AMERICAN COLLEGE OF CHIROPRACTIC CONSULTANTS

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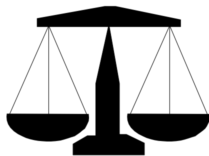
ISSUES OF LITIGATION FEATURING ANALYSIS & COMMENTARY



"Exacerbation vs. Aggravation"

The following is an excerpt from an article by Dr. Brooks, a Seattle area orthopedic surgeon, and printed with permission from inside MCN. Although each state differs in their legal use of terminology consultants, appreciate clarification of gray areas. Clearing up gray areas in medical terminology is important.

Whether a patients present condition is due in part or entirely to a pre-existing problem, and just how bad it is, are key concepts in many legal debates. It is important to understand the difference between exacerbation and aggravation as well as impairment versus disability.

Exacerbation refers to a temporary worsening of a pre-existing condition. Aggravation, on the other hand, is precisely defined by the AMA Guides to the Evaluation of Permanent Impairment, 4th Edition as: "a physical, chemical or biologic factor, which may or may not be

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MRI NOT USEFUL FOR WHIPLASH INJURIES

Patients with whiplash injuries frequently report persistent symptoms for weeks or even months. These Dutch researchers examined whether MRI findings might explain those symptoms.

One hundred patients with whiplash injuries from head-on or rear-end auto accidents had MRI of the cervical spine and brain within three weeks of the accident. None had neurologic findings on physical examination. Virtually all patients had neck pain and headache; other symptoms included loss of concentration (34 percent), arm paresthesias (24 percent), dizziness (24 percent), and tiredness (19 percent).

Only one patient had an MRI abnormality probably related to the injury (prevertebral edema in the C3-C4 region); a repeat MRI was normal three months later, even though the patients symptoms remained unchanged. Fourteen patients had herniated or bulging disks, but this is consistent with the prevalence in asymptomatic populations.

Comment: Whatever the reason for ongoing symptoms in whiplash patients without neurologic findings, MRI is unlikely to provide the explanation

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Published in JournalWatch 15 October 1996.

EXACERBATION VS. AGGRAVATION

work related, contributed to the worsening of a pre-existing medical condition or infirmity in such a way that the degree of permanent impairment increased by more than 3 percent". Aggravation implies permanent worsening of the original condition.

Here's an example of the difference. Let's say a middle-aged male with degenerative arthritis of the knees had to squat for a prolonged period at work one day. After that he reported increased knee pain, but had no anatomical changes in his already-degenerated knee joints. Gradually his pain eased. He suffered an exacerbation. Let's say, in contrast, that the same man sustained a meniscal (cartilage) tear while squatting, or extended a pre-existing degenerative tear. He underwent arthroscopic knee surgery, called a total meniscectomy, removing the entire C-shaped piece of cartilage. This warrants a rating of 7 percent impairment of the lower extremity, and he would have by the AMA Guides definition, an aggravation of his pre-existing knee condition, If, however, only a partial meniscectomy was necessitated, warranting a rating of 2 percent impairment of the lower extremity, the AMA's definition of aggravation would not be fulfilled.

In the state of Washington a third term lighting up, has been thrust upon medical and administrative personnel as a result of the case Miller v. Department Wn. 674 (1939). Although some might argue the term is more applicable to an incandescent or fluorescent bulb, in this context lighted up refers to the phenomenon of a pre-existing, but asymptomatic and possibly non-disabling condition becoming symptomatic, and possibly disabling as the result of an occupational injury. In such a case it is concluded that any resulting impairment is attributed to the injury, rather than the pre-existing condition, and apportionment is not warranted.

NEW QUESTIONNAIRE

An article appearing in Soft-Tissue Review Vol. 1, Number 1 summarized a new questionnaire developed by Howard Vernon D.C. designed to assess whiplash patients. The survey is a modification of the Owestry Low Back Disability Index. Reprints of the article are available from the Haworth Medical Press 1-800-342-9678. The questionnaire was printed in Journal of Musculoskeletal Pain 1996: 4 (4):95-104. The neck disability index: patient assessment and outcome monitoring in whiplash.

The Soft-Tissue Review is available by subscription by calling 1-360-753-9659 or writing to Body-Mind Publications, 210 Union Ave. SE, Ste. F, Olympia, WA 98501-9301. Soft-Tissue Review is published monthly.

PERSONAL CONFIDENTIALITY; A LOST DREAM

Your name, birth date, social security number, old or current address, mother's maiden name and other personal data are now available to anyone with a credit card, through a new data base called P-Trak. It is a recent development from a company in Dayton, Ohio called Lexis-Nexis, whose business is providing commercial information. This type of information could be, and has been, used to commit credit card fraud or otherwise allow a stranger to use your identity for any number of other purposes.

