

Back To Chiropractic Continuing Education Seminars
Ethics & Law: PI Legal Issues – 2 Hours
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Marcus Strutz, DC

Back To Chiropractic CE Seminars

Your patient is in a car accident on June 1st and starts coming to you for treatment. On June 17th the patient is in another (2nd) car accident on the way to your office to get treatment. One of the most common questions I get asked as an attorney/chiropractor is, "Should I keep 2 separate charts for the 2 accidents?" The short answer is, "No." The long answer is that opening up a new patient chart is an old trick from the 1990s to try to keep the claim adjuster from finding out about the prior treatment of the patient that doesn't work anymore. There is no need to do it anymore because the claim adjuster will find out about it and it will make you look dishonest.

This course will teach you about APPORTIONMENT AND GAPS IN CARE issues that you need to address as a treating chiropractor whenever these issues exist. It is important that you understand the LAW even though you are not lawyers. You swim in the legal ocean and you need to know the legal rules.

APPORTIONMENT is needed when there are TWO different injuries to the SAME body area. Insurance companies try to avoid paying claims and blaming someone else (or some other cause than the accident they have to pay for) is a common trick they use to avoid paying. To be fair, the car accident insurance company should not have to pay for a shoulder injury that occurred six months before while playing volleyball. To be accurate, the insurance companies take the idea of blaming everybody else to the extreme and they are more often disingenuous than seeking a fair apportionment. You, the treating doctor, are the PERSON MOST KNOWLEDGABLE about the injuries and it is your job to do a reasonable and fair apportionment. Here are a few examples.

Apportionment for TWO Car Accident Cases LESS Than One Month Apart

There are many scenarios where the patient is in more than one car accident in less than one month.

- 1) BOTH car accidents are NOT the patient's fault.
- 2) ONE car accident is NOT the patient's fault and one car accident IS the patient's fault.
- 3) BOTH car accidents are the patient's fault.

Where BOTH car accident are NOT your patient's fault, there is the possibility of TWO settlements from two different people (insurance companies) that caused the accidents. Both car insurance companies will point to the other and try to blame the other to avoid paying. The FACTS in your records provides the most important basis for the APPORTIONMENT of these two accidents and their injuries.

EXAMPLE ONE: Your patient is in a car accident on June 1st and another car accident June 17th. You examined the patient June 2nd and treated the patient 7 times BEFORE the 2nd accident. The patient had the following injuries after the 1st accident:

- 1) Neck injury
- 2) Upper back injury
- 3) Right shoulder injury
- 4) Low back injury

Your patient had the following injuries after the 2nd accident:

- 1) Neck injury (worse after the 2nd accident)
- 2) Upper back injury (worse after 2nd accident)
- 3) Right shoulder injury (NOT worse after the 2nd accident)
- 4) Low back injury (NOT worse after the 2nd accident)
- 5) LEFT shoulder injury
- 6) Right knee injury
- 7) Numbness in left fingers
- 8) Brain concussion

This is the easiest case to apportion. You simply write:

Mary's neck and upper back were injured in the accident on June 1 and both these areas were additionally injured in the accident on June 17. I was not able to do any follow up evaluations so I have no records upon which to base an apportionment between the two accident as to which cause the majority of the neck and upper back injuries. Therefore, **Mary's neck and upper back injuries are INDIVISIBLE** and both accidents are responsible for the totality of Mary's neck and upper back injuries because the accidents were so close in time. All of the examinations and treatment BEFORE June 17 are 100% attributable, caused by and necessary because of the accident on June 1. Both accidents are responsible for the examinations and treatments AFTER June 17.

Mary's right shoulder was injured in the accident on June 1 and was NOT further injured in the June 17 accident. Therefore, although I continued to treat Mary's right shoulder after the June 17 accident, 100% of the treatment, exams and my fees for her right shoulder are attributable, caused by and necessary because of the June 1 accident.

Mary's low back was injured in the accident on June 1 and was NOT further injured in the June 17 accident. Therefore, although I continued to treat Mary's low back after the June 17 accident, 100% of the treatment, exams and my fees for her low back are attributable, caused by and necessary because of the June 1 accident.

Mary did not have any injury to her LEFT shoulder or right knee and she did not have a brain concussion after the accident on June 1. She did have injuries to these areas AFTER the June 17th accident and, therefore, 100% of the treatment, examinations and my fees for these injuries are attributable to the accident on June 17.

One potential exception to this bright line apportionment may be regarding Mary's neck injuries. I found in my examination after June 17th that the numbness and tingling in Mary's left fingers was coming from injuries to nerves in her neck. Although these nerves were not symptomatic from June 1 to June 17, I believe that the June 1 accident weakened Mary's neck in a way that caused her neck to be more severely injured by the June 17 accident than if Mary had only been injured one time on June 17. Therefore, I believe the numbness and tingling in Mary's left fingers is an indivisible injury to a reasonable medical probability despite the fact that the numbness and tingling did not appear until after the June 17 accident.

NOTE: The term **REASONABLE MEDICAL CERTAINTY** means you are 76% to 100% sure you are right when you make an opinion. The term **REASONABLE MEDICAL PROBABILITY** means that are 51% to 75% sure you are right when you make an opinion. Anything less than 50% is just a "guess" or a "possibility" in the law and are NOT compensable.

When any claim adjuster or lawyer reads your excellent Apportionment regarding all of Mary's injuries from both accidents, they will have no trouble deciding who is liable and for how much of each injury.

One important law you need to understand is the doctrine of **JOINT AND SEVERAL LIABILITY**. Joint and several liability means that an injured party can pursue any tortfeasor (party that caused the accident) for the ENTIRE judgment, even if that tortfeasor was not 100 percent responsible for the harm caused. In California, joint and several liability applies only to economic damages (lost income, medical expenses, and property damage.) It does not include noneconomic damages (such as pain, suffering, loss of companionship, or emotional distress.)

