

Recovery & Resolution

A LEGAL NEWSLETTER FOR
HEALTH CARE PROFESSIONALS



Graham Lundberg & Peschel *Founded 1979*

Pre-existing Injuries Do Not Preclude Third Party Recovery

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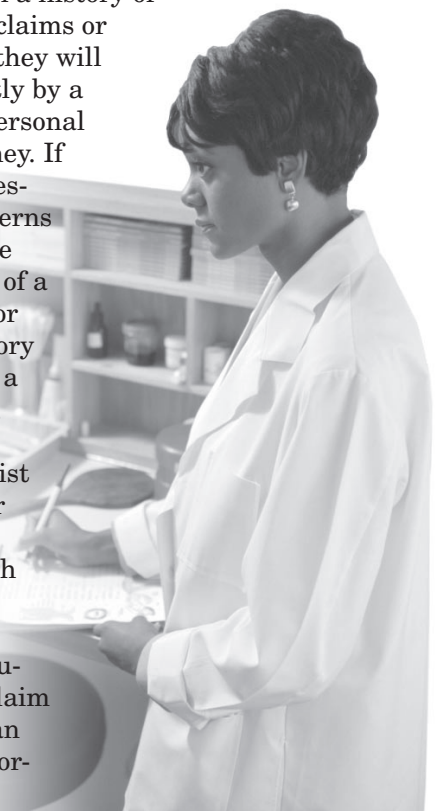
When patients arrive at your office, common questions often arise regarding how to document their chart when they are involved in a new trauma injury and they have a history of third party injuries and prior claims. It is best to always disclose this information when requests for medical records clearly request all prior records regarding the patient.

Under Washington law, the attorneys and judge will take steps to discover whether prior to the new injury the client had a pre-existing condition that was causing pain or disability in the weeks and months before the new accident. If the old injury had fully healed and the patient had no ongoing pain or discomfort; the law does not allow the patient's new claim to be discounted or diminished in value. However, if the patient's health and medical condition would have deteriorated regardless of the new accident, the law may still allow for compensation. The law allows for monetary compensation and recovery if the patient's pre-existing pain and disability were increased and worsened after a new accident. *The important thing to remember is that the client is almost always entitled to compensation after a new accident, the issues become amount and degree.*

In a recent case, our client saw their health care provider in the days before the new accident and lumbar objective test results before the new trauma revealed no positive lumbar disc herniation findings, yet objective findings done within 48 hours of the new trauma revealed multiple objective

positive lumbar disc herniation findings. This patient's claim was not impaired by the pre-existing condition. Full disclosure of the patient's prior treatment records allowed our law office to properly convince the insurance carrier for the new accident to accept the lumbar disc herniation injury as part of the new injury claim. We received a great result for this patient!

It is our firm's experience that if you have patients with a history of prior injury claims or complaints, they will benefit greatly by a competent personal injury attorney. If you have questions or concerns regarding the implications of a patient's prior medical history in respect to a new trauma, we will be happy to assist you and your patient and help establish the best approach to properly document their claim and ensure an eventual favorable result.



Plan to Attend Our Legal Educational Seminar...

What You Need to Know about Pre-existing Conditions

See page 3

Why Should an Apportionment Opinion be Performed?

When a health care provider has a patient who has previously seen him for treatment and/or injuries and that patient then gets into a motor vehicle accident or some other traumatic event, it will be necessary for the doctor to apportion the treatment and injuries. Insurance companies commonly require the primary health care provider to form an apportionment opinion between the previous treatment/injuries. There are several primary factors to consider when the health care provider forms this apportionment opinion.

The first factor to consider is the diagnosis in the records from the prior treatment and/or injuries compared to the diagnosis in the subsequent accident or traumatic event. Secondly, the health care provider should consider the type of treatment rendered as well as the frequency of the treatment. And third, had your patient reached maximum medical improvement (MMI) prior to the subsequent injury/traumatic event or when did you expect your patient to reach MMI if the second or the subsequent accident/traumatic event had not happened.