Fortunately, it is possible to have a name and its corresponding data removed from this list free of charge in several ways:

1. Call 1-800-543-6862 and select the option that will allow you to talk to a live representative. Tell them that you wish to remove your name from the P-Trak database; you should only have to give them your name and social security number.
2. FAX your request to 513-865-1930
3. E-Mail address- P-Trak@PROD.LEXIS-NEXIS.COM.
4. You may also physically mail your deletion request to Lexis-Nexis, P.O. Box 933, Dayton, OH 45401-0933. - It's a good idea to do this in addition to any of the above three choices.

This information was current as of November 1, 1996. To get further information about Lexis-Nexis, call 888-965-3947 toll-free. As word of the existence of the database has spread on the Internet, Lexis-Nexis has been inundated with calls and messages, so be prepared to be put on hold.

TMJ INJURY AND MOTOR VEHICLE ACCIDENTS

The relationship between TMJ pain and whiplash injuries has gained much attention in the last few years, and two new studies provide some more information on this problem.

The first study examined the relationship between accident mechanics and TMJ symptoms in 219 patients after motor vehicle accidents (MVA's). Not surprisingly, the researchers found that higher speed collisions were more likely to result in TMJ problems than were lower speed collisions. However, they also found patients were more likely to have TMJ pain if they had their head turned in either direction at the time of the collision , or if their car was hit from the rear. The study also noted that a large percentage of the TMJ patients were women, 89 percent. Delayed onset was also a problem addressed: 15 percent of the patients reported that the symptoms appeared one month or longer after their accident.

The second study, by the same team of researchers, was a follow-up evaluation of patients who had received treatments for TMJ pain after an MVA, but who were no longer receiving treatment. 30 patients were given phone interviews regarding their current symptoms (if any), current treatment, current insurance claims and litigation - an average of 52 months after their accidents.

-Soft Tissue Review, Volume 2,
Number 2 February 1997

From the Nobel Group

http://www.nobelgroup.com

As a result of the ACCC listing in the Nobel Group Internet Directory at http://www.experts.com, we welcome submissions from ACCC members for our Monthly News Bulletin Feature. Each month we select an article (with graphics and/ or photographs), written by an expert who is listed in the Directory for publication on the Internet in the section The Noble Internet Directory called: Monthly News Bulletin.

We are looking for articles that offer expert opinions on newsworthy topics highlighting advances in medicine, science and technology. We will also consider topics of interest that might be provided as a public service. You may contact me by phone (800-640-5959), Fax (415-982-3530) or E-mail (lind@hooked.net) with your suggestions. The articles can be up to 5 or 6 typewritten pages.

When your article is selected for publication, it is then promoted to the media by E-mail press releases to over 3,500 media contacts such as newspapers and magazines in the U.S. It is a great way to receive press free press coverage and promotion. The article will include a link to your association directory listing or to your own website. This is a Free service for those who list with The Nobel Internet Directory at http://www.experts.com

We look forward to hearing from you.
-Lin Doyle
Nobel Group

CHILD BRAIN INJURIES MISSED ON X-RAY

According to pediatric experts, a skull x-ray "is not a reliable predictor of intracranial injury... If imaging is required, it should be with CT and not skull radiography," They say a close watch of patient symptoms, plus a reliance on more high-tech imaging such as computed tomography (CT) scans, should become the "gold standard" for diagnosis.

British researchers reviewed the cases of over 6,000 children admitted for head trauma to the Accident and Emergency Department of the Alder Hey Children's Hospital.

Of 156 children; 107 children displayed skull fractures on x-ray, 49 who did not have skull fracture on x-rays, still complained of head-trauma symptoms such as headache, vomiting, memory loss, drowsiness, and altered consciousness.

The researchers ordered CT scans performed on all 156 children of which 23 were found to have significant brain injury. The researchers concluded that had the physicians relied on x-ray skull-fracture determinations alone, just 15 of those 23 patients would have been properly diagnosed, whereas, monitoring for the symptoms of neurological trauma would have led to proper diagnosis of over 90% of cases. External symptoms should be depended upon as a more reliable indicator since brain injury is rarely seen in the absence of neurological abnormalities, but commonly occurs in the absence of skull fracture."

The researchers still recommend skull x-rays for infants because, in children under the age of two, cranial fracture more often occurs independently of actual brain injury. They also point out that it is often difficult to determine behavioral and personality changes in very small children, making x-rays a potentially more valuable part of the diagnostic process.

