

## **THE IMPORTANCE OF OBJECTIVE EVIDENCE IN INJURY CASES**

Sometimes practical tips in dealing with insurance companies are more valuable than fine legal arguments when it comes to getting your bills paid. This is one such instance.

We have an effective tool to counter the prevailing idea promoted by insurance companies that soft tissue injuries are minor in nature and should only require a very minimum amount of treatment. We continue to hear insurance companies assert that no significant injuries can exist in automobile accident claims unless there is a major impact and serious injuries, which are often defined as fractures, herniated discs, and the like.

However, such dramatic evidence is not required to substantially increase the value of these claims, or to obtain fair compensation for the reasonable and necessary chiropractic treatment that they require.

Simple documentation (photographs) of cuts, bruises, abrasions and swelling will add tremendous value to most soft-tissue injury claim. Insurance companies know that they can't easily persuade a jury that a person was not significantly injured when that person can produce photographs of significant bruising, cuts, abrasions or swelling following an accident. The usual insinuations by insurance company lawyers that the person is embellishing his or her pain and suffering, or is a malingerer, is more likely to antagonize a jury than to be persuasive in the presence of such evidence. The insurance companies don't want such pictures to be seen by a jury because they know that they undermine their basic defense that there were no real injuries therefore no pain and suffering.

This is not just a theory. In the day-to-day technical evaluation of claims by insurance companies, it is common for adjusters to be required to note on each claim whether or not there are "objective injuries." It's a simple "yes" or "no" evaluation performed by a click of the mouse. In many cases there is no further discussion beyond that.

It is very important that you understand that, to the insurance company, objective injury means visible injury, it does not mean (to them) that you as a doctor performed tests and recorded objective findings from these tests. That is something entirely different and does not necessarily result in a higher valuation of the claim (in part because such tests also involve to a greater or lesser extent the subjective input of the patient being examined). Evidence of visible injury is a stronger "value driver" than objective findings you're your examination.

While this is a simple way to fortify the claim it is important to actually take the necessary actions. Most cuts, abrasions, contusions, and swelling tend to fade or resolve leaving little or no trace of the injury within weeks. You will know better than I that there are exceptions to this as well. For that reason photographed should be taken as early as possible.

Depending on the situation and injury, photographs should also be taken periodically. That is particularly true in the case of cuts or dog-bites that might result in scarring. Your records and reports (as well as photographs) always should reflect the existence of scars as a result of the accident, as these in particular can substantially increase the value of the claim.

However, I do not want to leave the impression that what I am saying here applies only to obvious disfigurement of the kind that might result from a motor cycle accident, dog bite or auto v. pedestrian collision. It applies equally to the routine bruises, abrasions, contusions, and major swellings that often go along with automobile accidents, falls and other such incidents.

## WHAT SHOULD BE DONE?

1. Patient histories at the time of intake should include a record of the existence of any cuts, bruises, abrasions, contusions, major swelling, scars, potential scars or puncture wounds. Diagrams and drawings are helpful, as are measurements;
2. Encourage, request, and even demand that the patient take (periodic) photographs of the visible injuries in questions. Naturally, with the prevalence of digital cameras and cell phone cameras, this is very easy to do (although we do not recommend that cell phone cameras be used because they often result in poorer quality pictures, either due to user error or the quality of the phone). Encourage the patient also to send the pictures to their attorney, or simply hold on to them if they are not represented at that time;
3. We recommend the above step because we recognize that doctors often have busy offices and are more concerned with direct treatment of the patient than with preparation of their claims, as should be the case. However, some doctors are very conscientious about this and willingly take patient photographs as part of their routine records when it is appropriate. Either way, the important thing to remember is that the availability of these photographs can have a significant impact on our ability to get you fully paid, especially in those cases where you are working strictly on a lien basis;
4. It would not hurt to keep a digital camera in your office all times for those times you might want to have photographs taken by your staff. Naturally good judgment and discretion must be used concerning the patients privacy in these matter, both with regard to how the photographs are taken (in some instances), as well as who takes them.
5. Have your office tell us if your patient is likely to have a scar or scars as a result of the accident, and please do so well before your final report. We will take it from there. Typically we contact the client, obtain documentation (pictures), and help the patient by arranging a consultation with a cosmetic surgeon regarding scar revision or other necessary procedures, if that is what the patient wishes to do.

You would be surprised by how much these simple measures can increase your chances of being fully paid for your services, and also increase the chances of your patient being satisfied with compensation received for their ordeal. In many instances, we have seen insurance companies significantly increase the value of the claim based on presentation of the photographs alone and without the need for any further opinion from a cosmetic surgeon or other medical doctor. So it is well worth considering this simple tip.