

Testifying on Pain

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You are a doctor who understands how to treat pain. But if you're called as the patient's doctor to testify before a jury, communicating the patient's pain 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.

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.

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 helping your patient.

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 and effectively communicate the limitations in your patient's life since the injury.

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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