The Arizona Court of Appeals has ruled that chiropractors and other doctors can be paid just $12 for an entire deposition in a personal injury case since they are almost always “fact” witnesses and not “expert” witnesses. The decision was issued on 08/20/13 in the case of Sanchez v. Gama, 1 CA-SA 13-0072, Department D, Arizona Court of Appeals. The appeal was filed by attorneys for State Farm who have been trying for years to pay only fact witness fees to chiropractors for depositions. ACS had filed an Amicus brief with the Court that had been accepted for review. The full opinion is posted at www.AZChiropractors.org under Breaking News.

The judges concluded: “Whether a treating physician is a fact or expert witness depends on the content of the physician’s testimony. When a treating doctor is testifying only to the injury, medical treatment, and other first-hand knowledge not obtained for purposes of litigation, the treating doctor is a fact witness and need not be compensated as an expert. However, where expert testimony is solicited, whether the source of the expert’s underlying information is from personal observation or the observations of others, but the testimony is developed for purposes of litigation, the doctors must be compensated accordingly. Often it will depend on the questions being presented to the treating physician. We lean on the discretionary powers of the trial court to determine when expert testimony is being solicited.”

Specifically in this case, the Court ruled that “a treating physician’s testimony concerning the patient’s diagnosis, treatment, and prognosis” is not expert testimony “simply because it necessarily draws upon his or her skill, training, and experience as a doctor.”

Practically, this means that in a PI case, when you are subpoenaed to appear for a deposition, you are only going to be paid a total of $12 as a fact witness. You will have to learn to be vigilant as to when “expert” questions are being asked and demand that you be paid an expert fee before agreeing to answer them.

ACS and others are filing motions with the Court asking for clarification so that you can know when you are being asked a “fact” question versus an “expert” question. You have the right if asked an expert question to demand payment at expert witness rates, not fact witness rates, or you will not answer the question. You should work closely with an attorney to decide which questions fall into the fact versus expert categories. Here are some clues from the Court’s decision about what qualifies as expert testimony:

- “Testimony would constitute expert testimony requiring appropriate compensation if the questions required a physician to review records or testimony of another health care provider or to opine regarding the standard of care or treatment given by another provider.”

- “Hypothetical questions or questions regarding causation also may be a signal that the doctor is being asked to give expert testimony.”
• “When the treating physician goes beyond the observations and opinions obtained by treating the individual and expresses opinions acquired or developed in anticipation of trial, then the treating physician steps into the shoes of an expert.”

• “The treating physician only functions as an expert witness to the extent that one or both of the parties ask the witness to use the basic facts to draw conclusions and express opinions on relevant medical issues.”

There will be appeals filed to this decision along with efforts to change court rules. ACS will keep you up to date on all developments. If you are not already a member, please join and help support these vital efforts. No other Arizona chiropractic association is involved in defending your rights in this battle. You can join online at www.AZChiropractors.org.