This is why your apportionment is CRITICAL for the lawyers and claim adjusters. Suppose the tortfeasor (driver that caused the accident) from June 1 had \$1,000,000 of insurance and the tortfeasor from June 17 only had the California minimum of \$15,000 of insurance. Mary had to have a 3 level neck fusion on December 15th to cure the numbness in her left fingers. Even though the 2nd accident cause the numbness and tingling to start, your apportionment of Mary's neck injury as "INDIVISIBLE" and your note that the numbness and tingling was indivisible "to a reasonable medical probability" means that Mary can get the entire \$15,000 from the June 17th driver's insurance and \$1,000,000 from the June 1st driver's insurance.

What? You mean the June 1st driver has to pay a million and the June 17th driver only has to pay \$15,000? Yes, that's the law. However, in California, your patient's attorney can only make such a claim for their loss of earnings, medical expenses and car damage. It does not include pain and suffering. In Mary's case, the neck injury and subsequent neck surgery was apportioned by the chiropractor as indivisible and that means that the pain and suffering IS available to Mary's lawyer from the driver with the \$1,000,000 policy.

Apportionment for TWO Car Accident Cases 1-3 Months Apart

This situation is a little different since you have (or should have) done a progress evaluation thirty days after the first evaluation so you should have some basis for determining

apportionment of the two accidents. The SAME rule applies (as above) for injuries that are attributable to ONLY ONE of the two accidents. You should have a symptoms or injuries list that shows Bill had certain injuries after the 1st accident that were NOT made worse by the 2nd accident and other injuries that were not present after the 1st accident that WERE present after the 2nd accident. Thus, it is easy to say that certain injuries were 100% attributable and caused by whichever accident appeared to cause them.

The indivisible injuries is different. If Bill had a neck injury after the 1st accident, you did a re-exam after one month and his neck was 50% better but then an accident two weeks after the re-exam showed improvement, his neck was injured again in a 2nd accident, you have more information and can make a better apportionment. In this situation, write something like this:

Bill had injuries from an accident on February 1st which included:

- 1) Neck
- 2) Low back
- 3) Right knee
- 4) Right ankle

I did a re-evaluation on Bill on March 1st and found the following:

- 1) Neck injury was 20% better after one month of chiropractic care
- 2) Low back injury was 40% better after one month of chiropractic care
- 3) Right knee injury was 100% better after one month of chiropractic care
- 4) Right ankle injury was 50% better after one month of chiropractic care

Bill was in a subsequent accident on March 15th. I consulted with and examined Bill on March 16th and found the following:

- 1) Neck pain was MORE severe than when I examined him after the February 1st accident
- 2) Low back pain was equal to the severity of pain after the February 1st accident
- 3) Right knee injury was still asymptomatic just as it was at the March 1st exam
- 4) Right ankle was more severely in pain that is was at my March 1st exam. It was equal to the level of pain during my February 1st exam.
- 5) NEW left shoulder injury
- 6) NEW left wrist injury
- 7) NEW numbness and tingling in Bill's left fingers

Notice how specific and definite these statements are and imagine how useful they would be to lawyers and claim adjusters trying to figure out which insurance company has to pay and how much. In addition, you will make certain apportionment statements at the end of the case. For example, suppose Bill had 3 more months of chiropractic care and the history and exam revealed the following on June 15th:

- 1) Neck pain is still 70% as painful and as it was on March 15th. Bill's neck pain never actually got back to the level of pain he had on March 1st when I examined him.
- 2) Left fingers numbness and tingling still comes and goes at approximately the same frequency as it did on March 16th after the 2nd accident.
- 3) Low back pain healed completely and Bill's low back is 100% cured.
- 4) Right knee injury is 100% cured.
- 5) Right ankle injury healed to 80% relief of symptoms.
- 6) Left shoulder injury has healed to 70% relief of symptoms when stationary but has a sharp, stabbing pain at 90 degrees of abduction and internal rotation.
- 7) Left wrist injury has healed 100% and is considered cured.

Then, Bill had to have an epidural injection (or Prolotherapy or PRP or Stem Cells) in his neck on July 7th and an MRI you ordered on June 15th revealed Bill's left shoulder had a torn rotator cuff that needs surgery. He went to a podiatrist who injected his right Achilles tendon sheath with saline solution and that cured the rest of his right ankle pain.

The epidural failed and a surgeon decided to do minimally invasive C5 disk surgery to trim the tear in the intervertebral disk. That was done on September 5th and Bill recovered completely with no residual neck pain.

Left shoulder surgery was done on September 27th to repair the torn rotator cuff and the surgery was successful. After 90 days of shoulder rehabilitation, Bill's shoulder had no residual pain.

Given these "FACTS" what do you say about apportionment? First, **I recommend calling the patient's P.I. attorney and explain the situation to him/her. The attorney may have information regarding the legal sides of the cases that could affect what you need to write.** For example, if driver #1 had only a \$15,000 policy, that insurance company surely would have tendered the policy limits as soon as they heard Bill had an epidural injection in his neck and, thus, there is only ONE CASE left to deal with. This saves you time apportioning the injuries from the first accident since that case is over. You might write something like this:

Bill's neck was injured in both accidents but he was healing nicely from the first accident and I expected him to make a full recovery. After the second accident, Bill's neck was worse than after the first accident and never recovered from just chiropractic treatment. He had to have a neck epidural and later neck surgery. I attribute 80% of the chiropractic treatment, exams and my fees after March 15th to the accident on March 15th and 100% of the post-chiropractic treatment (epidural and neck surgery) to the accident on March 15th since I had examined Bill just before the second accident and believed he was progressing and his neck would have recovered completely from just chiropractic treatment alone.

Bill's left shoulder was injured in the accident on March 15th to a reasonable medical certainty because I examined Bill on February 1st and March 1st and found no left shoulder injury at all just prior to the March 15th accident. Therefore, all treatment, exams, my fees and subsequent surgery are 100% attributable and caused by the accident on March 15th.

Bill's low back was no worse after the accident on March 15th and, therefore, I attribute none of Bills treatments, exams or my fees to the accident on March 15th.

Bill's right ankle had healed 80% before the subsequent accident on March 15th. I expected it to fully recover with chiropractic treatment alone. However, the second accident on March 15th injured Bill's right ankle again and it did not recover with only chiropractic alone. He had to have a needle stuck into his Achilles tendon in order to recover from the right ankle injury. I attribute 80% of Bill's chiropractic treatments, exams and my fees to the March 15th accident and 100% of the post-chiropractic treatment (podiatrist fees, exam and treatments including the injection) to the accident on March 15th to a reasonable medical probability.

