

In Court with Dr. Lichtenberg

Is your client a poor or unreliable historian? Provider bias!
Part 4 of a series.

Dr Lichtenberg Reports:

“I have had the argument that the client has poor or inaccurate recall of their medical history brought up against me 4 times in the last few months in IMEs or court!

Why is your client a Poor Historian?

1. **For secondary or monetary gain? *Rarely***
2. **Because they have a poor memory? *Possibly***
3. **Because they have mental or behavioral disorders with associated psychological factors that affect everything they do? *Commonly***
4. **Because their complaints were ignored or not considered claim-related by a treating provider? *Commonly***
5. **Because the treating provider failed to document properly or was biased towards the insurance company or employer? *Commonly***
6. **Because of neuroplastic brain changes? *Frequently***

-In the first newsletter, we reviewed defense arguments that litigating accident patients have poor recall of their medical histories, usually under-reporting pre-existing conditions and over-reporting current symptomatology.

-In the second newsletter, we explored secondary gain, Waddell's signs, and symptom magnification as reasons why clients are so often considered poor medical historians, yet these are usually incorrect analyses and therefore false arguments.

-In the third newsletter, we explored poor memory and mental and behavioral disorders with associated psychological factors as causes of being a poor historian.

******So now let's look at the fact that claimant complaints were ignored**

or not considered claim-related by a treating provider, that the treating provider failed to document properly, and/or was biased towards the insurance company or employer .

PROVIDER BIAS!!

What does the treating Dr. gain by claiming the patient is a poor historian, ignoring certain complaints, documenting poorly or omitting history, and denying causality of complaints?

In the workers comp and personal injury arenas: **Monetary gain!**

Yes. More referrals, more \$\$, and the reputation in the niche of denying causality and treatment.

-Concerning ignoring history and various complaints:

Providers are human, and don't always like their patients.

1. [Pain](#). 2011 Oct;152(10):2342-7. **When you dislike patients, pain is taken less seriously.**

[De Ruddere L](#), [Goubert L](#), [Prkachin KM](#), [Louis Stevens MA](#), [Van Ryckeghem DM](#), [Crombez G](#). Department of Experimental-Clinical and Health Psychology, Ghent University, Gent, Belgium.

Abstract. This study examined the influence of patients' likability on pain estimations made by observers. Patients' likability was manipulated and videos of the patients were presented to 40 observers who rated the pain. Results indicated lower pain estimations with regard to patients who were associated with negative personal traits. The effect on pain estimations was only found with regard to patients expressing high-intensity pain. **These findings suggest that we take the pain of patients we do not like less seriously than the pain of patients we like.**

-It is also a well-known fact that many physicians document histories and physicals poorly. As a matter fact, this is frequently implicated in malpractice suits. In today's medical arena, controlled to a significant part by insurance companies (such as what diagnostics we can and can't do and what medications we can and can't prescribe), physician's time is at a premium. Physicians are frequently overbooked, get behind due to

unforeseen difficult patients, complicated patients, or emergencies, and are frequently hurried when they see patients. This all adds to poor documentation, and adds to rushed histories and physicals. In the claimant arena, all of the above items apply.

- It is also a well-known fact that many doctors are minimally or poorly trained in issues of causality. This is a major concern when compensability is questionable, and the diagnosis is questionable, and then the physician ignores complaints that the physician feels are not related to the claim.

However, as we all know, not only are these complaints frequently relevant to the claim, but can be claim-related or confounders. The claimant may have other complaints, but the treating provider didn't consider the complaints part of the claim and didn't deal with that part of the history and did not do an exam relating to those ignored complaints. Providers simply try to deal with the main complaints, hope the patient gets better, and then close the case. When the claim does not resolve in a timely manner, various complaints have been ignored and not treated.

If one doesn't ask or examine, one doesn't get certain info. For example, many providers don't ask any questions about mental status, because they are not concerned about it, when it is frequently involved in delayed recovery, claim related symptom magnification, and may require treatment and an impairment rating.

-Physician bias toward insurers. A study from the Oregon Division of Workers Comp supports that there is bias in the system. Not only was this expressed in the injured worker and attending physician surveys, but also 53% of the IME physicians responding to the survey stated that there was bias.

Physician bias also occurs due to:

-Insurer interference with report outcome through ex parte communications, asking leading questions and putting inappropriate comments in their letters to the treating providers.

-**Financial pressure** on treating doctors if a significant part of their practice income is paid from by contracts with insurers and workers comp insurance companies,.

Another study notes negative experiences and physician bias, among other interesting items:

-Physical Therapists Who Claimed Workers' Compensation: A Qualitative Study

<http://www.ncbi.nlm.nih.gov/pubmed/14640867>, *Phys Ther.* 2003 Dec;83(12):1080-9.,

1. *JE Cromie, PT, Ph, School of Occup Therapy, La Trobe Univ, Bundoora, Victoria, AU*
2. *VJ Robertson, PT, PhD, Associate Prof., School of Physiotherapy, La Trobe University*
3. *MO Best, PT, MPH, Sr. Ergonomist, Victorian WorkCover Authority, Victoria, Australia*

Another study, of Physical therapists' experiences in the workers' compensation system, noted negative experiences. **They encountered attitudes that labeled them as malingerers and felt their credibility was questioned.** Participants referred to their belief that having made a workers' compensation claim could limit future employment opportunities, and some reported that they had changed their career because of their claim, choosing to extricate themselves from the situation and determine their own intervention.

Overall, the therapists were unhappy with their experiences of being workers' compensation claimants for several reasons. Furthermore, although the workers' compensation system was intended to help injured workers return to work, therapists found dealing with it bureaucratic and unpleasant. The experiences of physical therapists as workers' compensation claimants are in line with those of other claimants. Participants described having their integrity questioned, particularly by medical practitioners, who were in the position of making a judgment as to the veracity of their claim. **The**

difficulties in negotiating the workers' compensation system reported by physical therapists, who routinely work with injured claimants, suggest that those with less familiarity may encounter even greater problems.

The next newsletter in this series: Biases of the Defense IME Dr., who reveal “poor or inaccurate recall of the claimant’s history”. Multiple studies detailing this bias will be listed and discussed. You don’t want to skip this next one! You can use it in court!