- The Lancet (1997;349:821-824)

New AAHP Study Demonstrates Impact of HMO Medicare Cuts; Elderly in HMO Health Plans Will Feel Effects

- A study for the American Association of Health Plans (AAHP) completed by the Barents Group of KPMG, demonstrates the full impact of the proposed Medicare cuts, which will disproportionately affect the elderly enrolled in Medicare HMOs.

...12% of Medicare beneficiaries are currently enrolled in HMOs

The FY 1998 budget proposal cuts $34 billion in payments to Medicare HMOs over the next five years. Although only about 12% of Medicare beneficiaries are currently enrolled in HMOs, they account for more than one-third of the Administration's proposed payments cuts.

The report from Barents states that nearly 95% of Medicare beneficiaries, and over 96% of Medicare HMO members, live in a county where HMO payments decrease under the proposal from what they would be under current law.

A county-by-county is available from the AAHP Communications Office. County data includes total Medicare HMO enrollment, payment rates both under current law and the proposal for the current year, 1998, 2000 and 2002 and the resulting difference in compound growth rates.

The study shows that under the proposal, per capita payment rates for Medicare HMOs will grow at an average 2.4% per year through 2002. Over the same period, the report shows fee-for-service payments per capita will grow at 6.1% per year, about two and a half times as fast as HMO payments.

So far, over 4.3 million Medicare beneficiaries have chosen to join one of the 258 HMOs that participate in the Medicare risk program.

The proposal would have a disproportionate impact on the middle to lower income seniors who currently represent the majority of Medicare HMO members. A 1996 Physician Payment Review Commission report that in 1994, 20% of Medicare HMO members had annual incomes less than $10,000 and 40% had incomes between $10,000 and $20,000 per year.

The Barents analysis revealed that 63% of counties currently characterized as "low-payment areas" will have lower payment rates under the proposal than under current law.

- American Association of Health Plans

Looking to Control Health Fraud

Charles E. DuVall, Jr., DC, MPS, DABUQARP, BCFE/BCFM

For years, as we reviewed claims, many of us saw that what we were seeing went far beyond over-utilization of services, lack of medical necessity and/or physician incompetence; we knew we were seeing criminal activity. Though we tried to alert the profession, third party industry and law enforcement agencies, except in select instances, it fell on deaf ears. But Not Anymore!

When it was finally realized that the money wasted/lost on health fraud was 10% of the GNP; that drug dealers were getting out of narcotics and into health care fraud {Reasons 1. more money to be made. 2. safer. 3. little or no consequences if caught} the federal law enforcement community decided it was time for action. In 1994, health care fraud became the NO. 1 Priority for the F.B.I. To the extent that a Health Fraud Unit was formed within the White Collar Crimes Division. And chiropractic physicians are an intricate part of this unit both as instructor/consultants. More importantly, last year guidelines explaining the Health Care Fraud and Abuse Control Program to be set up by the U.S. Attorney General and the Department of Health and Human Services. All of this is required by the Health Insurance Portability & Accountability Act Of 1996 [p 104-191]. The goals of this act are to coordinate, federal, state, and local law enforcement programs to control fraud and abuse in health plans; conduct investigations; audits, evaluations and inspections; facilitate the enforcement of civil, criminal, and administrative laws; provide industry guidance, including advisory opinions, safe harbors, and fraud alerts and establish a national data bank to receive and report adverse actions against health care providers.

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"Health Fraud" Cont. from page 4 -

PRESIDENTS MESSAGE

Your executive board has been diligent in addressing the concerns and needs of the membership. The audit report by an outside accounting firm has been completed. Their report will be available for your review at the convention. The institution/bylaws revisions for the ACCC and ABCC are in their final stages. The application of the 1993 assessment to the 1997 dues, the one time amnesty allowance and 10% dues discount for early payment has been extremely successful in bringing back past members.

The executive board decided not to offer an educational session in April this year. We feel that there is a perceived conflict of interest with the examining board teaching a claims review class and administering the certifying examination. The examining and executive boards have voted to accept the 100 hour utilization review consultants' course sponsored by Logan College for the last 6 years as part of the revised core requirements. This change will take effect after the September 1997 examination. The next newsletter issue will address this issue.

We have sent our newly revised application to DCs who have successfully completed Logan's classes. They include the states of Kentucky, Kansas and Missouri. We were fortunate to be able to make presentations to the last class session in Connecticut during January (Dr. Marcy Jones) and first session in Florida during February (myself). The second 1997 class offering is scheduled for Pennsylvania this April or May. Contact Logan College for details. We are very appreciative of Dr. Patrick Sullivan and Logan College for allowing us to make these presentations. Dr. Cox indicates that we have already begun to receive completed applications.

