Shaw Chiropractic Group

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

Unknown Prior Impairments

One of our doctors was in a deposition recently and was asked about his assigned impairments and how they were arrived upon. After describing the basis for the opinions, he was asked the question that all of us dread, **"Doctor, would it make a difference to you if you were to find out that your patient had prior injuries/impairments to the same area?"** Of course, the right answer is that it would depend on the circumstances but we all know where this is going. Ultimately, this patient had multiple prior injuries and impairments that were not reported to us by the patient or his attorney. The attorney didn't know about these prior impairments either but the patient certainly did.

So, while it is fresh on my mind, I thought it was a good idea to discuss our position on these situations and offer some insight from the perspective of a treating physician. To start, **no individual case or patient is worth destroying our reputation (or yours)** and we wouldn't ever change our opinion to accommodate a misrepresentation. If we have opined on a patient's outcome and, after the fact, it comes to our attention that prior injuries to the area exist, then we acknowledge that we were unaware and that our findings are what they are, regardless. Had we known in advance, the care and management may have been different with different treatment goals. Also, there are ways to wordsmith our opinions to reflect the relative effect of the new injury on the prior permanent status. There is a lot we can do, and do every day, to address relative worsening of a condition on the eggshell patient. It's important for all parties to know that an incremental worsening of impairment has a significantly greater functional loss to patient's ability to meet their ADLs. A 5% impairment is certainly limiting but an 8% is far more limiting and in a manner significantly greater than the 3% numerical value may suggest. This can all be explained by the doctor who is informed of the prior status and then orders care with realistic expectations for recovery in that context. Absent that information, there really is little a doctor can do retrospectively, unless there are some very well defined differences from prior impairment reports and medical records when compared to the current MMI status.

Typically, prior medical records are of such poor quality that it is unusual to find an adequate level of usable data to establish a retrospective base line (unless of course the priors are from my providers). Typically, we are presented with canned EMR style reports that say nothing and document a patient that is near death (or the opposite), even though the objective findings are fundamentally inconsistent and the patient believes they made a full recovery. Like you, we take the patient as we find them and treat them for their present needs. Prior injuries are only a big issue if we don't know about them and address them in context.

What is the moral of the story? Simply, that the attorney and doctor need to diligently educate patients/clients with regard to being forthright and honest about prior cases and injuries. If every effort has been made and there is still misrepresentation, the burden falls on the patient and they will reap what they sow. **The reputation of the doctor and attorney is worth far more than any individual case**!