

Having Trouble in Personal Injury Cases? Get a Second Opinion

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Over the past few years, I've observed that many chiropractic physicians are having difficulty obtaining payment in a timely fashion in personal injury cases. Cases take longer to settle and attorneys are frequently asking doctors to reduce their fees. Claims adjusters are often challenging chiropractic bills.

After more than 30 years of experience caring for patients injured in vehicular crashes and slip/fall injuries, I've undergone a learning process that may offer some guidance to other doctors in the successful management of personal injury cases. After reviewing my personal injury cases for the past several years, I note that I have a 98.5% collection rate and I very seldom have a deposition or have to testify in court for the plaintiff.

Integrity with Insurance Adjusters and Attorneys

The formula for success is really very easy to follow. First and foremost I cannot place enough emphasis upon the importance of the physician's honesty, credibility and integrity while serving the injured patient and while working with the insurance adjuster and plaintiff's attorney. Sometimes the doctor loses sight of this goal after dealing repeatedly with claims adjusters and attorneys who are confrontational. My advice is to never forget the importance of integrity: it pays off long-term despite short-term set backs.

Handling the First Visit

When the new personal injury patient comes for the first visit, it is important to determine if he/she has an attorney. If the patient does not have an attorney, the doctor can offer the patient a short list of knowledgeable reliable attorneys that the physician has worked with in the past. It is always a good idea to present this list after the patient requests assistance from the doctor. Referring all patients to one attorney can create an impression of collusion between the doctor and attorney.

If the patient chooses to be represented by one of the attorneys on the list, the doctor can provide the patient with the name, address and telephone number of that attorney. Frequently, the patient will want to call the attorney from the physician's office to establish initial contact.

Occasionally a personal injury patient will consider retaining the "family attorney" who has drawn up wills, real estate papers and other business papers. My question to the patient who is considering a family attorney is: "How many personal injury cases has your attorney been involved with?" Then I explain to the patient that lawyers specialize in certain types of law, and that an attorney who specializes in auto accident cases will provide the most effective representation.

The patient also needs to understand that insurance companies retain highly trained defense attorneys to represent the insurance company. Furthermore, the insurance adjusters are professionally trained to evaluate the worth of personal injury cases favoring the insurance company. This frank, up-front discussion is usually effective in connecting the patient with a

competent personal injury attorney. Next, the doctor must receive a properly written letter of protection from the patient's personal injury attorney, as authorized by the plaintiff.

Get Your Name on the Settlement Check

Sometimes a patient refuses to hire an attorney and attempts to settle the case without representation. In these instances I have found it best not to accept such a patient unless adequate insurance coverage is available through the patient's own insurance company, or the patient pays on each visit. If the doctor treats the personal injury patient, the odds are that the physician will never get paid. Also, such patients are usually not satisfied with treatment and not likely to keep their appointments. If you decide to accept a patient without legal representation, the doctor should contact the adjuster immediately to find out how to be paid for services, and if he/she will need an itemized statement and a report.

I have developed an authorization form that the patient signs (among other forms) on the initial office visit, which is then notarized by a staff member. This form states that the personal injury patient agrees that the physician's name is to appear on the settlement check for the physician's services issued by the adjuster for the insurance company. It is important at that time to ask if the adjuster will honor the authorization form. If the authorization form is honored, the doctor should mail a copy of the executed authorization form to the adjuster at once. Then when the case is completed, the doctor should send the final itemized statement to the adjuster with another copy of the executed authorization form.

If the adjuster refuses to honor the patient's authorization form, the physician needs to explain to the patient that the adjuster will write the settlement check directly to the patient, who must use that check to pay the physician's bill. Unless the patient is well known to the office for honesty and integrity, it is best to have that patient pay cash, take out a bank loan, or use a credit card.

A few years ago I treated a young lady injured in an auto collision and no attorney was involved. I became suspicious early that I would not get paid in this case, so I called the adjuster and expressed my apprehensions. After a short conversation, the adjuster agreed to cut two checks: one for me and the other one to the patient. Later I found out that the young lady and her boyfriend took a trip to North Carolina. As you can see it pays to get well acquainted with insurance adjusters. This is where the physician's honesty, credibility and integrity must shine through for the adjuster.

