

Testifying on Pain

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You are a doctor. You understand how to treat pain. For you to communicate that pain to a jury is a much different task than the trial lawyer faces when attempting to effectively describe the suffering of his client.

The goal of the trial lawyer is to have the jurors feel the client's pain and suffering. The lawyer must be careful not to overstate the suffering (the jury may believe the case is fabricated), nor to understate the pain (the jury will award little or nothing).

There are many variations on treating pain. The chiropractic point of view will handle the pain in one manner; the orthopedic in another. As each individual experiences pain differently, the trial lawyer faces significant challenges when attempting to adequately quantify and communicate pain to a jury.

There's an often-disregarded axiom: Never have your client as the principal source of communicating his/her pain to the jury. Trial lawyers face prejudices as a result of years of publicity and brainwashing by insurance carriers that complaints of pain (particularly in soft tissue cases) are fabricated or, at the very least, exaggerated. As a result, jurors view with considerable skepticism plaintiffs speaking about their own pain.

The solution is to avoid having the plaintiff testify about the pain; if the plaintiff testifies, it should be brief and concise and directly on the topic in a concise manner.

Enter the DC. There is no one more capable of being believed than the treating doctor if the testimony is clear and graphic. You are the key to your patient emerging victorious.

Many doctors wish to extol the virtues of their treatment, but focusing on the positive aspects of treatment and the improvement plays right into the hands of the defense. If the patient is now well, what's all the fuss?

The focus during treatment is improvement. The focus at trial is on residual problems the patient continues to experience. The service to your patient is to objectively quantify what he/she cannot accomplish or cannot perform as well.

Your patient is injured; your patient will never be the same; your patient is disabled. With proper guidance, your job at the trial will be to effectively communicate the limitations in your patient's life.

Dealing in pain on a day-to-day basis may have caused you to become desensitized. Notwithstanding the focus toward improvement, you will do your patient a disservice if your testimony does anything other than exhaustively describe the patient's pain and limitations.

An inherent difficulty in handling personal injury cases is that years may pass between the accident and the trial. As a result of the treatment of the doctor of chiropractic, the patient may appear healthy but have permanent disabilities.

Pain is not abstract; it's real; pain is felt. What is important is for the doctor and lawyer to work together as a team to have the jurors feel the pain of the patient.

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