

# Evidence Based Medicine Does Not Equal Evidence Based Causation

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- Nancy Grover

Orlando, FL (WorkersCompensation.com) – There's a concept in jurisprudence called 'jury nullification,' which loosely translates to a scenario where jury members base their decisions on their own beliefs and experiences, rather than the evidence and facts in front of them. In workers' compensation, judges and medical providers themselves are often guilty of this.

For example, despite a plethora of evidence disputing the idea that carpal tunnel syndrome can be caused by sitting at a desk typing all day, such claims are often accepted.

"It's that [jury nullification] concept; 'it's so intuitive, it must be. If we're sitting there all day, 50 hours a week, it must be CTS.' But it isn't," said Barry Bloom, managing principal of The bdb Group. "There are people with big decision-making jobs, with limited medical training who are making them."

While the idea of using evidence-based medicine to treat injured workers has caught on, it has not extended to the decision-making process.

"It's rather a new concept," said Teresa Bartlett, M.D., senior Medical Officer for Sedgwick. "There's EBM, but what about taking that a step further to evidence-based causation." Bartlett and Bloom presented a session on evidence-based causation during the Workers' Compensation Institute's annual conference here.

Integrating EBM further into the entire workers' compensation system would mean not only is medical care based on the best available science, but that decisions would be as well. As it is, many stakeholders instead rely on their vast experience and intuition to guide them.

Determining whether an injury is work-related or due to other factors these days can be as much an art as a science. An accurate diagnosis is imperative.

"How do we make sure the accurate and proper diagnosis is actually applied to the case, because many times we don't have an expert clinician coming up with the diagnosis, but a judge or an attorney or a clinician who may not be qualified to make that diagnosis," Bloom said.

"How often do you use an independent medical examiner and what do you get? You get that doctor's opinion. But is that opinion evidence-based?" Bartlett said. "The good ones will give you tidbits of evidence-based science. But most of the time you get, 'in my opinion,' or 'in the past.' That can be really frustrating."

Compounding the problem are the many variations in applicable laws throughout the country in terms of what is or is not compensable. Some say work needs to be 'more likely than not' the cause of the injury; others say it must be more than 50 percent; then there are

those laws that mandate work must be a substantial cause — 30 to 40 percent; California requires just 1 percent.

“The levels of what is or is not compensable is different in each system, maybe in each courtroom. Typically, the court wants black or white, no gray area. Either it is or is not the proximate cause,” Bartlett said. “Medicine is not like that. ‘It might be [due to work,]’ ‘it may have been.’ This is why it’s so difficult to promote what we are talking about.”

## **Solutions**

But the idea of evidence-based causation can be accomplished, Bloom and Bartlett explained. One way is through education.

“This is a big focus of ours at Sedgwick; we like to focus on defense attorneys and educate them, make sure they understand our philosophy and where we are trying to drive change,” Bartlett said. “With opioids as an example, they don’t know about the dangerous combinations of drugs, that if you’re taking Ambien and Oxycodone and Xanax you might not wake up. When they hear us talk about it, they become more passionate and want to work for the injured worker.”

In some cases, it may be necessary to provide education on the law of the land, even to judges. In the first case in Ohio after the state eliminated approvals of Oxycontin for injured workers, a judge never-the-less approved it. “

“We presented [that it was the law.] He didn’t care,” Bartlett said. “Even though we offered other medications and tapering, the judge said ‘no,’ he thought [the oxycontin] was reasonable.”

Working closely with medical providers and those providing ‘expert opinions’ can also cut down on the ‘opinions’ and get to more science-based outcomes. “I ask physicians, ‘please give me the facts; what the person can do, and don’t make an employment decision. Don’t say ‘they can’t work the second shift’ unless there is really good clinical evidence as to why,” Bartlett said. “It’s really important to tease out the facts.”

Additional advice from the speakers included:

- Investigate thoroughly
- Have all facts
- Use appropriate experts
- Do your research
- Sell your ideas
- Use the law in your favor – EBM
- Train lawyers, claim examiners, judges, regulators and prepare clinical rationale for them
- Never give up.