

## Verbal Threshold Guidelines of NY and NJ

Recently, our offices have been involved in managing patients that have had injuries from New York and New Jersey accidents. From 1984-1990 I had three practices in NJ and NY and have some familiarity with the laws. Unfortunately, having practiced in Connecticut for the past 16 years I have missed many of the law changes that have occurred. Because of the confusion that I have experienced from attorneys here in Connecticut I have done some reading and called some friends so that I understand the documentation requirements. Here is what I have found

Under New York No-Fault Law, you cannot recover for personal injuries unless you have sustained a **Serious Injury** as defined under the law. Under New York State Insurance Law, the **Serious Injury Threshold** is defined as:

1. A permanent loss of use of a body organ, member, function and symptom.
2. A permanent consequential limitation of a use of a body organ or member.
3. Significant limitation of a use of a body function or system.
4. A medically determined injury or impairment of a non-permanent nature which has prevented the Plaintiffs from performing substantially all the material acts which constitute the Plaintiffs usual and customary daily activities for not less than 90 days during the 180 days immediately following the accident.

New Jersey No-Fault laws have changed several times over the past decade and were initially modeled after the NY law. Now, under **NJ verbal threshold**, suits for pain and suffering are prohibited unless an injury results in;

1. Death;
2. Dismemberment;
3. Significant disfigurement or significant scarring;
4. Loss of a fetus;
5. Displaced fractures; or
6. A permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement. In NJ an injury shall be considered permanent when the body part or organ, or both, has not healed to function normally and will not heal to function normally with further medical treatment. N.J.S.A. 39:6A-8.

When compared to Connecticut, it looks like an impossible hurdle to overcome on the commonly seen connective tissue strain/sprain. In fact, an uncomplicated strain/sprain would not meet the threshold in either state.



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**A MEDICAL-LEGAL NEWSLETTER FOR PERSONAL INJURY ATTORNEYS BY DR. STEVEN W. SHAW**

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From conversation with friends and practitioners in both states it is clear that the way to determine of an injury meets the threshold is to have objective diagnostic testing which can demonstrate a soft tissue lesion that meets the threshold. For the most part, this means a MRI or EMG demonstrating a disc lesion and neurologic involvement. In fact, many times you need both tests to met the threshold. One of the articles I read specifically identified case law that successfully allowed a motion for summary judgment based upon equivocal MRI findings in the presence of a positive EMG.

An interesting fact that has not changed since I practiced in these states is that, unlike Connecticut, the doctors and attorneys do not generally request or require evaluation for permanent impairment ratings. Rather they must document objective findings of "Serious Injury" and demonstrate how these injuries have significantly altered the patients ability to meet prior achievable functional activities. Also interesting is that the functional limitation must be significant. The loss of ability to play tennis or enjoy playing with your child was not enough to meet the threshold in several NJ cases.

The good part about both states is that there is abundant no-fault benefits for the injured patient to receive the medical examinations that are required to determine if the threshold has been reached. However, since the PIP benefits are primarily in place on the vehicle not at fault, there is some grey area as to who is responsible for the medical expenses when the struck vehicle is insured in a state like Connecticut that has no required basic reparation benefits. None of the articles I read elaborated on this point.

In summary, it is important that the attorney and doctor understand the parameters that are present when attending to patients injured in jurisdictions outside of Connecticut. Improper medical management, documentation, legal filings and terminology can all lead to the patient being burdened with a large medical bill and no foundation to pursue an action to receive appropriate compensation.

I have two articles I downloaded from the Internet that I found particularly helpful in my understanding of these state laws. Please contact me if you would like me to email you the articles in PDF format.

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