Get the idea?

Apportionment for TWO Car Accident Cases Where You Already RELEASED the Patient

Javier was in an accident on November 1st. You treated him and released him from care on February 15th. He was in a second accident on April 1st. Your apportionment completely depends on what your records show when you released him on February 15th. If you stated he was 100% cured of every single injured body area, then you simply state that fact and you attribute 100% of all treatment, exams and fees after April 1st to the accident on that date.

However, what if you didn't do a good job and made no referral to pain management even though Javier still had "residuals" in his neck and back? If all you said was, "Javier has residual neck and back pain" and you failed to quantify it AND failed to refer him somewhere to get more treatment to get rid of those residuals, you have done severe damage to Javier's 2nd legal case. The insurance company will blame "most" of Javier's neck and back pain to the prior accident since you did not quantify it. They can claim ANYTHING since you were not specific. It is generally unwise in the 21st century to release a P.I. patient with "residuals" since we now have novel and minimally invasive treatments at pain management physicians that can make the residuals go away. NOTE: Make sure to refer to "Interventional Pain Management" physicians because regular (non-interventional) pain management doctors often just drug up the patient with addictive pharmaceuticals. Interventional pain management doctors do things like PRP injections, STEM CELL injections, Prolotherapy injections and none of these injections involve pharmaceuticals at all.

Suppose you released Javier on February 15th but at that time made a referral to an interventional pain management doctor for a PRP injection in his neck because his neck pain was only 70% better after 3 ½ months of chiropractic care. Javier had the PRP injection on February 28th and by April 1st his neck was 100% better. Therefore NO APPORTIONMENT issue for the April 1st accident.

What if you released Javier on February 15th and made the referral for PRP. He had the injection on February 28th and by April 1st his neck was 90% better. There IS and apportionment issue for the April 1st accident IF Javier's neck was injured again in the April 1st accident.

Let's say his history reveals that he had the PRP and his neck was 90% better by April 1st when the subsequent accident occurred. He comes to you on April 2nd and his neck pain is now worse than after the 1st accident. You treat him for three months but now he is only 50% improved. You refer him to PRP and he gets two PRP injections but still is only 60% improved. He ultimately has to have endoscopic neck surgery to repair the torn disk.

A good example of writing would be: Javier's neck was injured in an accident on November 1, 2018. After 3 ½ months of chiropractic care, his neck had healed to only 70% so I referred him for PRP injections on February 15, 2019. He had one PRP injection on February 28, 2019, which further healed him to 90% by April 1st, 2019. The subsequent accident on April 1st, 2019, did more damage to Javier's neck and three months of chiropractic care was only able to relieve Javier's neck pain to 50%. I referred him for injections and he had two more PRP injections but they were less effective after the April 1st accident than it was before that accident and Bill was only able to recover to 60% of normal. He ultimately had neck surgery and his pain level has improved to 95%.

I attribute 100% of the chiropractic treatments, exams and my fees to the accident on April 1, 2019 because I had concluded my chiropractic treatments from the November 1st accident. I attribute 100% of the PRP injection PRIOR TO April 1st to the November 1st accident. I attribute the majority of the PRP injection treatments and fees to the accident of April 1, 2019, and 100% of the neck surgery treatment and fees to the accident on April 1, 2019. I believe Javier would NOT have needed neck surgery but for the April 1st, 2019, accident to a reasonable medical probability.

Notice that APPORTIONMENT is completely driven by the FACTS. Your history and exam records MUST show definite and specific FACTS if you ever hope to competently address this very important issue in a legal case. I cannot give you EVERY possible scenario involving all of your patients for the rest of your career. YOU now know that being specific in your history and exam NOTES is the basis for your ultimate opinion. Vague statements or using the word "residuals" will make you look incompetent and generally pretty useless to lawyers and claim adjusters. If you look incompetent and useless on paper, your patient's legal case will suffer a great deal.

Apportionment for ONE Car Accident but the patient had a Pre-Existing Injury

Tricia injured her left shoulder spiking a volleyball at the 4th of July picnic in 2018. She went to her primary care physician (PCP) who diagnosed her with a "sprain/strain" and sent her for physical therapy. Three months of P.T. got her a lot better but not completely well. You order her PCP's records and discover this prior left shoulder injury when you are treating her for a car accident that occurred on March 1, 2019. How do you address it?

I recommend using the FACTS to guide you. Tricia was injured in a car accident on March 1, 2019. The forces from this accident that caused \$3,842 damage to the left side of her car were sufficient to cause the injuries described in my recorded patient data. I also believe this accident was the sole cause of Tricia's injuries, treatments, examinations and my fees EXCEPT for her

left shoulder which was previously injured on July 4, 2018, and had not fully healed at the time of this accident.

I reviewed the records of her primary care physician for the last five years and found reference to this July 4, 2018 left shoulder injury which was diagnosed as a “sprain/strain” by her medical doctor. Of all of Tricia’s injuries in this accident, her left shoulder was one of the most severe. Tricia she still had mild, intermittent left shoulder pain which was controlled before this accident with non-steroidal anti-inflammatory medications, massage and exercise. After this accident wherein her left shoulder hit the left driver window and her left supraspinatus tendon was torn in a full thickness partial tear, she had to have left rotator cuff surgery.

Tricia only had a sprain/strain before this car accident and only needed some massage, exercise and an occasional Advil. However, after this accident she had to have left rotator cuff surgery. She would not have needed left shoulder surgery but for this car accident. Therefore, I attribute 90% of her chiropractic treatments, exams and my fees after April 1, 2019, and 100% of her surgical treatment and fees to the accident on April 1, 2019, to a reasonable medical certainty.

HONESTY is the best policy. DON’T try to hide pre-existing injuries. The insurance company will find out about it and it will make you look like a liar. Jurors don’t like liars. If you think saying, “I didn’t know about the prior shoulder injury” will make you look better, that only makes your patient look like a liar and the jurors will hate or distrust her. When the jury hates or distrusts anybody, they nearly always for the other side. Besides, saying you didn’t know actually makes you look incompetent for failing to order her PCP’s records and look them over BEFORE rendering your opinion in the case.