It is necessary for the primary health care provider to review all records that they are aware of regarding the previous and subsequent treatment then make a professional opinion on what

percentage of the treatment after the second or subsequent accident is related to previous injury and/or what percentage is related to the subsequent or second injury/accident. If your patient was undergoing active treatment at the time of a subsequent or second injury the frequency of your patient's treatment prior to the subsequent injury compared to the frequency after the subsequent injury would be a key factor. For example, if your patient was undergoing treatment one time a week, whether it be physical therapy, massage therapy, chiropractic or acupuncture treatment and then after a subsequent accident or injury treatment frequency increased to three times a week, apportionment will need to be made in order for the

health insurer or PIP insurer to pay the bills. It is important that soon after a subsequent accident or injury the primary health care provider make an apportionment in his/her records. If the health care provider waits to make an apportionment after treatment is concluded it is less likely their bills will be paid as the insurance carrier paying the bills will not pay any bills until they know what portion they have to pay. If your patient is working with an attorney

the health care provider might speak with the attorney if they need assistance with the apportionment so that the medical bills are paid promptly.





GRAHAM LUNDBERG PESCHEL &
Attorneys at Law

We are a team of legal professionals working together to advocate for the injured while being recognized in the community for providing the highest level of service.

Pardon us!

Regarding our Nov/Dec article "Attending Physician Keeps Independent Medical Examinations More Objective," Dr. Arthur C. Croft's book is titled, *Whiplash Injuries: The Cervical Acceleration/Deceleration Syndrome*, not *The Cervical Syndrome*.

Our Attorneys

- John Graham
- Scott F. Lundberg
- Brian J. Peschel
- Kenneth B. Golden
- Cydney Campbell Webster
- Sean A. Ayres
- Angela L. DeWig
- Kenneth Barry Dore
- John Webber
- *John Williams
- Rodney G. Zerr
- Tara Eubanks – Intern
- Ben Lambert – Intern
- *admitted in Ohio only

Our Paralegals

- Patricia Clanton
- Patti Cryder
- Kimberly Cutting
- Johnnie Dano
- Kathleen Gottlieb
- Judy Hanson
- Lora Harris
- Grace Stephens
- Heather Webb

Our Administration

- Arlene Bolger
- Tamara Briggie

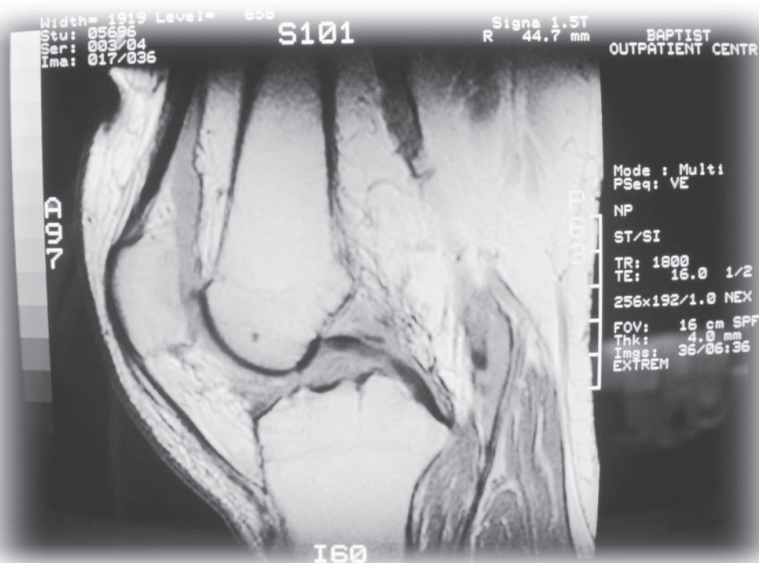
Administration, cont.

