.2d 385, 117 N.W.2d 364 (1962).
[27] 17 Wis.2d 568, 117 N.W.2d 660 (1962).
[28] *Id.* at 572, 117 N.W.2d at 662.

zealous in adhering to the requirement of "competent objective medical findings" since *Lucas*. In *Borowske v. Integrity Mut. Ins. Co.*,[29] and *Erdmann v. Milwaukee Auto. Mut. Ins. Co.*,[30] awards for permanent injury, seemingly based only on subjective complaints related to the physicians, were sustained.

However, in *Moritz v. Allied American Mut. Fire Ins. Co.*,[31] the court repeated the language quoted above with approval. Thereafter, *Wegerer v. Koehler*[32] was reviewed, and, in an opinion by Mr. Justice Gordon, awards for permanency based on subjective complaints were affirmed without reference to either *Diemel* or *Lucas*. Nevertheless, in *Huss v. Vande Hey*,[33] complaints of pain in the back and neck were said by the same Justice to be "types of injuries as to which the prognostications of one who is not medically qualified are insufficient to support a judgment for damages either as to permanence or as to future pain and suffering."[34]

One may query what clairvoyance is accorded a physician enabling him to penetrate the workings of his patient's mind so as to determine the veracity of complaints unsubstantiated by anything *objective*. The supreme court had a further opportunity to answer this question in *Rivera v. Wollin*.[35] There, the effect of a physician's statement that a patient would have pain *for an indefinite time* was considered. The statement was predicated upon an examination made some fourteen months before trial, which revealed a tender subcutaneous nodule. The supreme court held this type of injury was "of such nature that a layman cannot with reasonable certainty know whether or not there will be future pain and suffering"—the *Diemel* test, despite the presence of the nodule. It then restated the *Diemel* rule, requiring expert testimony for an award of permanency, to read as follows:

> Where the injury cannot be objectively determined or where it is of such nature that a layman cannot with reasonable certainty know whether or not there will be future pain and suffering.[36]

Unfortunately, in re-stating the *Diemel* requirement, the court did not provide trial judges and lawyers of the state with a resolution of the apparent conflict between *Diemel* and *Lucas*. The clash over the quality of proof supporting a claim for permanent injury continues. And, more and more doctors are assuming the posture of expressing faith in the legitimacy of their patients' complaints, despite the absence

---

[29] 20 Wis.2d 93, 121 N.W.2d 287 (1963).
[30] 20 Wis.2d 439, 122 N.W.2d 430 (1963).
[31] 27 Wis.2d 13, 23, 133 N.W.2d 235 (1965).
[32] 28 Wis.2d 241, 137 N.W.2d 115 (1965).
[33] 29 Wis.2d 34, 138 N.W.2d 192 (1965).
[34] *Id.* at 39, 138 N.W.2d at 195.
[35] 30 Wis.2d 305, 140 N.W.2d 748 (1966), analyzed in depth in 50 MARQ. L. REV. 158 (1966).
[36] *Id.* at 313, 140 N.W.2d at 753.

of any bases. When those expressions take the form of opinions of five to ten per cent disability of the body as a whole, arising out of small bruises to the hip and claimed back strain for which there is a high incidence of occurrence, defense attorneys and their clients are faced with a problem of no small magnitude.[37]

Complicating it is the absence of any distinct rule of law deducible from other jurisdictions.

FOREIGN CASES ARE IN LIKE CONFLICT

A popular text on trial practice professes to epitomize the law on the question:

> In specific application of the foregoing it has been held, *where the existence of a disease or state of injury is undoubted,* that medical opinion may be received that the condition is one which is accompanied by pain, which will continue as long as the condition persists, or that the condition prevents or limits ability to perform manual labor or pursue ordinary activities. By the great weight of authority, under the conditions indicated, medical opinion is also admissible as to the probable duration of a disease or state of injury; that it is curable or will improve or that it is permanent. (Emphasis added)[38]

But, a leading treatise does not contain that emphasis:

> It is to be observed at the outset that in nearly every case discussing the necessity of expert evidence to warrant submission to the jury of the issue either as to the permanency of the injury or as to future pain and suffering, or an award of damages on such basis, the court's conclusion will depend upon the nature of the injury. That is, if the injury is of an objective nature (such as the loss of an arm, leg, or other member) the jury may draw their conclusions as to future pain and suffering from that fact alone (the permanency of such injury being obvious); whereas there must be expert evidence as to future pain and suffering or permanency where the injury is subjective in character.[39]