NOTE: The language above is an EXAMPLE of the type of description needed in your records and/or report regarding APPORTIONMENT. Hopefully you have realized that you must **KNOW WHAT IS WRONG WITH YOUR PATIENT** and keep **GOOD RECORDS** of your consultations and exams and **ONLY** by doing that will you be able to give a description of the apportionments on **YOUR PATIENTS** that will be **USEFUL** to lawyers and claim adjusters. Be sure to **EDIT, REWRITE, EDIT AGAIN and REWRITE AGAIN** your apportionment statements so you are certain that you sound intelligent and believable. This is the **MOST IMPORTANT** section of your records or report when multiple car accidents occur to the same patient in a short space of time. Good writing.

GAP IN CARE

Theresa was in a car accident on December 1, 2018, and was taken to the hospital by ambulance where she was treated and released with a prescription for Motrin. Her pain worsened over the next week but she was busy with Christmas parties and preparing for Christmas with her family. On January 5, 2019, she comes to your office seeking care. She has not been to ANY doctor since December 1, 2018, the day of the car accident.

Claim adjusters call this a “**GAP IN CARE**” and are trained to use it against your patient. Claim adjusters actually make a **CALENDAR** of every single doctor appointment your patient has from the day of the accident until he/she receives a demand letter from an attorney (beyond that if the

patient is still getting treatment after the demand is sent.) It is VERY obvious when charted on a monthly calendar that Theresa has NOT BEEN TO THE DOCTOR FOR 5 WEEKS and the claim adjuster denies or lowballs the claim citing GAP IN CARE.

The reason this fabulously frivolous technique is used by insurance companies is BECAUSE IT WORKS. It works on juries and all claims are negotiated based on how much the insurance company believes a jury will award to your patient. The attorney for the insurance company tells the jury, “Ladies and gentlemen. When you’re sick, don’t you go to the doctor? If you are truly in a lot of pain, don’t you go to the doctor? Well, Theresa here is asking you to believe that she was in a lot of pain but DIDN’T go to the doctor for 5 weeks. Come on ladies and gentlemen. Use your common sense. Does this make sense to you? Do you get hurt and then wait FIVE WEEKS before you go to the doctor? Of course not. Nobody with a REAL injury would do that. But here, Theresa was in a car accident on December 1st and didn’t go to any doctor UNTIL she hired the attorney you see sitting next to her over there on at the other table. HE is the one, the ATTORNEY is the one that SENT HER TO THE DOCTOR and do you know why? It was to build up a phony case where Theresa wasn’t really injured but later she hired this ambulance chaser to try to get money she doesn’t deserve.”

Juries are made up of twelve people who couldn’t get out of jury duty that day. Jurors get a summons and may try very hard to get out of it. They need to go to work to make money to pay rent. They have bills to pay. They are self employed so they don’t make ANY money during a week or two of jury duty. Some have to take sick leave or vacation time from work so they still get paid for a week or two of jury duty but then they cannot go on vacation for the rest of the year. There are some VERY unhappy people who end up on a jury and many of them hope that at least they’ll be able to put a murderer in jail to make up for the huge sacrifice they have made. Then they get assigned to some car accident case and they have the insurance company attorney making all kinds of accusations that Theresa is faking the claim, doesn’t deserve any money, that her attorney is a sleazy guy and that her chiropractor is a charlatan doing fake treatments and running up a huge bill.

The jury has been brainwashed by Allstate commercials which talk about all the fraud cases there are out there. Then these brainwashed, unhappy, susceptible to misinformation, easily confused people hear all these “reasons” that Theresa is not really injured because TRULY INJURED PEOPLE GO TO THE DOCTOR RIGHT AWAY.” It works so the insurance companies use this trick frequently. They pay less in claims and the CEO gets a new corporate jet.

The story of Theresa is a common one. The GAP IN CARE can be a week, two weeks, three weeks, a month or even longer. If you follow the guidelines I teach in this course, MOST gaps in care of less than a month can be easily dealt with and do NOT become a problems for the attorney when settling or litigating the claim. The CHIROPRACTOR is the one who can fix this problem. The attorney cannot because the demand is not sent for many months after the gap in care had occurred. YOU see the patient right after this so-called gap in care.

EXAMPLE ONE: Theresa went to the hospital by ambulance and didn’t come to see you until five weeks later. “Theresa was in a car accident on December 1,

2018. Paramedics were called to the scene and they treated Theresa at the scene (make sure to order a copy of the paramedic records so you can add in some details here.) They were concerned enough to call an ambulance to rush her to the hospital (order a copy of the ambulance records so you can add details about what they were doing for her on the way to the hospital.) The hospital emergency room treated Theresa by (get the E.R. records and put in some details.) The hospital gave Theresa a one month prescription for 800 mg of Motrin, the strongest dose of ibuprofen allowed by law. Theresa took those Motrin three times a day for an entire month. She got “treatment” every day until New Years Eve when she ran out. Once the pain medication (her DAILY treatments) ended, she felt worse and worse for several days. Her sister-in-law saw how much pain she was in and gave her my office telephone. She made an appointment and came into my office seeking relief of pain on January 5, 2019. The only gap in her care occurred for four days after she ran out of pain medication and she almost immediately came to get treatment from me.”

EXAMPLE TWO: Theresa did not go to the hospital on December 1, 2018, and came to see you TWO WEEKS later. “Theresa was in a car accident on December 1, 2018. She had no life-threatening injuries so she did not go to the emergency room (where they deal with life-threatening injuries.) Instead, she called in sick the next day (Friday) and then had the weekend to stay at home and try to recover from her injuries. She woke up Friday morning in a lot more pain so she took a hot shower and let the hot water run on her neck until she ran out of hot water. She went back to bed. By Friday afternoon, her neck was getting even worse but Theresa has no health insurance and was afraid to go to the doctor because it costs so much. She tried to tough it out. Saturday morning she woke up even worse than on Friday so she got out some Tylenol and took it. It barely relieved her pain at all but she kept taking it all weekend. On Sunday, she went to get a massage down the street from where she lives at a place called Massage Envy. It helped a little but on Monday morning she was even worse than before the massage on Sunday. She went back to work reluctantly on Monday even though she was in a lot of pain because she did not want to get fired. She switched to Advil (ibuprofen) on Monday and took the maximum dose every six hours just to get through work that day. This continued all week. Pain medications to get through work and collapsing into bed and sleeping 12 hours every night. By the following Monday (December 11), she was barely able to work but she has a very understanding boss who allowed her to take more frequent rest breaks than normal. She call my office that morning to get an appointment and the first time we could see her was December 15, 2018, when I first examined her.

