

New Difficult Defense Tactic – and How to Fight It!

Is your client a poor or unreliable historian?

Part 1 of 2

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 3 months in IMEs or court! Here is the argument and literature used.”

Following is from a Defense Dr’s IME report:

MEDICAL HISTORIAN:

It is my opinion that Patient X is not currently a reliable historian. Patient X has difficulty recalling the intensity, frequency and duration of prior difficulties to include neck, low back, past accidents, headaches, chest and abdominal complaints. Patient X does not appear to recall the extent of her list of illnesses, difficulties nor her smoking history. The medical record indicates similar past difficulties. This is not to suggest that Patient X failure to accurately communicate past medical history is volitional. There are numerous studies indicating that this is common.

The following lengthy discussion is provided so that recipients of this report will not interpret this behavior as being unique to Patient X. Herein, Patient X is a classic example of an unreliable historian. She does exactly what is described herein.

Recent studies by Carragee and Don¹ have significantly advanced the scientific knowledge base of relevance to the unreliability of examinee self-reported history. One of the strongest findings from the first Carragee study⁴ is the overwhelming tendency for claimants to deny pre-existing conditions which are of greatest relevance to complaints of persistent back and neck pain (e.g., previous complaints of back or neck pain, history of heavy or binge alcohol consumption, history of illicit drug use, history of psychological distress). Specifically, when medical records were reviewed and compared to claimants' reports of their histories, it was discovered that 80% of claimants were found to have falsely denied such relevant pre-existing conditions.

Don and Carragee repeated the project with an enlarged sample.⁵ They reported a replication of the finding of an especially strong association between filing legal claims and falsely denying significant aspects of the pre-claim health history. Specifically, they reported that claimants systematically under-reported *every* pre-claim health issue that might have provided a non-injury-related explanation for their pain complaints. Instead of reporting the rate of claimants who misrepresented their histories (as had been reported in the first study), they reported the rate for individuals who reported that someone else was responsible for their accident (and they reported that 89.8% of such individuals reported that they were pursuing a medical legal claim). For this mostly claimant group of research participants, the rate of falsely denied relevant health history approximated 100%. They additionally noted that the tendency to falsely deny relevant pre-claim issues was not limited to details which might have been easy for claimants to forget, but actually included the false denial of previous back and neck complaints when those complaints were documented to have been of an extensive nature, and to have involved multiple healthcare interventions. They also referenced several prior scientific studies by other researchers which produced similar findings through a comparison of claimant reports to general population surveys, and noted that their new data corroborated the indications from those previous projects that relevant pre-claim health history is systematically under-reported by claimants.

The Broderick Study², *Interference with activities due to pain and fatigue: accuracy of ratings across*

¹ [*Is the self-reported history accurate in patients with persistent axial pain after a motor vehicle accident?*](#) Don AS, Carragee EJ. Spine J. 2009 Jan-Feb;9(1):4-12.

² [*Interference with activities due to pain and fatigue: accuracy of ratings across different reporting periods.*](#) Broderick JE, Schneider S.

different reporting periods Demonstrated that recall ratings were consistently inflated relative to averaged momentary ratings when addressing current symptomatology. The Study indicated that patients had increasing difficulty actually remembering symptom levels beyond seven days. **Thus reporting periods can influence the accuracy of retrospective symptom reports and should be taken into consideration.**

Accuracy of patient reporting is important as not only do clinicians allow examinee self report to influence their decision making but so do adjustors, judges, commissioners, attorney, arbitrators, etc. Unfortunately, the premise that examinee reports are accurate has repeatedly failed scientific testing. Scientific study has demonstrated that such histories are highly vulnerable to inaccuracy **specifically including inaccuracies which may mislead clinicians in their diagnostic, causation and impairment evaluation work.** The unreliability of examinee reports is especially pronounced when the examinee has filed a medical legal claim. Even outside of a claims context, patient reports are not a credible basis for clinical decision-making. **This, of course, is applicable to Patient X circumstance.** Herein not only is there a medical legal claim but Patient X is acutely financially stressed. Subsequently, the reports from claimant and the circumstances are simply not medically credible.

Barsky's Review notes that the under-reporting of a patient's history is especially pronounced in certain circumstances. For example, when patients believe that a specific event (such as an accident) is the cause of current complaints, they are more likely to under-report their health history for the time preceding that event, and over-state the extent of their problems for the time period which follows that event. **As another example, behavioral issues are more prone to under-reporting (e.g. recreational drug use, risky sexual activity, abortions, etc.).**

The unreliability is especially pronounced for histories reported by claimants. As was reported above, Barsky's review of relevant scientific findings emphasized the finding that a patient's belief system contributes to the under-reporting of health history, with health history for the time prior to the perceived cause being especially vulnerable to false minimization. The "fundamental question" for a forensic evaluation (such as a Guides-based impairment evaluation) is the difference between the claimant's functioning prior to the claimed cause of impairment, versus the level of functioning following the claimed cause. The abnormal nature of the claimant reports was similarly demonstrated in that claimants reported significant post-injury (or post-filing of claim) worsening of functioning for all areas except alcohol and drug use, which contrasted sharply against non-claimants reporting no significant pre versus post differences for any area of functioning.

The researchers noted that there is no evidence to support an implausible conclusion that claimants had better pre-claim health and functioning than did patients who did not file medical-legal claims (they report that the scientific evidence actually runs contrary to such a conclusion). **They explained that a more plausible explanation for the findings is that claimants systematically distort their reported history in a fashion which potentially inflates the financial compensation for their claims.** The researchers further explained that such misrepresentation might be a consequence of the medical-legal claim process, rather than simply being a process of premeditated deceit **(they review scientific literature which indicates that such misrepresentations can be a non-deliberate consequence of the various social pressures which are inherently placed on claimants).**

The findings from the Lees-Haley³ projects indicate that there are extra layers of unreliability when the examinee is a claimant (layers beyond the unreliability which Barsky reviewed generically). In addition to documenting their own findings, the Lees-Haley research team also provided a **review of scientific studies which had previously demonstrated that there is a pronounced tendency for claimants to exaggerate their current impairment.**

Taken as a whole, the scientific findings that are reviewed and presented in the Barsky and Lees-Haley

Schwartz JE, Stone AA. Qual Life Res. 2010 Oct;19(8):1163-70. Epub 2010 Jun 11 <http://www.ncbi.nlm.nih.gov/pubmed/20535565>

articles **indicate that the clinical presentations of claimants are vulnerable to the cumulative effect of several types of distortion:** the distortions that are prominent in the self-reports for all types of examinees, the exaggeration of current impairment that is relatively unique for claimants, and claims of super-human pre-claim functioning which are also relatively unique for claimants. **Given these multiple layers of distortion, the fundamental purposes of impairment evaluations and other types of forensic evaluations cannot be credibly addressed through *reliance* upon examinee self-report.**

Per Dr. Lichtenberg:

So.... Is your client a poor/unreliable historian?

In the next newsletter, we will discuss how to defend this attack!