



PERSPECTIVES

How Mental Illness Can Affect Post-Date of Loss Physical Health and Recovery

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

INTRODUCTION

Pre-Date of Loss anxiety or mental illness can have a profound impact on post-accident or injury recovery. In fact, long-term anxiety, depression, and other mental health issues can play a significant role in how an individual reacts to medical issues, injuries, and accidents. While mental health issues that were in place prior to date of loss (DOL) may not have contributed to the alleged injury, they can affect the individual's response to the event or illness.

Underlying anxiety can heighten or exacerbate symptoms, making it more difficult to treat subjective complaints which, in turn, can prolong recovery post-DOL. Chronic anxiety can have serious consequences on both physical and mental health, irrespective of injuries.

This paper will examine specific issues surrounding the effects of prior mental health problems on recovery following the DOL of an accident or injury. The conclusions may be helpful to defense attorneys and claims adjusters seeking to mitigate the cost of a claim in a manner that is fair to all parties as well as to plaintiff lawyers who are seeking just compensation for their clients.

HORMONES AND STRESS

Long-term anxiety can cause the brain to release stress hormones on a regular basis. This can increase the frequency of certain symptoms, such as::

- Headaches
- Dizziness
- Chest pain
- Depression
- Heart palpitations
- Heart rate
- Blood pressure and
- Asthma-related symptoms.

In the setting of pre-DOL anxiety and mental health issues, it's important to determine just how extensive a role the underlying anxiety played in the individual's recovery, or lack of recovery. Many subjective complaints reported after an injury could be related to anxiety and not to the event itself.



Figure 1 - While medical science still has a lot to learn about the biology of anxiety and depression, we do know that mental health has an impact on physical health.

OVERTREATMENT

It is not unusual to see an individual with premorbid psychological issues be overtreated and to have additional subjective complaints, as opposed to an individual who does not have underlying illnesses. These individuals with prior problems often become hyper-focused on their symptoms, which not only can have an impact on the duration of care, but also can drive up the overall cost of the claim. Additionally, chronic pain, headaches, and stress are sometimes seen following an injury because of a person's premorbid state and coping skills.

DETERMINING EXACERBATION OF PSYCHOLOGICAL PROBLEMS

Plaintiff attorneys often try to relate psychological issues to the injury. They sometimes give little or no consideration to a claimant's underlying psychological issues prior to the event and whether these issues could potentially be driving the claim.

When allegations are made regarding exacerbation of psychological problems, it is imperative that psychotropic medications prescribed and any ongoing therapies both before and after the DOL are compared. If the claimant requires fewer medications post injury, this could potentially be a win for the defense team, as an argument could be made that the claimant did not require increased dosages of psychotropic medications. Additionally, no change (i.e., frequency) in therapy visits or providers may also show that there was no significant exacerbation of the claimant's condition. Under these circumstances, therefore, the injury did not exacerbate the claimant's psychological issues.

PLAINTIFF COUNSEL CONSIDERATIONS

As both defense and plaintiff lawyers know, juries will award sizeable monetary damages for emotional harm caused by an accident. For those plaintiffs seeking compensation for emotional distress post-DOL, their lawyers should understand and acquire their client's medical records and other measurable and evidence of emotional distress that can link the suffering to the incident.

Information can come from a variety of sources beside medical records:

- the injured parties themselves who can testify to their symptoms,
- relatives who can attest to a change in behavior,
- or expert witnesses such as psychiatrists and therapists.

At the same time, attorneys for plaintiffs need to tread cautiously in this area. By asking for damages for emotional distress – especially in significant amounts - they may be opening their clients to requests by defense counsel for past therapy and other medical records as well as for an independent medical examination. While not all emotional distress can be quantitated, much can be with careful review and analysis. With that in mind, plaintiff lawyers should take steps to protect their client's right to privacy and seek to limit what mental and physical health history they must disclose to defense counsel.

CONCLUSION AND TAKEAWAYS

Pre-injury psychological and psychiatric conditions may influence post-injury outcomes. Be aware of the conditions within the context of the event or injury. For instance, ask if the injury itself was stressful or could be considered stressful. If so, underlying conditions may worsen or exacerbate outcomes and related treatment.

As a result, several steps should be taken:

- Understand that premorbid conditions, whether medical or psychological, can and often do impact recovery times.
- If possible, obtain pre-DOL records to determine pre-injury baselines.
- Post-traumatic stress disorder (PTSD) is real and can resurface under certain circumstances if there was a prior history.
- Be on the lookout for alleged stress-related diagnoses, such as headaches, migraines, changes in daily living (e.g., sleep and eating), acid reflux, etc.
- Consider an internal desk review or consultation with a psychologist if the treatment timeline is extended beyond a reasonable period.

Finally, anxiety and stress may be deemed compensable, depending on the circumstances of the case. Nurse reviewers and consultants can help defense counsel, plaintiff counsel and claims adjusters determine the effect of premorbid conditions on recovery post-DOL.

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