Generally, if you **EXPLAIN what the patient did during the time BEFORE she came to see you, the gap in care argument does not work.** DETAILS is the key. Ask the patient exactly what she did and specifically ask the following questions:

- 1) Did you take any over-the-counter medications?
- 2) Did you take hot showers?
- 3) Did you get a massage?
- 4) Did you use an ice pack?
- 5) Did you call in sick? (if no, why not?)
- 6) Did you do ANYTHING at all to try to stop your pain for the past two weeks?

If the patient states she didn't do ANYTHING for the pain for one week, two weeks, three weeks or more, you **MUST** wonder **WHY NOT?** Is she really that injured? Your reputation is on the line if you vouch for somebody that does very little or nothing to stop the pain. How much pain are they really in? The knowledge you gain from asking these questions may (should) affect your decision making for how much treatment you are willing to give her. You don't want to be part of some fraud case and sully your own professional reputation. There are plenty of other patients who really need our care so that we don't have to participate in phony cases just to make a dollar.

DETAILS IS THE KEY TO OVERCOMING THE GAP IN CARE. Where there is a legitimate reason for the gap in care, explain it. Where the patient took some actions to mitigate their pain in ANY way(s) put them down on paper. **DETAILS.**

Generally, a one to two week gap in care (**WITH AN EXPLANATION**) will not be a problem for a patient who did **NOT** go to any doctor during those two weeks. For example, Theresa got a bottle of Advil and took the maximum dose of Advil for eleven day. Despite getting these medical treatments every day after the accident, her pain worsened and she came to see me on December 13, 2018.

Generally **LONGER** than two weeks (**UP TO FOUR WEEKS**) will not be a problem for a patient who **WENT TO URGENT CARE OR A HOSPITAL.** It requires an explanation, too, and be sure to call each and every **PILL** they took a "**TREATMENT.**" For example, Theresa went to Urgent Care on December 2, 2018, and took the prescription medication every day for 17 days but even with these daily treatments, her pain worsened and she had to come and see me on December 18th.

Generally, a gap in care where the patient did **NOT** go to any doctor, any urgent care or any hospital for more than four weeks **IS GOING TO BE A PROBLEM** for the legal case. The claim adjust will forcefully assert (and not back down ever) the gap in care and will usually severely lowball the case. Suppose Theresa comes to see you six weeks after an accident, never went to any doctor and has no reasonable explanation for why she did not go. I would **NEVER** treat her on a lien in this situation because if my bill is \$3,500, the offer from the insurance company to the attorney will often be **LESS** than my bill. If the attorney gets one third and the patient is supposed to get something, you'll be stuck getting 30% to 40% of your bill. In my office, patients like this were **CASH PATIENTS** from day one. If they truly were hurt and wanted the care, they would pay (or make a payment plan.) If they were faking their injuries and

just trying to get money, they would NOT want to pay. This is a convenient screening mechanism so you AVOID getting involved in fraud cases AND you get paid up front even if it is for a lesser amount. At least you get paid something and your reputation is preserved.

Essential Facts that Alter the Amount of the P.I. Settlement that the Chiropractor Must Know

In addition to handling the apportionment and gap in care issues (that only occur once in a while), there are a number of things you MUST DO EVERY TIME. These include:

- 1) Know what is in the patient's last five (5) YEARS of medical records.
- 2) Ask the patient about LOSS OF ENJOYMENT OF LIFE
- 3) Ask the patient about DUTIES PERFORMED UNDER DURESS
- 4) Ask "HOW HAS THIS ACCIDENT AFFECTED YOUR LIFE?"

I refer you to the forms attached at the end of these eleven pages of notes. You will find an example of an AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION. This one is HIPPA compliant. Most doctor offices will give you the patient's last five years of records for free if you fax them this form. Even if you have to pay a nominal fee (\$15.00), the information in these records is SO IMPORTANT that you should pay it. When you receive the records, go over them with the patient and use an "Existing Patient Evaluation and Management" code such as 99211 (5 minutes), 99212 (10 minutes) or 99213 (15 minutes) to sit face to face and discuss anything you found in the records that is material to the car accident injuries.

If your hourly rate is \$400 and you charge for ten minutes of your time (99212) to discuss these records (that cost you \$15 to get), you'll earn 1/6 of an hour which at \$400 an hour is \$66.67. At \$300 an hour, you'll earn \$50.00. At \$500 an hour, you'll earn \$83.33. You won't lose money by requesting these records AND you will be a better doctor AND you won't look stupid on the witness stand when they surprise you with what is in the medical records that make your opinions obviously wrong.

"Dr. Smith," the defense attorney says (dramatically), "would it change your opinion at all if you knew that three months before this car accident Theresa had an MRI of her neck and they found three herniated disks?" There is no good answer to this question. If you say, "No", you look foolish to the jury and they won't trust anything else you say. If you say, "Yes", the jury will hate you for wasting their precious time. Either way, your patient's case will be lost because you failed to get the prior five years of medical records. GET THEM and read them and discuss anything relevant you find in them with your patient.

CHANGE MY NAME TO YOUR NAME ON BOTH PAGES WHEN YOU USE THIS FORM.

LOSS OF ENJOYMENT OF LIFE FORM

I refer you to the **loss of enjoyment of life form (AKA LOSS OF ENJOYMENT OF SPORTS, HOBBIES, TRAVEL, DAILY LIVING AND SCHOOL)** at the end of these notes. The **PATIENT FILLS OUT THIS FORM FOR YOU** so you gather important information

with taking your time. You look it over during the consultation. **This form is designed to be used TWICE during the entire time you treatment the patient (2-5 months).** I recommend doing it after the first thirty days of care and again at the FINAL exam.

