

We have all seen claims and litigation in which the amount of medical care makes no sense, from the standpoint of either minor property damage to the vehicles involved in an auto accident case, the physical injuries diagnosed by treating physicians, or just plain common sense (which is valuable in its own right, and should never be “checked at the door”—as we trial lawyers are fond of telling jurors). For example, have you ever seen a claim involving a 5 mph rear end impact, leading to thousands or even tens of thousands of dollars in treatment, often including months or years of chiropractic care, massage therapy, acupuncture, physical therapy, trigger point injections, and other efforts made by the medical community to assuage patients’ complaints? Of course you have!

Does this mean the claimant is making it all up, or is trying to “build specials”, in order to increase a settlement, an arbitration award, or a jury’s verdict? Not necessarily. While that is certainly true in some instances, my years of experience defending injury cases filed by patients in this situation has lead me to conclude that frequently patients become involved with medical and other professionals who, likely not intentionally, promote a disability mentality through the constant recommendation of various treatment “modalities” in response to patients’ complaints.

This sort of practice can lead to what is referred to in the medical literature as “iatrogenic disability”. This is disability which is induced inadvertently by a physician or by medical treatment or diagnostic procedures—in other words, real disability, insofar as the patient/claimant/plaintiff may come to truly believe that he or she is unable to engage in pre-accident activities, often including employment, but which is actually a result of

Iatrogenic Disability

When the doctor won’t “just say no”
— by Jay D. Enloe

medical professionals having instilled that belief in the mind of the patient. What is usually more appropriate is reassurance that remaining active, continuing to work, letting time assist the healing process, and getting on with one’s life will be a more helpful prescription.

We all know that there are at least a couple of types of medical professionals who end up treating patients with minor injuries resulting from auto accidents and other traumatic events with a potential for compensation. There are those doctors, usually primary care, who recognize a minor injury when they see one, recommend some short term medication, perhaps a few days off work, maybe a couple of weeks of physical therapy, and tell their patients that the usual course of the type of injury they sustained is to heal over the course of weeks or months and that they need not be concerned about anything more serious being involved. There is another group, sometimes primary care providers but often medical professionals who are referred to the claimant by friends or family who have had a good experience in the past, who do not follow the general practice of offering short term care and reassurance. Medical professionals are in this group either because of being overworked PCPs (not uncommon these days) who are anxious to get on to dealing with patients who have serious problems, or because they think months of hands-on care is actually necessary, or because they are trying to generate income for themselves (I trust this is a rare occurrence), or because they are assisting someone “build specials” (rare, but it does happen on occasion). This group ends up prescribing endless treatment, with a resulting tremendous waste of medical and financial resources.

By all of this attention, these enablers often cause the patient, who might otherwise be a

(Continued on next page)

nice, honest, member of the community, to believe that there must be something seriously wrong with them. Frequently, when this sort of scenario plays out, the patient then loses his or her job, becomes deconditioned and/or depressed, and ends up being the plaintiff in a lawsuit that has to go to arbitration or trial, because the plaintiff has incurred more in medical treatment expenses than the entire case is worth!

What is wrong with this picture? Part of it is greed. Part of it is professional treaters (usually at the fringes—often part of the “alternative medical care” community) who genuinely believe that all of their attention to the patient is benefiting the patient. And, as alluded to above, part of it may be intentional on the part of someone (not necessarily the patient) who sees these minor traumatic events as a way to earn a living. Patients in these circumstances are often impressionable and find that personal attention from a medical professional who provides frequent hands-on care feels good in the short term and builds trust, and they find it easy to accept the advice that this will be necessary for an extended period into the future.

What is the answer? To the extent this problem is generated by greed, all we can do is defend, defend, defend. Being on the losing end of a campaign to become wealthy is an unprofitable enterprise over time and those participating in it will find other work. In other words, participating in the process by expending substantial amounts of time and money in a losing piece of litigation will convert some of those who thought this was a good idea. Otherwise, we as a community, and our medical professionals, need to get a grip on common sense and understand that the general course of minor soft tissue injuries is, in fact, to resolve in the short term. We need to understand the value of the “tincture of time” and not let ourselves fall into the hands of professionals who would like us to take time away from productive

activities to be manipulated, massaged, poked, injected, and otherwise managed to believe that we have maladies that require us to expend tens of thousands of dollars on medical care.

What can claims professionals do? At the very least, you should not assist the enabling, by rewarding people who are caught up in this behavior. Keep in mind that often this is not conscious behavior on the part of the claimant. They are probably not trying to “work the system” (although you will see some of that at times). Rather, they are usually under the influence of some professional or another who has recommended that they divorce themselves from their usual and customary activities of daily living, as a proper response to their injuries. These people need reassurance. They can and should be told that most people you see with minor soft tissue injuries do recover in weeks or months, often without receiving much in the way of medical care at all! This is not to say that people should be discouraged from going to doctors, or seeking the advice of other professionals, but if they are being told that they need months and months of hands-on care for injuries that in your sense should resolve in the short term through the mere passage of time, they should be encouraged to seek a second professional opinion, before they end up down the road in a situation they will regret. Early IMEs are also useful, whether by the PIP insurer or liability insurer, as showing the claimant another way of looking at what they have been told is a need for endless medical care. ❖

— *If you have any questions about this topic, please feel free to contact the author, by email directed to jay@lerlaw.com.*