A case which puts the character of medical opinion as to disability based on subjective complaints in proper focus is *Horowitz v. Hamburg American Packet Co.*[40] There, an instruction charging the jury that they were at liberty to consider the "lasting or permanent character" of a back injury, notwithstanding the absence of any objective signs or expert medical opinion, was initially approved. But, then the

---

[37] It should be noted that Arnold, *Medical Evidence in Wisconsin 1956-1966,* 49 MARQ. L. REV. 657, 679 (1966), discusses many of the decisions considered in this article, but does not consider whether the physician *should* be permitted to opine disability purely on subjective symptoms.

[38] BUSCH, LAW AND TACTICS IN JURY TRIALS, §438, pp. 791-92 (1949).

[39] Annot., 115 A.L.R. 1149, 1150 (1938).

[40] 18 Misc. 24, 41 N.Y.S. 54 (1896).

judgement was reversed without further opinion,[41] based on the dissent of Daly, J., who had pointedly remarked:

> If a defendant's liability in damages may be allowed to rest upon opinion, it should not be the opinion of a jury without the help of science. *If a guess is to have such serious consequences, it should be the guess of a medical man of learning and experience.* These observations do not apply, of course, to the loss of a member, nor, perhaps in the case of a fracture. (Emphasis added)[42]

The characterizing of an opinion based only on subjective complaints as a "guess" seems accurate. The pertinent inquiry is whether "guesses" should form the foundation for an award of damages, even if they come from the lips of professional men. In *Shuck v. Keefe,*[43] the Iowa Supreme Court held that the very nature of a claim for future pain and suffering requires *corroboration* and proof by expert witnesses. Like so many other cases, this one does not spell out what type of corroborative proof is required.

In digesting possibly relevant decisions, the treatise authors have been more concerned with whether the complaints were made in connection with treatment or pre-trial preparation, than with whether the opinions based solely thereon were probative.[44] But, from reading the several cases germane to the issue, one must conclude the law is unsettled. In *Elgin A. & S. Traction Co. v. Wilson,*[45] it was held by the Illinois Supreme Court that a doctor having treated a patient may express an opinion as to his condition, based on information gained from the patient. Much earlier, the Massachusetts court ruled a surgeon attending and prescribing for an injured person about three months after the accident could not give an opinion as to the extent of the injury, based on the patient's statements about her then state of feeling.[46]

The Minnesota Supreme Court indicated a like disposition in *Cameron v. Evans,*[47] when it stated:

> . . . Courts must exercise much circumspection in sustaining large verdicts where there as no objective findings and the only evidence of the extent of the injury is the word of the person injured. Thus, in Lowe v. Armour Packing Co., supra [148 Minn. 464, 182 N.W. 610], it was held that, where objective symptoms

[41] App. Div. 631, 43 N.Y.S. 1156 (1897).
[42] Horowitz v. Hamburg American Packet Co., 18 Misc. 24, 41 N.Y.S. 54, 60 (1896).
[43] 205 Iowa 365, 218 N.W. 31 (1928). Similarly, Harmon v. Industrial Comm'n., 76 Ariz. 40, 258 P.2d 427 (1953).
[44] See 32 C.J.S. *Evidence* §546(94) (1964); 20 AM. JUR. *Evidence* §866 (1939); Annot., 65 A.L.R. 1217 (1930); Annot., 51 A.L.R.2d 1051 (1957).
[45] 217 Ill. 47, 75 N.E. 436 (1905). *Cf.* Traders & General Ins. Co. v. Burns, 118 S.W.2d 391 (Tex. Civ. App. 1938).
[46] Rowell v. Lowell, 11 Gray (Mass.) 420 (1958).
[47] 241 Minn. 200, 62 N.W.2d 793 (1954). And, see other cases cited in 2 AM. JUR. PROOF OF FACTS *Back Injuries* 315 (1959), and 25A C.J.S. *Damages* §162 (9) (1966).