The most important piece of data that I ever acquired as an attorney from this form was a patient who wrote at the bottom of page 1 “Travel Plan #1: I could not go to my mother’s funeral in North Carolina because I was in too much pain after this car accident. She died 3 weeks after my accident.” The claim adjuster could not get out her check book fast enough to write me a VERY big check for this poor woman who was in so much pain she missed her own mother’s funeral.

DUTIES UNDER DURESS FORM

This form is also located at the end of the notes for this course. Similar to the Loss of Enjoyment of Life form, this should be filled out by the patient at the first re-exam and again at the end of the case at the FINAL exam. **That makes TWICE** if you are keeping track.

Claim adjusters LOVE to get the information on this form. When I (the attorney) am asking for “one thousand more” to settle the claim, the adjuster starts asking me the questions on this form. These questions are IN THEIR COMPUTERS and each answer adds about \$50-\$75 to the settlement amount. I ask my client to fill it out for me (when the treating chiropractor didn’t) and send it to the claim adjuster and “magically” the case is worth a few thousand more.

HOW THIS ACCIDENT AFFECTED MY LIFE FORM

Use this form ONLY AT THE END of the case at the FINAL exam. This allows the patient to tell their story and the information it gathers will help you tell the patient’s story to the attorney and claim adjuster.

Remember that ALL OF THESE FORMS are billable for the time you spend reviewing them with the patient. Existing patient evaluation and management codes (E & M Codes) such as 99211, 99212 and 99213 which you use for re-exams are for the TIME you spend face to face with the patient discussing their injuries and how it is affecting their functioning in life. The information in all these forms (and their prior records) are all relevant to the injuries in the car accident for which you are treating them and, thus, billable time during your re-exam.

Steven C Eggleston
Attorney at Law
27 La Plaza Penthouse
Palm Springs, CA 92262
(877) 424-4765

AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION

Patient Name _____
Date of Birth _____ MRN# _____

I authorize the following entity to release my health information:

The information is to be released to:

Steven C Eggleston, D.C.,
2601 Main Street, Suite 800
Irvine, California 92614
(877) 424-4765 / Fax (877) 883-2963
Email: Dr.Eggleston@yahoo.com

INFORMATION TO BE RELEASED BY THIS AUTHORIZATION

_____ My complete medical records **after** _____
_____ Diagnostic imaging films/discs after _____
_____ Diagnostic imaging report(s) after _____
_____ Operative, pathology, EKG and laboratory report(s) after _____
_____ Consultation, history, physical exam and E.R. records after _____
_____ My complete medical records **before** _____
_____ My billing statements for services after the date of _____

THE PURPOSE(S) FOR DISCLOSING THIS INFORMATION IS

_____ Review/Inspection of records by Dr. Eggleston
_____ Continuing medical care
_____ Legal purposes
_____ Billing & payment of bill

I understand that the information disclosed by this authorization may be re-disclosed by the recipient and no longer protected by federal privacy regulations.

I hereby give specific authorization to grant the release of mental health diagnosis or treatment. I understand that Welfare & Institutions Code 5328 requires that these mental health records must be treated as confidential.

Initials _____ Date _____

I understand this authorization is voluntary.

I understand that treatment, payment, enrollment, or eligibility for benefits will not be conditioned on signing this authorization except if the authorization is for: (1) conducting research-related treatment; (2) obtaining information in connection with eligibility or enrollment in a health; (3) for determining an entity's obligation to pay a claim; or (4) creating health information to provide to a third party.

I understand that under no circumstances am I required to authorize the release of mental health records unless I specifically authorized the release of such records with my initials above.

I understand that I may revoke this authorization at any time, provided that I do so in writing and submit it to Steven C Eggleston, DC, at the address listed above. The revocation will take effect when received by Steven C Eggleston, DC, except to the extent that Steven C Eggleston, DC or others have already relied on it.

I understand that I am entitled to receive a copy of this authorization and that I may inspect the health information I am being asked to disclose.

Unless otherwise revoked, this authorization expires five (5) years from the date of signing of this form.

It is my intent that a photocopy, scan, email or facsimile copy of this Authorization for Release of Health Information shall be as valid as an original copy.

Signature of Patient

Date

Printed Name

(Legal Relationship of Signatory if not Patient)

Loss of Enjoyment of Sports, Hobbies, Travel, Daily Activities, & School (p. 1 of 2)

Patient _____ Date _____ Date of Injury _____

☐ Initial ☐ Update

Please check all that apply to your EXERCISE & SPORTS Activity because of the accident.

- | | |
|---|--|
| <input type="checkbox"/> My exercise was affected by this crash | <input type="checkbox"/> I have gained _____ pounds since the accident |
| <input type="checkbox"/> I go to the gym & work out in pain | <input type="checkbox"/> I had to quit my _____ team after the accident |
| <input type="checkbox"/> I no longer go to the gym to work out | <input type="checkbox"/> I had to quit my _____ team after the accident |
| <input type="checkbox"/> I run but in pain | <input type="checkbox"/> I had to quit my _____ team after the accident |
| <input type="checkbox"/> I no longer run | <input type="checkbox"/> I had to quit my _____ team after the accident |
| <input type="checkbox"/> I take walks & have pain while walking | <input type="checkbox"/> I don't enjoy the sport of _____ anymore |
| <input type="checkbox"/> I no longer take walks | <input type="checkbox"/> I didn't enjoy the sport of _____ for _____ weeks |
| <input type="checkbox"/> I used to make income at sports | <input type="checkbox"/> I don't enjoy the sport of _____ anymore |
| <input type="checkbox"/> I have lost sports income since crash | <input type="checkbox"/> I didn't enjoy the sport of _____ for _____ weeks |
| <input type="checkbox"/> I am an amateur athlete | <input type="checkbox"/> I don't enjoy the sport of _____ anymore |
| <input type="checkbox"/> I am a professional athlete | <input type="checkbox"/> I didn't enjoy the sport of _____ for _____ weeks |
| <input type="checkbox"/> _____ | <input type="checkbox"/> I don't enjoy the sport of _____ anymore |
| <input type="checkbox"/> _____ | <input type="checkbox"/> I didn't enjoy the sport of _____ for _____ weeks |

Please check all that apply to your HOBBY Activities because of the accident.

