

Litigation Neurosis: Is it real?

by Dr. Ronald J. Farabaugh, D.C., C.C.S.P.

This "condition," which has also been referred to as accident neurosis, has, in Dr. Croft's (nationally recognized expert in accident reconstruction and traumatology) opinion, stood historically as a metaphor for the incompetence of some practitioners who fail to appreciate or understand the complexities of the mild brain injuries and soft tissue injuries arising out of cervical acceleration-deceleration (CAD) trauma. The thinking involved runs along the following illogical lines: this patient, who claims to be in pain from an auto accident, has no fractures, dislocations, or other pathological lesions that I can see. Furthermore, no gross abnormalities such as deformities, subluxations, etc., are apparent. Since the patient is planning on bringing suit against the other driver, he must either be fabricating his pain, or else the issue of litigation has made him mentally ill.

Stated that way it sounds fairly absurd. Yet, this is essentially the basis of accident neurosis, a construct that has failed attempts at validation, but one that remains popular in defense circles. Since the emergence of these terms, numerous studies have been performed to evaluate various outcomes in mild brain injuries and CAD injuries. Quite a few have addressed the effect of litigation on outcome and nearly universally have found that it was not a significant factor. While it is clear that some persons will either exaggerate their injuries or fabricate them altogether--thus perpetuating the problem--the overwhelming preponderance of the literature available today suggests that these concepts of neurosis should be abandoned. Reference 109c is a good review of this literature.

Evans et al. (284f) conducted a postal survey asking orthopaedic surgeons, neurologists, neurosurgeons, and family practitioners their opinions about whiplash and PCS. About a quarter of all groups were of the opinion that prolonged PCS were psychogenic in origin, while 46.8% of the orthopaedic surgeons believed that prolonged CAD symptoms were psychogenic. Neurologists and family practitioners were the least skeptical.

Litigation neurosis remains an area of interest primarily for historical reasons. Newer studies and thorough literature reviews continue to refute this label (109c, 166c,166l,166m,167c,). Moreover, these patients are typically not neurotic and should be handled with compassion and understanding (166n,166o,166p,167b,167d,167e,168n,169o). Other ill-defined inorganic factors, such as personality type, emotional status, maladaptive pain and stress coping mechanisms, family and work environment, and the litigation process itself, have not been shown to have enough significant impact on the outcome of CAD or MTBI victims to warrant serious consideration, in spite of the exhortations by some to the contrary (166q). These factors play a minor role only. Guthkelch (133) estimates that only about 10% of these patients are exploiting their injuries. As reported by Swenson (542) most recently, there have been no show studies implicating litigation as a significant outcome variable in MTBI.

Kolbinson et al. (545) conducted a retrospective pilot study to assess patients who had previously been treated for temporomandibular disorders after motor vehicle accidents to determine the nature of their symptoms in terms of jaw, head, and neck pain and jaw dysfunction, and to determine whether there was a difference in the pain and dysfunction between those who had settled and those who had not settled their insurance claims. No apparent differences were found between those who had and those who had not settled their insurance claims.

In a classic writing, Miller (158) had earlier suggested that most of these complaints were the result of "litigation neurosis." His theories have since been almost universally debunked (127,129,132,133,157,160-166), although they remain influential in medicolegal settings for obvious reasons! More recently Schmand et al. (534) have concluded from their study that, "The prevalence of malingering or cognitive underperformance in late post-whiplash patients is substantial, particularly in litigation contexts. It is not warranted to explain the mild cognitive disorders of whiplash patients in terms of brain damage, as some authors have done. The cognitive complaints of non-malingering post-whiplash patients are more likely a result of chronic pain, chronic fatigue, or depression."

In considering the Netherlands study, we must first remember that the authors did not allow the reader to compare the litigating and non-litigating groups on the basis of severity of symptoms, type of symptoms, type of injury, etc. As always, there arises the question of comparability between groups (i.e., internal validity). It is quite likely that persons with more severe symptoms and/or more disability are accordingly more likely to bring suit than those who suffer minor injuries or who resolve quickly. If litigation is an independent variable in such a study, it is very important to be sure that two groups are otherwise comparable. In this case we don't know if there were.

Finally, virtually every study ever published on the outcome of CAD injury in which litigation was indeed an outcome variable, has failed to show a correlation. In fact, Dr. Art Croft published a paper concerning this issue (109c), and since that time about 20 additional papers have been published which also failed to find that litigation affects outcome.

The notion of litigation neurosis has been rather definitively dispelled.

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About Dr. Farabaugh: Dr. Farabaugh has been in practice since 1982. He is certified in LOW SPEED REAR IMPACT CRASH RECONSTRUCTION through the Spine Research Institute of San Diego (SRISD), and holds a subspecialty as a Certified Chiropractic Sports Physician. He was appointed by Governor Voinovich to serve on the Healthcare Quality Advisory Council, which helped design the new QHP, and HPP systems for Worker's Compensation in Ohio. He is also Past President of the Ohio State Chiropractic Association where he now serves as Treatment Guideline Chairman (2001-2003).

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