

Diagnostic Testing Fraud and Abuse

Diagnostic testing has been part of modern medicine since it's beginning. In the early days it may have consisted of simply using a sphygmomanometer to measure blood pressure. Perhaps using an ophthalmoscope to examine a patient's eyes or a stethoscope to listen to a heart, lung, vessel or abdomen. Now, the level of sophistication has brought on a new era in diagnostic medicine. We have nuclear medicine, PET scanners, MRA, three dimensional ultrasound, and a wide array of testing designed to help doctors diagnose more accurately and treat more precisely. These advances have saved millions of lives and reduced morbidity in ways that we could never have imagined even 20 years ago.

In the world of neuro-musculo-skeletal medicine we have found advances in imaging and electrodiagnostic medicine to be most applicable. We have electromyography, nerve conduction velocity testing, evoked potentials, MRI, Fluoroscopy (DMX), diagnostic ultrasound and more that help us identify the underlying lesions objectively.

These diagnostic procedures are indispensable when used on the properly selected populations. Unfortunately, many of these tests are ordered as a matter of routine without consideration of cost or need. In the personal injury world many doctors order the tests to satisfy an attorney's request or to increase billable services. In the non-personal injury world these tests are often ordered defensively to avoid malpractice claims. None of these are appropriate indications for the tests and represent abuse of the procedures. Doctors have an obligation to look out for the well being of their patients and order tests judiciously and appropriately; weighing the cost-benefit ratio.

Abuse of the tests for the above reasons is extremely disturbing. Even worse is when the abuse becomes fraud.

In the early Eighties I owned a mobile diagnostic company in New York that provided Thermography and Electrodiagnostic services to physicians in their offices. For several years I enjoyed the benefit of being one of only a few services of it's kind in the country. In the late Eighties the industry became infected with unethical companies that offered kick backs, diagnosed abnormalities when none existed and sold out what would otherwise be a extremely helpful procedure. Anyone who has had clients in New York or New Jersey has experienced the extraordinary abuses perpetrated by unscrupulous providers. These abuses had become so entrenched in the culture of these states that it became impossible to ethically compete with these fraudulent companies. I sold my business and relocated to Connecticut where the grass was greener.

I have been in Connecticut since 1990 and have enjoyed practicing in an environment with high ethical



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

standards. I have continued to order and perform diagnostic tests when appropriate, absent the influences that exist in other states. I have a love for the new technology and have purchased diagnostic ultrasound, EMG, DMX fluoroscopic machines but rarely use the tests because of careful patient selection. The personal financial gains do not outweigh my personal and professional ethical standards.

The diagnostic testing abuses I have witnessed in Connecticut have been few and far between. While performing file reviews I have seen the surface EMG and Neurometer abuses. I have seen some EMG and MRI abuses. Until recently, I had not experienced the fraud. I am sorry to say that the practices I witnessed in New York are now starting to develop in Connecticut.

As an example, I will share 2 stories about one of the most valuable tests that I have seen to date, DMX fluoroscopy (motion x-ray). Several months ago I was speaking with an attorney that told me about a doctor that offered to diagnose "whatever lesion he wanted". The doctor guaranteed the abnormality would result is a 25% impairment. To his credit, the attorney never dealt with the doctor again.

Just last week I was called from a prominent Hartford attorney who shared an experience with another chiropractor that guaranteed an abnormal test on 100% of the patients. If not, he would not charge for the service. Perhaps I'm naive but this sounds a lot like fraud to me.

In defense of DMX Fluoroscopy let me assure you that it's a valuable test when performed and interpreted properly. But like most tests, the percent of positive studies, even with strict selection criteria, should be in the 20%-30% range. Be on the lookout for any doctor that guarantees positive findings or that does the same test on every patient that walks in his door. You have to question the intention of a doctor that orders indiscriminate testing and has a financial motivation to do so. Even more so, run away from those doctors who guarantee impairments and abnormal results.

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