- | | |
|---|---|
| <input type="checkbox"/> My hobbies were affected by accident | <input type="checkbox"/> Hobby #3 _____ |
| <input type="checkbox"/> Hobby #1 _____ | <input type="checkbox"/> I can't do hobby #3 anymore |
| <input type="checkbox"/> I can't do hobby #1 anymore | <input type="checkbox"/> I do hobby #3 but in pain |
| <input type="checkbox"/> I do hobby #1 but in pain | <input type="checkbox"/> I have lost money from not doing #3 |
| <input type="checkbox"/> I have lost money from not doing #1 | <input type="checkbox"/> I didn't do hobby #3 for _____ weeks |
| <input type="checkbox"/> I didn't do hobby #1 for weeks | <input type="checkbox"/> Hobby #4 _____ |
| <input type="checkbox"/> Hobby #2 _____ | <input type="checkbox"/> I can't do hobby #4 anymore |
| <input type="checkbox"/> I can't do hobby #2 anymore | <input type="checkbox"/> I do hobby #4 but in pain |
| <input type="checkbox"/> I do hobby #2 but in pain | <input type="checkbox"/> I have lost money from not doing #4 |
| <input type="checkbox"/> I have lost money from not doing #2 | <input type="checkbox"/> I didn't do hobby #4 for _____ weeks |
| <input type="checkbox"/> I didn't do hobby #2 for _____ weeks | <input type="checkbox"/> _____ |

Please check all that apply to your TRAVEL Activities because of the accident.

- | | |
|---|--|
| <input type="checkbox"/> Business travel was affected by crash | <input type="checkbox"/> Travel Plan #1 _____ |
| <input type="checkbox"/> Pleasure travel was affected by crash | <input type="checkbox"/> I did not go on travel plan #1 |
| <input type="checkbox"/> I hurt driving in my own car | <input type="checkbox"/> I went, but did not enjoy #1 as much |
| <input type="checkbox"/> I am in too much pain to drive | <input type="checkbox"/> I went and the accident had no effect on #1 |
| <input type="checkbox"/> I hurt when a passenger in a car | <input type="checkbox"/> Travel Plan #2 _____ |
| <input type="checkbox"/> I am in too much pain to sit in a car | <input type="checkbox"/> I did not go on travel plan #2 |
| <input type="checkbox"/> I have anxiety when I'm in a car | <input type="checkbox"/> I went, but did not enjoy #2 as much |
| <input type="checkbox"/> I hurt when I'm on an airplane | <input type="checkbox"/> I went and the accident had no effect on #2 |
| <input type="checkbox"/> I am in too much pain to travel by plane | <input type="checkbox"/> I missed time with my family/friends b/c can't travel |

Loss of Enjoyment of Sports, Hobbies, Travel, Daily Living, & School (p. 2 of 2)

Patient _____ Date _____ Date of Injury _____

☐ Initial ☐ Update

Please check all the DAILY LIVING Activities that cause you pain *because of the accident*.

- | | |
|---|---|
| <input type="checkbox"/> Dressing | <input type="checkbox"/> Riding in a car |
| <input type="checkbox"/> Putting on pants | <input type="checkbox"/> Opening a jar |
| <input type="checkbox"/> Putting on shoes | <input type="checkbox"/> Lifting a pan when cooking |
| <input type="checkbox"/> Tying my shoes | <input type="checkbox"/> Closing the trunk on my car |
| <input type="checkbox"/> Putting on shirt | <input type="checkbox"/> Opening the garage door |
| <input type="checkbox"/> Drying my hair | <input type="checkbox"/> Using my home computer |
| <input type="checkbox"/> Combing my hair | <input type="checkbox"/> Climbing stairs |
| <input type="checkbox"/> Washing my hair | <input type="checkbox"/> Going down stairs |
| <input type="checkbox"/> Taking a shower | <input type="checkbox"/> Sexual activity |
| <input type="checkbox"/> Taking a bath | <input type="checkbox"/> Turning my head to left or right |
| <input type="checkbox"/> Leaning forward | <input type="checkbox"/> Holding my head up all day |
| <input type="checkbox"/> Laying in bed | <input type="checkbox"/> Watching TV |
| <input type="checkbox"/> Sitting in my favorite chair | <input type="checkbox"/> I have pain sitting & doing nothing |
| <input type="checkbox"/> Sleeping | <input type="checkbox"/> Talking on the phone |
| <input type="checkbox"/> Going out with my friends | <input type="checkbox"/> Reading |
| <input type="checkbox"/> Sitting in a restaurant | <input type="checkbox"/> Writing |
| <input type="checkbox"/> Shopping | <input type="checkbox"/> Opening doors |
| <input type="checkbox"/> Driving to/from work | <input type="checkbox"/> Drying with a towel after a bath or shower |
| <input type="checkbox"/> Sitting in Church | <input type="checkbox"/> Life has become a chore just to do normal things |
| <input type="checkbox"/> Playing with my children | <input type="checkbox"/> It is depressing to live like this |
| <input type="checkbox"/> Caring for my children | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Bending at the waist | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Sitting in a movie theater | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Exercise | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Eating | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Stooping | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Squatting down | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Kneeling | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Brushing my teeth | <input type="checkbox"/> _____ |

Please check all that apply to your SCHOOL & EDUCATION Activities *because of the accident*.

- | | |
|---|---|
| <input type="checkbox"/> School was affected by the accident | <input type="checkbox"/> I have pain carrying my school books |
| <input type="checkbox"/> I am a student at _____ | <input type="checkbox"/> I hurt sitting in class more than _____ minutes |
| <input type="checkbox"/> I am in the _____ year/grade | <input type="checkbox"/> My neck hurts when I look down to read |
| <input type="checkbox"/> I was <input type="checkbox"/> full time <input type="checkbox"/> part time | <input type="checkbox"/> I don't learn as quickly as before the crash |
| <input type="checkbox"/> I am now <input type="checkbox"/> full time <input type="checkbox"/> part time | <input type="checkbox"/> I don't learn things as well as before the crash |
| <input type="checkbox"/> I had to take fewer classes b/c of crash | <input type="checkbox"/> I have difficulty concentrating in class |
| <input type="checkbox"/> I missed days of school | <input type="checkbox"/> It takes much longer to study/do my homework |
| <input type="checkbox"/> I had to drop out of school b/c of crash | <input type="checkbox"/> _____ |
| <input type="checkbox"/> My grades are lower since the crash | <input type="checkbox"/> _____ |

Signature of Patient

Date

Duties Performed Under Duress at Work and Home

Patient _____ Date _____ Date of Injury _____

☐ Initial ☐ Update

Please check all that apply to your WORK because of the accident.