It's worth repeating what I stated at the beginning of this article, after reviewing my personal injury cases for the past several years, I note that I have a 98.5% collection rate and I very seldom have a deposition or have to testify in court for the plaintiff.

The Lawyer Is "Unfamiliar"

If the plaintiff has already retained an unfamiliar personal injury attorney, the doctor must be sure to contact that attorney by telephone or in person and ask for a "letter of protection," indicating clearly that the physician's bill for his/her client will be protected and paid directly to the physician out of any settlement of the claim. This request should be sent to the plaintiff's attorney in a follow-up letter. If the attorney appears hesitant or uncooperative, the doctor must impress upon the patient to request the letter of protection from his/her attorney.

Responsibility for Payment Is Always with the Patient

The physician should make it clear to the personal injury patient that regardless of the outcome of the case he/she is fully responsible for payment of the physician's bill for professional services

rendered to the plaintiff. It is amazing how many plaintiffs feel that they are not responsible for their bill simply because the vehicular accident was not their fault.

Responsibility of payment should also be reflected in the office forms signed on the initial office visit. Payment of the physician's bill can be made by the plaintiff in cash (a rarity), auto Med-Pay insurance (plaintiff's auto insurance) or by presenting a claim to the plaintiff's health insurance. The doctor should explain to the plaintiff the need to show some payment on the claim. If the case goes to deposition or trial, the defense attorney cannot effectively say that the physician has a vested interest in the outcome of the case since the doctor's bill is paid.

Get Your Name on the Settlement Check

What happens when the doctor has completed the plaintiff's treatment and has written the final report to the attorney and now the plaintiff dismisses his/her attorney? This happens on rare occasions. The authorization form that I mentioned earlier is useful in these circumstances.

After dismissing his/her attorney, the plaintiff may go to the adjuster and try to negotiate the settlement of the claim. Usually the adjuster is aware that the plaintiff is attempting to keep all settlement funds and does not plan to pay attorney fees or physician fees. This is one reason for the doctor to know the adjuster so that he/she can be contacted immediately regarding the authorization form signed by the plaintiff. In most instances the adjuster will accept the form, which can be faxed immediately. However, should the claims adjuster not accept the form and send the settlement check to the patient, the physician may never get paid unless the patient is honest. The only other recourse is to try to communicate with the patient, and if that fails, the doctor may turn the patient's account over to a collection agency and/or file a claim in small claims court.

A few years ago I saved \$2,700 with my patient authorization form. The patient I had released from further care fired her personal injury attorney. I quickly telephoned the adjuster who understood the situation and accepted the patient's authorization to place my name on the settlement check. He placed my name on the check for my services along with her name. The patient later came into the office and slammed the check down on the counter and flew out of the office madder than a wet hen. We simply stamped the check for deposit and put it in the cash drawer. End of problem. By the way, we have a special stamp we use in a case like that. Incidentally, the attorney in that case was never paid.

Why Do Cases Go to Court?

What makes a case wind up in court? Several things. First, the plaintiff may have an inexperienced or incompetent attorney handling the personal injury case. The attorney may be asking much more than the case is worth when presenting the demand package to the insurance company.

A few years ago I testified in court for an inexperienced attorney who was demanding in excess of \$200,000 for a soft tissue injury case that involved no fractures, surgical intervention or permanency. The defense attorney did his job well and the jury rendered a low verdict. What was worse, the patient tried to feign pain that she didn't have. I still received 60% payment of my bill.

On another occasion I testified in court for a plaintiff that had an experienced personal injury attorney. The plaintiff had no permanency and had few medical bills. The insurance carrier offered him \$6,000. The plaintiff refused even though his attorney advised him to accept the offer. We went to court and the jury awarded \$6,000. But now the plaintiff had to pay extensive out of pocket trial costs such as my fee for expert testimony. He should have taken the money and run after the initial offer.

A case may also go to court if the defense has received a poorly written report with insufficient documentation, coupled with a high bill for services. First, the defense will probably want to negotiate a very low settlement. If that is not acceptable to the plaintiff, the case may go to trial. A deposition follows.

