

"Proof" of VSC leads to \$105,000 legal award by Gregory S. Zoro, Attorney at Law

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A recent personal injury case utilizing outcome assessment results as evidence may become a landmark in chiropractic case history since it managed to present sufficient evidence to "prove" the presence of subluxation complex in a legal proceeding.

The case was submitted to binding arbitration and tried to a panel of three well-recognized, experienced trial attorneys sitting as arbitrators. The award rendered was a direct reflection of the reception these arbitrators gave to the evidence presented.

The case focused solely on the injuries to a 45-year-old male resulting from a "T-Bone" type automobile collision. The primary factual issue was whether the patient had sustained an exacerbation of pre-existing, asymptomatic degenerative disc disease in the cervical spine as a direct and proximate result of the collision.

Following the collision, the patient was transported by ambulance to the hospital where cervical spine films were taken and interpreted as "normal." The radiologist indicated in his report that there appeared, "mild degenerative disk narrowing at C5-C6 and C6-C7." Films of the chest showed fractures of four ribs with minimal displacement.

No complaints of pain

The patient was discharged from the hospital with a clinical diagnosis of left rib fractures and pulmonary contusion. No mention was made in any record as to any injury to the spine.

Within a week, the patient was seen by an internist who kept the patient under observation for the next eight weeks, then discharged him. No treatment was rendered with regard to the cervical or thoracic spine. Medical

records made no mention of any complaints by the patient about to neck or back pain. After being discharged, the patient did not receive treatment from anyone for six months.

The patient was told by the internist that he had reached maximum medical improvement; further, that any "discomfort" that he might occasionally feel would subside in time. Eight months after the collision, the patient entered the care of a chiropractor complaining of neck and back pain, bilateral numbness in his arms and headaches.

Finally admits pain

The patient explained that he could no longer tolerate the pain, which by that time had become disabling. The chiropractor treated him for about one year, during which time the patient showed good results.

As the chiropractor's attorney, I realized that, in order to prove the pain my client suffered was caused by the accident, opinion testimony had to be persuasive, supported by a broad foundation of empirical evidence. The defendants called an orthopedic surgeon who had conducted a medical examination of the patient shortly before trial.

The orthopedist testified that the patient had sustained merely a "transitory aggravation" of pre-existing degenerative disc disease and, due to the eight-month lag in treatment, no chiropractic treatment was reasonable or necessary.

The surgeon placed heavy emphasis on the fact that no nerve root compression was apparent. The opinion of the treating chiropractor, however, was that the patient had sustained a permanent exacerbation of pre-

existing cervical degenerative disc disease as a result of the automobile collision. We argued that the exacerbation not only made the pre-existing condition symptomatic, it had also accelerated the degenerative process.

Proving subluxation complex

Proving this latter point was pivotal to the case because it took the judges out of the realm of deciding the case solely on the word of one doctor over the word of another as to the presence of pain. By proving the presence of the subluxation complex and measuring the changes of that condition in objective terms, the focus would be away from a qualitative and somewhat argumentative evaluation and more toward a quantitative, objective analysis.

Evidence that the collision had "made active" the patient's pre-existing disc disease logically fit the Vertebral Subluxation Complex Model described by Lantz.(1)

Static and video fluoroscopic film and precise inclinometric readings established kinesio pathology.(2) Neuropathology and myopathology was graphically depicted and proven by surface electromyographic findings.(3) We also had persuasive proof of neuromotor deficits and demonstrated permanent impairment at maximum clinical improvement with the results of computerized muscle testing. (4,5)

After introducing into evidence all prior medical, employment and military records and all plain and videofluoroscopic films, the chiropractor testified that he had reviewed all medical records and had viewed all films, in particular the plain films taken on the night of the collision.

He then testified that he concurred with the findings of the radiologist, showing the panel what the affected area looked like by point-

ing on the films to the disc space narrowing at C5-C6 and C6-C7.

The patient's prior medical records had no reference to spine pain or problems. The treating chiropractor testified that he had reviewed these records, and then compared his initial observations and impressions of the patient's demeanor and apparent attitudes, noting that the patient consistently minimized his complaints of pain and discomfort. The doctor had obtained a history and noted that it was consistent with past medical records.

Pain in question

The doctor then testified as to the results elicited by the Oswestry pain questionnaire and compared the responses with the clinical examinations that he performed on the patient. He gave detailed testimony on the results of specific tests he performed on the patient throughout the course of the patient's care.

Of crucial importance was the results of various outcome assessments. Detailed testimony recorded that the doctor followed the standards set forth in the AMA Guides to the Evaluation of Permanent Impairment and conducted each range of motion test three times, utilizing a fluid-filled inclinometer.

He showed the judges what such a device looked like and demonstrated its use. Testimony was crisp and clear. The patient's ranges of motion were stated in specific numerical values followed by a line of questions pertaining to the significance of the findings.

Orthopedist give vague answers

This was in sharp contrast with the testimony of the orthopedist, who also stated that he had obtained range of motion findings but failed to utilize either an inclinometer or goniometer. He testified that his years of experience gave him the

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benefit of a "critical eye."

The treating chiropractor then went on to testify that he regularly performed computerized muscle testing throughout the patient's course of care and was thereby able to establish and document the extent of the patient's motor deficits. Based upon the computerized graphical representations over time, he was able with precision to determine permanency of condition.

Through a series of rather complex questions, the treating chiropractor related the results of his clinical examination and results of range of motion tests and computerized muscle testing with plain and videofluoroscopic films. He identified the specific anatomical structures which were affected in the collision. He described the various forces which came to bear upon the patient's spine during the collision all the while pointing to a model of the human spine and anatomical charts of the body.

The doctor then compared the plain film obtained on the night of the accident with the first film he took of the patient's cervical spine eight months later showing an identical loss of cervical lordosis. Of significance was the report of a radiologist interpreting the videofluoroscopy which indicated sclerotic changes which were not apparent in the plain films taken on the night of the collision.

Wending his way through the videofluoroscopy, plain films and the results of computerized muscle testing taken through the course of the patient's care, the doctor showed the judges where and how the degenerative processes accelerated.

No guessing game

The most remarkable aspect of this case was the lack of emphasis placed upon pain. Focusing merely on the issue of pain -- a subjective reaction which is difficult to prove or disprove -- creates little more than a guessing contest for the judges, who are often misled by irrelevant factors rather than the merits of the case.

While pain was a very significant factor in this case, this case did not focus merely on pain. It focused upon a clear demonstration and explanation in bio-mechanical terms of exactly how the patient's pre-existing condition was affected by the collision.

A fundamental principal of persuasion was adopted throughout the presentation of evidence:

- (1) People will believe only that which they can understand.
- (2) In order for it to be understood, it must be seen.
- (3) Seeing is believing.

While the chiropractor and I both were well grounded in the concept of the vertebral Subluxation we focused on the components of the condition. Because of the heavy emphasis upon outcome assessments, the doctor's testimony was never challenged -- not a single cross examination question was asked.

It became apparent that the patient had suffered a permanent insult which was considered by all to be painful and the award of \$105,000 was made by an unanimous panel.

References

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(Gregory S. Zoro is a personal injury attorney in private practice since 1979, experienced in insurance dispute cases. He is a member of the board of directors of the Washington State Spinal Health Institute and has been published in The American Journal of Clinical Chiropractic.

His Chiropractic Physician in the case was Bret J. MacDermott, D.C., of Des Moines, Wash.

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