> indicate full recovery, a large verdict cannot be sustained because subjective symptoms described by the plaintiff indicate a continuance of the ailment resulting from the injury unless the evidence furnishes a basis for determining with reasonable certainty, the future consequences to be apprehended.[48]

However, a Florida appellate court approved an attending physician's opinion that his patient's pain was permanent, assuming it had not ceased by time of trial, although the opinion was based on the patient's self-serving statements regarding the pain.[49]

None of the cases come to grips with the intrinsic problem underlying medical opinion founded on subjective complaints. That problem involves the reliability or convincing power of an opinion which essentially is no more than a medical blessing of veracity upon the words of the claimant.

CONCLUDING COMMENT

The test for the admission of opinion evidence of expert witnesses has historically been whether the jury would be aided in a consideration of the issues,[50] and whether the witness has expertise in the area under inquiry.[51] When a doctor expresses his personal belief in the reality of his patient's complaints, there being no organic manifestation of a basis for them, he does not execute the function of an expert witness —informing the jury of facts which, because of their lack of expertise, they cannot understand.

There appears to be no evidentiary foundation for the admission of opinions based exclusively on self-serving statements. Traditionally, such statements were never accepted as substantive proof of the facts related.[52]

And, while medicine is an art and not a science, and while it has been said "Doctors know what you tell them,"[53] subjective symptoms are an unreliable vehicle for evaluating disability. Where there is no loss of function and no sign of injury, what justification is there for permitting anyone, doctor or otherwise, to express a personal belief in the propensity of the plaintiff for telling the truth? It is interesting to consider what Dr. McBride says about the formula for medically rating a permanent physical impairment:

> The medical rating of disability should follow basic medical diagnostic principles. It is just as important to adhere to regular diagnostic and prognostic methods in evaluating permanent

[48] 62 N.W.2d, *supra* note 47 at 796.
[49] Tampa Transit Lines, Inc. v. Smith, 155 So.2d 557 (Fla. App. 1963).
[50] *E.g.*, Kreyer v. Farmers' Co-op Lumber Co., 18 Wis.2d 67, 75, 117 N.W.2d 646, 650 (1962).
[51] 20 AM. JUR. *Evidence* §775 (1939).
[52] See Ahlers, *The Subjective Complaint and the Medical Examination*, 25 INS. COUNSEL J. 83 (1958), reprinted in 1958 PERSONAL INJURY COMMENTATOR 241.
[53] FLESCH, THE BOOK OF UNUSUAL QUOTATIONS 64 (1957). The statement is attributed to Don Herold.

> physical impairment as it is to use such thoroughness in the diagnosis or prognosis of systemic disease. The procedure is to elicit all evidence and suspicion of pathologic changes in the anatomy or physiology of the body. All clinical symptoms and signs of disabling physical impairment must be analyzed for evaluation. *The loss of inherent function of the injured part of the body is the final step.* (Emphasis added.)[54]

Where there is no evidence of any change in anatomy or physiology, and no sign of disabling physical impairment, there is no legal reason to permit those Wisconsin physicians and surgeons, so bent, from continuing to find permanent disability because they believe they have a sincere patient. The Wisconsin Supreme Court has lately observed that:

> . . . Many elements that go to a determination of impairment capacity cannot be proven with certainty. Proof of these elements must be permitted by facts or inferences that lead to reasonable probabilities. Some (but not all) of the elements which cannot always be shown with certainty are the length of time a disability will exist, the degree of improvement or additional disability that will ensue, the aptitude and ability of a disabled person to engage in other types of work, and the compensation he will be able to obtain. . . .[55]

While the supreme court permits latitude in the proof of impaired earning capacity, it should not exercise the same broad tolerance in admitting testimony about the underlying disability where no concrete evidence substantiates it. When the court is next accorded an opportunity to reconcile the *Diemel* and *Rivera* cases with the *Lucas* case, it is hoped it will adhere to the "competent *objective* medical findings" requirement of the latter case. To do otherwise will only cast the matter of Wisconsin medical evidence into further uncertainty, simultaneously promoting conjecture at the expense of the defense.

---

[54] McBride, *Disability Evaluation, The Portage Ticket to Rehabilitation,* ARCHIVES OF PHYSICAL MEDICINE AND REHABILITATION (Jan. 1965), reprinted in 7 SCHWEITZER, CYCLOPEDIA OF TRIAL PRACTICE 50 (1966 Supp.).

[55] Reinke v. Woltjen, 32 Wis.2d 653, 661, 146 N.W.2d 493, 497 (1966).