I am proud of the efforts of Dr. Jeanne Lapp for accumulating articles for the newsletter and extremely grateful to Dr. Jeffery Cates for his continuing expertise and direction relating to our website.

You have already received an issue of Topics in Chiropractic. Your board has decided to pick and choose certain issues of pertinent publications rather than a single subscription for quarterly mailings. This appears to be more advantageous and the least duplicative solution. Dr. William Tellin has been very helpful in the selection process. We are currently considering issues from the Chiropractic Report, Lantern, etc.

We are negotiating with other organizations to hold joint conventions each September. We have a commitment from the American Academy of Biomechanical Trauma for 1998. We are finalizing the details with the North American Academy of Impairment Rating Physicians for this fall. We hopefully will have the opportunity to obtain an additional 12 hours of impairment rating (they require 48 hours) at the end of our convention on Saturday afternoon and Sunday for a nominal fee. They will update our knowledge base with the significant changes in the AMA's 4th edition. These hours will help us qualify to sit for their certifying examination.

I hope that you are pleased and encouraged with the member services that have been and continue to be offered by the ACCC. The executive board has taken an aggressive approach relating to broadening the exposure of the College to those that may need the services of our members. We are now:

Listed in the National Directory of Expert Witnesses. Their 1997 directory is published in May with 8,000 copies mailed to law firms and insurance companies. Additionally, we are included in their Online Internet Directory (www.claims.com).

Listed in the Noble Internet Directory. Their directory (www.experts.com) is a resource for attorneys, judges and journalists and now receive over 2,000 visitors per day.

- Warren T. Jahn, DC, MPS, FACO

An organization has, for many years, been at the forefront of the health fraud war, and has been working to educate the third party system, political and law enforcement officials to the rampant fraud and abuse in our health care system. This organization is the National Health Care Anti-Fraud Association [NHCAA]. The NHCAA holds educational programs around the country, helped to develop a computer data base which can track and cross reference fraudulent activities, schemes, providers, and questionable practices.

The NHCAA has professional membership composed of major insurance carriers, ASO and TPA, in the United States, Canada, and many foreign countries; representation by state and federal regulatory and law enforcement agencies including: F.B.I.- Office of Inspector General- US Attorney General- US Dept. of Justice - US Dept. of Defense [CHAMPUS]- US Dept. of Defense [Criminal Investigative Services]- Dept. Health and Human Services - Health Care Financing Administration- IRS- US Postal Authorities- FDA- National Association of Medicaid Fraud Control Units.

There is also an Advisory Liaison Committee, to provide in-put from the health care field. This group includes, Amer. Hosp. Assoc.- Amer. Col. Podiatric Medical Review- Amer. Dental Assoc.-Amer. Medical Assoc.- Nat'l Assoc. for Chiropractic Medicine- Health Ins. Assoc. of Amer.- Internat'l Claims Assoc.- Internat'l Assoc. of Special Investigative Units- Nat'l Assoc. of Medical Equip. Suppliers- Nat'l Assoc. Private Psychological Hosp.- Nat'l Ins. Crime Bureau- US Dept. of Justice- Consumer Health Information Research Instititute.

All of this means that there are now very well informed, well funded and highly motivated organizations that have the ear of law enforcement, and are out to rid society of the scourge of health fraud.

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Mark your calendar!
The ACCC convention is
September 18-20, 1997
at the Marriott in
Schaumburg, IL !

JOTS FROM DR. JEFF

Dear Colleagues,

Our web site has move to: http://www.ACCC-chiro.com ! ... Stop in and take a look, and let us know what you think! Also please report any malfunctions or broken links. It would be very helpful if you supply an updated link for those you find broken.

If you haven't been on the web and it seems all too scary, and difficult ... be aware that it's not that hard. We will cover some of the basics of web surfing at our next convention!

A very good online orthopedic text book is available at: http://www.medmedia.com/med.htm A link to the site is provided at the ACCC website.

If you have ideas or suggestions for the website or newsletter, feel free to e-mail me at: cates@essex1.com

- Jeffrey Cates, DC

We're on the Web at http:// www.ACCC-chiro.com

JEWELS FROM DR.

CALL FOR ARTICLES

As Dr. Cates and I put together these newsletters, input from member's would be extremely helpful. If you come across pertinent information regarding UM, UR and QA. We would appreciate you forwarding it to one of us for future use.

Thank you.

Jeanne Lapp, DC

Fax (847) 945-8430

or

E-mail to JLCHIRO@aol.com

- Jeanne Lapp, DC