One purpose of a deposition is to explore and probe the weakness of the physician as a witness. Will the physician appear as a credible witness to the jury? Does the physician appear nervous and give unclear and incomplete answers to the defense's questions? Does the physician tend to volunteer more information than the question warrants? Most important, is the witness defensive and angry when opposing counsel challenges his/her credibility?

Should the defense attorney perceive the physician as a weak witness, a jury trial moves forward. Why? Because the defense will be eager to get the doctor on the witness stand before a jury, or show the jury a poor or angry DC witness by deposition.

Get a Second Opinion

If the chiropractic physician presents a high bill for chiropractic services and has good documentation and a well written report, the defense may still opt to try the case. But if the chiropractic physician has an evaluation by a specialist, such as a neurologist, physiatrist, neurosurgeon or orthopedic surgeon, who provides a supportive report with some recommendations, it will lend greater credibility to the case. This, in turn, may deter the defense from going to deposition and/or court. Of course, the defense will also use its own specialist to counter the plaintiff's specialist(s).

Good cooperation in this case can be achieved by referring to a specialist with whom the chiropractor has personally become acquainted and with whom he/she has a good rapport. The plaintiff's case is certainly strengthened when there is appropriate documentation such as a radiologist's report, emergency room report, prior medical history, MRI and C-T scan reports, laboratory reports (when indicated) and the specialist's report. Such documentation lends strong credibility to the chiropractic physician's services, report, and itemized statement, all of which is incorporated in the demand package to the insurance adjuster by the plaintiff's attorney. The probability of the defense asking for a deposition and going to court is thereby substantially reduced.

Evaluating the Case

What is a soft tissue injury case really worth? That depends upon many different factors, some of which are medical and some which are legal. Recently the Columbus Bar Association published a book, *What's Your Case Really Worth: A Decade of Trial Verdicts*. Obviously a case with no permanent injury, no severe fractures or major laceration and no surgical intervention is worth far less than if these factors were present. Furthermore, the same type of injury that occurs in one county may be worth considerably less than if that same injury occurred in another county. By using your local bar association as a guide, it is easier to estimate the real monetary worth of a personal injury case.

In January 1993, I inherited a personal injury case in which a 25-year-old lady driving a Firebird was rear-ended by a GMC Safari traveling about 55 MPH. There apparently were no skid marks. At impact, her left forehead struck the windshield and bent and twisted her seat back about six inches. Aside from her cervical, thoracic and lumbar sprains, she developed petit-mal-like symptoms causing her to have black-outs from 60 seconds to as long as 4-5 minutes. EEGs were equivocal and C-T scans and MRIs of her brain were negative. However, a complex EEG (brain

mapping) performed at OSU Clinical Neurophysiology Laboratory, which I recommended, was reported by Miles Drake Jr., MD.

Interestingly, the left front temporal region was identified as being asymmetrical when compared with the right side. This turned out to be the only hard positive evidence to document her brain injury. The neuropsychological evaluation indicated a level of performance within mildly impaired range. Yet today this lady continues to suffer from cerebral dysfunction or neuropsychiatric disorder. This prevents her from driving a vehicle or holding a job. The drug, Clonopin, does help somewhat to control her momentary "dissociation from the environment, causing inability to interact with those around her for 30 seconds up to 5 minutes, up to twice daily." The neurological exams were all negative.

The defense in this case took the depositions of the various doctors involved. I was in deposition for four hours and received \$900 from the defense attorney at the conclusion of the deposition. The case was set to go to trial when the defense attorney opted to settle out of court for \$250,000. The accident occurred in a small rural county. Had the case gone to trial, the fear by the defense was that the jury verdict could have reached one million dollars. The fee for my professional services in this case was \$3,287.

"Team" Management

I like to think of managing a personal injury case as a team concept approach. The competent personal injury attorney is the "legal quarterback" and the astute chiropractic physician is the "clinical quarterback." The team players who are called upon to play their roles are the hospital ER; radiologist; diagnostic laboratory (MRI, C-T scan, bone scan); physiatrist; neurosurgeon; orthopedic surgeon; psychologist; psychiatrist; oral surgeon; plastic surgeon; rehabilitation center; neuropsychologist and brain mapping (complex EEG). I urge the chiropractic physician to use these "players" wisely and timely, not only in the best interest of the plaintiff, but to obtain a timely and full settlement of the physician's bill.

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