- | | |
|---|--|
| <input type="checkbox"/> I go to work but work in pain | <input type="checkbox"/> I work in pain because I have bills to pay |
| <input type="checkbox"/> I limit my work activities | <input type="checkbox"/> I can't take time off because I would lose my job |
| <input type="checkbox"/> Bending at work hurts | <input type="checkbox"/> I keep working so I don't lose status at company |
| <input type="checkbox"/> Stooping at work hurts | <input type="checkbox"/> My business would fail if I took time off |
| <input type="checkbox"/> Sitting at work hurts | <input type="checkbox"/> I believe in working even when I'm in pain |
| <input type="checkbox"/> Using the Computer at work hurts | <input type="checkbox"/> I feel obligated to work even though I'm in pain |
| <input type="checkbox"/> Pushing at work hurts | <input type="checkbox"/> My business would lose money if I took time off |
| <input type="checkbox"/> Pulling at work hurts | <input type="checkbox"/> My work is not as good as it was before accident |
| <input type="checkbox"/> Kneeling at work hurts | <input type="checkbox"/> My boss reprimanded me for poor performance |
| <input type="checkbox"/> I have lost status in my company | <input type="checkbox"/> I got a different job within the same company |
| <input type="checkbox"/> I have lost job security | <input type="checkbox"/> I got a different job in another company |
| <input type="checkbox"/> I didn't get a promotion | <input type="checkbox"/> I make less money than before the accident |
| <input type="checkbox"/> I don't enjoy work as much as before | <input type="checkbox"/> I cannot do the same work/job as before accident |
| <input type="checkbox"/> I doze off at work | <input type="checkbox"/> I can't concentrate as well at work |
| <input type="checkbox"/> I take unpaid time off work to go to Dr. | <input type="checkbox"/> I take paid time off to go to Dr. |
| <input type="checkbox"/> I daydream at work more than before | <input type="checkbox"/> I make mistakes at work I didn't used to |
| <input type="checkbox"/> I feel tired at work | <input type="checkbox"/> I hide my poor work performance from my boss |
| <input type="checkbox"/> I need medication to be able to work. I take _____ mg of _____ at _____ am
when my pain level gets to _____/10 and/or again at _____ pm when my pain gets to _____/10 | |

Please check all that apply to your HOME/DOMESTIC duties because of the accident.

- | | |
|---|--|
| <input type="checkbox"/> My house is not as clean now | <input type="checkbox"/> I cannot take time off because I care for children |
| <input type="checkbox"/> My yard is not as neat now | <input type="checkbox"/> I have _____ children ages _____ |
| <input type="checkbox"/> My garden is not as productive now | <input type="checkbox"/> I had to hire a paid housekeeper |
| <input type="checkbox"/> I do yard work, but do it in pain | <input type="checkbox"/> I asked someone for unpaid housekeeping help |
| <input type="checkbox"/> I cannot do my normal yard work | <input type="checkbox"/> I had to hire a paid gardener |
| <input type="checkbox"/> I do house work, but do it in pain | <input type="checkbox"/> I asked someone for unpaid yard work help |
| <input type="checkbox"/> I cannot do my normal house work | <input type="checkbox"/> Mowing the lawn hurts me |
| <input type="checkbox"/> Doing laundry hurts me | <input type="checkbox"/> I cannot mow the lawn |
| <input type="checkbox"/> I cannot do laundry now | <input type="checkbox"/> Taking out the trash hurts me |
| <input type="checkbox"/> Washing dishes hurts me | <input type="checkbox"/> I cannot take out the trash |
| <input type="checkbox"/> I cannot wash dishes now | <input type="checkbox"/> I do not enjoy my gardening/yardwork like I used to |
| <input type="checkbox"/> Vacuuming hurts me | <input type="checkbox"/> I do not enjoy my housework like I used to |
| <input type="checkbox"/> I cannot vacuum now | <input type="checkbox"/> Gardening hurts me |
| <input type="checkbox"/> Cooking hurts me | <input type="checkbox"/> I cannot do my gardening at all since the accident |
| <input type="checkbox"/> I cannot cook now | <input type="checkbox"/> Others living with me do my share of the work now |
| <input type="checkbox"/> Washing the car hurts me | <input type="checkbox"/> Others living with me do my share of the yard work |
| <input type="checkbox"/> I cannot wash my car | <input type="checkbox"/> Others living with me do my share of the gardening |
| <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |
| <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |

Signature _____

Date _____

How This Accident Affected My Life

Patient _____ Date of Injury _____ Today's Date _____

() I have had physical pain that was caused by this accident. If yes, describe how it changed your life.

() I have had mental suffering that was caused by this accident. If yes, describe how it changed your life.

() I have had a physical impairment from which I did not recover that was caused by this accident.

() I have had inconvenience in my life that was caused by this accident.

() I have had grief in my life that was caused by this accident.

() I have had anxiety in my life that was caused by this accident.

() I have had humiliation in my life that was caused by this accident.

() I have had emotional distress in my life that was caused by this accident.

() I have a disfigurement (scar or other visible permanent sign) caused by this accident.

Signature of Patient

Signature of Doctor

Thanks for taking CE Seminars with Back To Chiropractic.

I hope you enjoyed the course. Please feel free to provide feedback.

Check out: Back To Chiropractic Resources

[Free Materials: Notes & Forms](#) hundreds of files ~ posters, newsletters & more

[Services & Listings](#) People helping people for free

Marcus Strutz DC

[Back To Chiropractic CE Seminars](#)

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