- Diane Daniel
- Ann Harris
- Thelma James
- Brian Jones
- Heather Kelly
- Martha McDonald
- Becky Moilanen
- Tina Mulcahy
- Lucinda Pieczatkowski
- Tom Reger
- April Stonebreaker
- Celine Cloquet Vogler
- Joyce Watts



How to Handle Documenting Multiple Injuries

1. Do not ignore that the patient had a preexisting condition or disability or a dormant condition prior to his or her second collision.
2. Indicate clearly the patient's new injuries, and with regard to previous injuries, make the distinction whether the patient had a "lighting up" of a dormant condition or an "aggravation" of a preexisting condition.
3. At the patient's initial examination compare and clearly document the patient's objective findings with his or her objective findings that existed prior to the second injury.
4. Take a second set of x-rays for comparison.
5. When documenting the patient's subjective complaints, clearly document how the activities of daily living have been affected since this second collision.
6. Determine as soon as possible the apportionment of the patient's injuries to each collision. Be sure to support the apportionment with the patient's subjective and objective findings, as it will be used by several parties to determine what percentage of the patient's injuries are related to each collision, including the PIP insurance carrier, other physicians, attorneys and the at-fault insurance carrier.
7. Do not ignore the PIP carrier. If there was a PIP carrier paying bills at the time of the patient's second collision, they will need an apportionment as soon as possible to determine how they will split payments between the two collisions. If the PIP carrier does not have an apportionment, they will more likely than not request an independent medical examination in order to obtain an apportionment.
8. When you receive a request, stipulation or subpoena for the patient's medical records, if requested, be sure to disclose all of the patient's medical records related to each accident.



FREE SEMINARS

Graham Lundberg & Peschel welcomes you and your office staff to attend a **FREE** Educational Seminar.

What You Need To Know About...

Pre-existing Conditions

Thursday, **February 6**
Everett – Howard Johnson Hotel

Thursday, **February 13**
Bellevue – Red Lion Bellevue Inn

Wednesday, **February 19**
Tacoma – Cliffhouse Restaurant

Thursday, **February 20**
Federal Way – Verrazano's Restaurant

Wednesday, **February 26**
Puyallup – Best Western Park Plaza

Thursday, **February 27**
Tukwila – Best Western of Southcenter

Wednesday, **March 5**
Lakewood – Lakewold Gardens

Thursday, **March 6**
Bremerton – Oyster Bay Inn

Thursday, **March 13**
Seattle – Best Western Executive

Enclosed is an RSVP form. Plan to attend this informative seminar.

- All Seminars: 12:30 – 2 pm
- Complimentary Lunch Buffet
- This Seminar is for Doctors, Therapists and their staff!
- Health Care Providers Earn Continuing Educational Credit





Tacoma's Open House!

Sean Ayres
Attorney at Law

Kenneth B. Golden
Managing Partner
of

Rodney Zerr
Attorney at Law



Attorneys at Law

We have completed the building
of our new office located at:

1420 South Union Avenue
Tacoma, Washington 98405

Open House!
Wednesday, January 29, 2003
from 1:00 p.m. – 7:00 p.m.

(253) 627-7701

www.glpattorneys.com

CONVENIENTLY LOCATED

For the convenience of your personal injury patients, we offer several meeting locations throughout Puget Sound and Peninsula communities. Attorney consultations are encouraged and always free.

- Auburn 253-931-1111**
- Bellevue 425-827-1111**
- Burien 206-241-1708**
- Everett 425-252-1111**
- Federal Way . . 253-946-1111**
- Gig Harbor . . . 253-853-5005**
- Lakewood 253-274-1111**
- Lynnwood 425-775-1111**
- Marysville 360-658-1111**
- Port Orchard . . 360-876-5005**
- Puyallup 253-845-1112**
- Renton 425-235-1111**
- Seattle 206-448-1992**
- Tacoma 253-627-7701**

Or Call Toll Free

North Puget Sound area including
King & Snohomish Counties
800-422-4610

South Puget Sound area
including Pierce, Kitsap
& Thurston Counties
800-273-5005

or visit us online...
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