

Essentials of a Medical- Legal Report

ALLEN J.
WYNPERLE
BARRISTER & SOLICITOR

PROFESSIONAL CORPORATION

Introduction

- Begin with the end in mind
- Trial is the end
- Complete reports help avoid trials
- Sometimes can't be avoided- If you write the report be prepared to testify

Qualifications

- Ensure that you're qualified to express the opinion
- Provide a short summary of your expertise
- Health care providers are often qualified as experts based on experience and not schooling

Information is the foundation

- Documents – list them – only detail the important information
- Tests
- Images
- Surveillance
- Patient history- don't cross-examine the patient
- Examination results

Diagnosis

Martin ats. Nova Scotia (SCC)

- Martin was injured in N.S.
- WCB system limited chronic pain claims
- Challenged under s.15(1) which protects the disabled from discrimination

Diagnosis (cont)

Martin (cont)

- SCC stated as follows:
“there is no authoritative definition of chronic pain. It is, however, generally considered to be pain that persists beyond the normal healing time for the underlying injury or is disproportionate to such injury, and whose existence is not supported by objective findings at the site of the injury under current medical techniques. Despite this lack of objective findings, there is no doubt that chronic pain patients are suffering and in distress, and that the disability they experience is real”

Diagnosis

Martin (cont)

- SCC went on to state that:

“Despite this reality, since chronic pain sufferers are impaired by a condition that cannot be supported by objective findings, they have been subjected to persistent suspicions of malingering on the part of employers, compensation officials and even physicians”

Diagnosis

- Although chronic pain is a difficult diagnosis the courts are supportive

Disability

- Different tests in different schemes
- If lawyer has not defined disability test you should clarify
- Legal definition of disability is a topic onto itself

Causation

- It is up to the injured person to prove, on the balance of probability that “but for” a specific event the injured person would not be suffering chronic pain (at least not to the same extent)
- Relevant in: Motor Vehicle Accident, Slip and Fall, WSIB, Malpractice
- Not important in LTD or CPP

Causation

Snell ats Farrell (SCC)

- The “but for” test is established where the injured person demonstrates a substantial connection between the injury and the defendant's wrong negligence
- Question to be answered: Is the negligence, on the balance of probability, “a cause” of the injury even if it is not the ultimate cause

Causation

Snell ats Farrell (SCC)

- The causation test is not to be applied too rigidly and does not need to be determined with scientific precision
- An inference of causation may be drawn from the evidence without positive scientific proof

Causation/Crumbling Skull Theory

Munk ats. ING Insurance (OCA)

- Three motor vehicle accidents
- After first accident returned to work
- After second accident suffered pain and numbness in both arms
- Narrowing of the spinal canal
- Surgery not required but future risks with any other injuries

Causation/Crumbling Skull Theory

Munk ats. ING Insurance (OCA)

- After second accident settled accident benefits for over a million dollars
- Returned to work after second accident
- After third motor vehicle accident numbness in arms and legs
- After two surgeries her condition is worse – incomplete quadriplegic

Causation/Crumbling Skull Theory

Munk ats. ING Insurance (OCA)

- OCA agreed with T.J. and found as follows:
 - Determined causation using material contribution test as outlined Athey applies to S.A.B.
 - Crumbling skull principle has no application in a first party system

Future investigations

- State what future investigations or rehabilitation is required
- If something is required before you can provide your final opinion on disability then say so

Prognosis

- Crystal balling the future
- What is the likely course of condition:
 - Earning capacity
 - Homemaking capacity
 - Cost of care

Prognosis

Schrump ats. Koot (OCA)

- It is not necessary for the injured person to prove that a future loss or damage will occur
- Must prove that there is a reasonable possibility of the loss or damage occurring
- Can't be speculative

Prognosis

Schrump (cont)

- Future contingencies which are less than probable are regarded as factors to be considered in the assessment of damages
- ie. 25% chance of early retirement gets 25% of the projected loss

Payment of Reports

- When and how much you get paid for your reports is up to you.
- Make sure everyone understands the terms before the work begins