



LEGAL FORUM

## Top 5 Value Drivers in Personal-Injury Cases

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*Editor's Note:* This is a [new column](#) for 2021 on legal issues relevant to chiropractic practice.

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Sometimes personal-injury work can feel a bit like a crapshoot. It's hard to tell if the patient in front of you represents a good PI case or a risky lien. It is very easy to feel like you have no say in the quality of the case and, thus, the odds that your lien is paid. Making matters worse, some cases come in looking promising, only to disappoint when it's time for the attorney to pay your tab.

That said, there are several things you can do or look for to maximize your chances of having a good case and controlling your own destiny. Your patient will thank you (because their case will be worth more), the attorney will thank you (because *their* case will be worth more), and you will be happier because when you go to ask for your bill to be paid in full (which you should), you will know you did everything in your power to make it so. With that said, here are the top five value drivers.

### 1. Liability



Most people who have been in a traffic accident find a way to explain how it wasn't their fault. However, the party adjudicated to be "at fault" for an accident is almost always the party whose insurance will end up paying for the damage (both bodily injury and property damage). This information is contained within the police report or traffic collision report, which can be obtained by asking your patient for a copy; or if they have already retained counsel, by asking their attorney for a copy.

Along with the pictures, insurance information and ER / ambulance records, the police report should be among the documents produced to you by every attorney you work with on every case.

Not every car accident will generate a police report; however, for those that do, you can find who the officer found to be at fault for the accident by locating the party listed as party number 1 on the front page or listed as the "at-fault party" in the narrative. While there are exceptions to this, if "the other guy" is listed as the at-fault party, you are well on your way to a quality case. If not, it's better you know now.

## 2. Property Damage

I have argued countless times to adjusters and opposing attorneys that property damage has nothing to do with bodily injury, and I stand by it. I recently settled a million-dollar case in which a 28-year-old athlete was hit in a head-on collision in a parking garage by an 89-year-old woman going no faster than five miles per hour – and while the property damage was nothing to write home about, his spinal fusion surgery was.

That said, cases with minimal damage to your patient's vehicle and minimal soft-tissue injuries are what insurance companies affectionately refer to as MIST cases (minor impact, soft tissue). They get referred to the dark depths of insurance company hell called things like the Minor Impact Unit, where nothing settles for more than \$2,000.

The bottom line is if you ask your patient for pictures of the damage (another thing any good PI attorney should send you) and find yourself asking, "Where is it?", you might have a low-value case on your hands.

### 3. Diagnosis

While every DC writes a PI report that includes diagnoses, they are not all created equal. It turns out that the diagnoses you write are extremely important, and taking the time to ensure you are appropriately documenting all of your patient's complaints can make or break a case. Also make sure you are using pain codes (like G89.11/12 for acute/chronic pain due to trauma), as well as trauma codes when appropriate.

For example, if your patient is having headaches after an accident, don't just write headaches; code G44.319/329 for acute / chronic post-traumatic headaches. Don't diagnose lumbago; use specific trauma and pain codes. Taking the extra time to report specific diagnoses not only will assist in justifying your treatment, but also can justify things like work restrictions and additional referrals. Taking someone off work or referring them to a neurologist will be questioned without supporting diagnoses.

### 4. Prognosis

DCs commonly will provide quality diagnosis, but fail to note the prognosis accompanying that diagnosis. This leaves open the door for an adjuster or attorney to argue that your patient needs no future medical treatment and is not deserving of much in the way of general damages (pain and suffering).

I recommend that for each diagnosis, you list a corresponding prognosis. When you are writing final reports, I suggest going as far as listing a percentage of pre-accident status (e.g., Diagnosis – G44.319 Headaches Acute Post Traumatic; Prognosis – 90 percent pre-accident status). Resist the urge to write that your patient is all better when they aren't.

I have seen some amazing results for post-traumatic chiropractic treatment and if your treatment resolved one or more of your patient's complaints, it should certainly be noted. But if your patient has ongoing complaints of pain – even at their last visit – that needs to be noted so they can be compensated for their residual pain.

### 5. Activities of Daily Living

Activities of daily living, much like pain and suffering, are compensable. Taking a moment to ask your patients what activities they used to enjoy or perform without pain, but that they are now no longer able to enjoy or perform without pain, can be very important. Your report could include the best three, including how long they have been unable to perform the activity and/or the level of disability or pain suffered while attempting the activity.

For example, an avid tennis player may note they have been unable to play in the month since the accident. You could list that, including a degree of disability of 10/10 or 100 percent. They may also explain that getting dressed in the morning causes them considerable pain now. You could list that as well, with a degree of disability of 5/10. While these metrics are obviously less-than-scientific, they are extremely helpful when attempting to prove the existence of soft-tissue injuries for which objective proof is lacking.

### The Bottom Line

Ultimately, taking the time to do some brief investigation of your cases and accurately documenting your patient's condition will save you time and money in the ongoing fight to get your bill paid. And chiropractors who get their bills paid are happier chiropractors, pure and simple.

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