



## Jurisprudence Section – 2010

### E19 Shaken Baby Syndrome: Issues and Concerns for Attorneys

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After attending this presentation, attendees will have a better understanding of the unique legal problems related to a diagnosis of shaken baby syndrome. The presentation will include research that suggests a new approach to the diagnosis of shaken baby syndrome may be in the interests of justice.

This presentation will impact the forensic science community by offering a perspective on this syndrome that is sometimes overlooked. If shaken baby syndrome is misdiagnosed, or if causation issues are not critically addressed, the resultant mistake may mean accusation, conviction, or incarceration of innocent individuals. Further, if these grave injuries to children are actually caused by other means, it is in the best interest of society to understand the exact causes of such injuries, instead of placing blame inappropriately.

At a time when evidence-based medicine is the norm and many aspects of forensic science are being rethought and reexamined, it is troubling that many experts fail to examine evidence suggesting fundamental flaws in the shaken baby syndrome theory. Findings of shaken baby syndrome rest on many assumptions that must be critically examined in the face of new evidence that tends to discredit previous thought on the subject. Attorneys must be aware of new research that suggests not only that it may be more difficult than previously thought to determine the identity of the alleged abuser in such a case, but also that the triad of symptoms frequently mentioned by investigators may not be indicative of abuse in the first place. In light of recent research, it is appropriate to consider a new approach to litigating cases involving infant head injury.

While attorneys are not and should not be expected to act as experts in medicine or biomechanics, such complex medical evidence and emotional subject matter demands that attorneys be familiar with the concepts and principles underlying a finding of shaken baby syndrome, as well as research that challenges those principles. When crafting arguments, an understanding of the science behind this complicated issue is essential. Findings of shaken baby syndrome must be approached with a critical eye. It is in the interest of justice to avoid the circular logic and examiner bias that sometimes plagues cases of this nature, and to do that, professionals must be well-informed and objective.

Recent research raises concerns with both the weight and admissibility of evidence of such a diagnosis. An analysis of the admissibility of a finding of shaken baby syndrome will be presented with special attention to the factors set forth in *Daubert v. Merrill-Dow Pharmaceuticals*. Shaken baby syndrome is a unique and dangerous diagnosis because it presumes a legal conclusion as well as the intent and identity of the perpetrator. Special attention should be given to cases where the syndrome is diagnosed on the basis of subdural or retinal hemorrhages alone in light of new information that suggests these symptoms can have myriad other causes. Without corroborating evidence that suggests abuse, it is even more likely that a misdiagnosis could be made, which is likely to result in a wrongful conviction.

#### **Child, Homicide, Investigation**