

# Recovery & Resolution

A LEGAL NEWSLETTER FOR  
HEALTH CARE PROFESSIONALS



Graham Lundberg & Peschel *Founded 1979*

## The Importance of a Health Care Provider's Testimony

*By John Webber, Attorney*

**W**e recently handled a case where our client was involved in a minimal damage rear end automobile collision in Bellingham. Because the damage to our client's car was under \$1,500.00, the at fault driver's insurance carrier refused to make a reasonable settlement offer. The client came to our office with a \$500.00 offer, and we took his case knowing that we faced some challenges, but believing that we could improve his position. The client sustained musculoligamentous injuries to his neck and back.

Our client's case did have a few strengths. Our client was a healthy young man before the automobile collision and had no prior history of accidents or injuries. He was articulate and presented well as a witness. Most importantly, his health care costs were conservative and reasonable and consisted of care with a medical doctor, chiropractor and massage therapist.

What made our client's case especially strong was that his chiropractor took the time to manage our client's care, take thorough notes, and document the client's treatment. The doctor set a reasonable treatment plan and carefully monitored the patient's progress and resumption of normal activities.

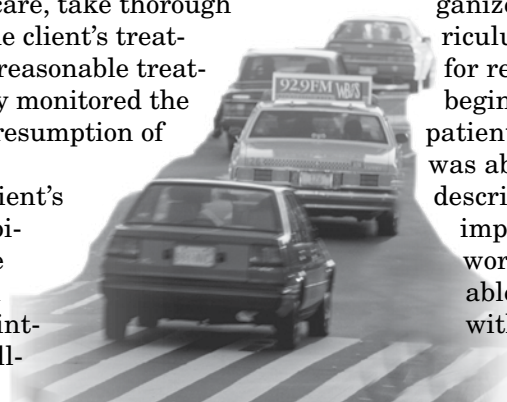
We submitted our client's case for mandatory arbitration pursuant to the Mandatory Arbitration Rules. The Court appointed arbitrator was a well-

established defense attorney. We presented our client's case and testimony at a half-day arbitration hearing. We obtained a fair and reasonable award for our client from the arbitrator. The Defendant's insurance carrier promptly appealed the award, and the case was set for trial.

About a month before the scheduled trial, our office scheduled our client's chiropractor for a videotape perpetuation deposition. We learned it would be the first time the chiropractor had testified. We scheduled a conference with the chiropractor ahead of time, and made sure that the doctor was provided with copies of our client's deposition transcript, vehicle damage photos, and prior records showing good health before the collision. We explained what to expect and how to handle typical insurance defense tactics on minor impact "soft tissue" cases.

On the day of the deposition, we arrived at the chiropractor's office to find him well dressed and professional. His file was organized. He had his current Curriculum Vitae copied and ready for review. It was clear from the beginning that the doctor knew his patient well and knew his chart. He was able to quickly and succinctly describe our client's injuries, the impact the injuries had on his work and home life, and was able to show the progress made with the treatment provided.

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# Help Your Patients Stay Out of Court

By John Webber, Attorney

Spending a week or more in trial to prove an injury claim is hardly something most injured people want to experience. Trials are expensive, time consuming and pose risk due to the often conservative nature of juries today. Health care providers can help their patients avoid litigation by keeping in mind these important tips:

➤ **Keep Good Records and Document Treatment**

Your medical records are like a history book when your patient reaches maximum medical improvement. Are they easy to read? Are they thorough and explain all injuries and treatment? Are limitations on work and daily activities well documented in the records? If an adjuster cannot read your records he or she cannot understand what your patient experienced as a result of an injury claim. Make sure you state that treatment you are providing is related, on a more probable than not basis, to the accident that forms the basis of the injury claim. Make sure you can state that your treatment is

reasonable and necessary for the patient's recovery. Document objective findings like bruising, swelling, abrasions, cuts and muscle spasms. Consider photographing bruises or visible injury and making the photographs part of your chart. Put all



records on letterhead, or otherwise identify your clinic, and put the patient name and full date of treatment on each record. If your intake notes, medical reports, SOAP notes, chart notes, treatment cards and other records read like a book, and tell your patient's story to anyone that reads them, then your records will help your patient and his or her attorney resolve the patient's claims without the need to file suit.

➤ **Utilize PIP, Medical Payment and Health Insurance Benefits**

If your patient has PIP, medical payment coverage or health insurance, use it and submit your bills and records in a timely fashion. Your patient is under enough stress from the injury and subsequent impact on normal daily activities. The worry over medical debt compounds that stress. It is always to your patient's benefit to have bills paid by any first party insurance that is available.

➤ **Watch for Gaps in Treatment**

Did your patient stop treatment and then start again after several months without care? If so, this might be a "red flag" for a third party adjuster to argue that such care and treatment is not reasonable and necessary and not related to the accident in question. Avoid big gaps in care, and where necessary, explain gaps that may be related to family emergencies, work or school schedules, or financial issues.

➤ **Watch for Excessive Treatment Arguments**

Has your patient shown improvement with treatment? How does the patient's treatment plan compare to treatment of other similar patients in your experience? Have you referred your patient for

other treatment modalities if your patient has a plateau with your form of care?

➤ **Pay Attention To Prior Medical History**

It is important that the health care provider is fully aware of the patient's prior medical history. Ideally, a health care provider should get a complete history from a patient at the initial visit and examination. If you know the prior history you can distinguish current complaints from prior complaints, and be able to prove that your care and treatment of your patient is reasonable, necessary for recovery and related to the injury claim in question.

➤ **Apportion Injury in Multiple Accident Claims**

If your patient has had the misfortune to be involved in two or more accidents with overlapping medical care, then the lead health care provider needs to give an opinion, on a more likely than not basis, which accident caused which portion of the injury or aggravation of injury. The health care provider should be able to give an opinion as to what percentage of treatment after the accident is related to the accident and what percentage is related to the prior injury, or other accident.

➤ **Have Your Patient Seek the Advice of a Qualified Personal Injury Attorney Early**

A good attorney can help with all aspects of an injury claim, from assisting with billing PIP or other insurance, documenting and preserving evidence, and anticipating the pitfalls and defenses such as those discussed in this article. Remind your patient that an initial consultation with a personal injury attorneys is free.





## Did You Know?

**G**raham Lundberg & Peschel successfully handles premises liability cases. Such cases arise when someone is injured while on the premises of a commercial business, an apartment complex, public property, or private residence and when the injury occurs as a result of someone else's negligence. Generally, under Washington law, an owner or occupier of a premises has a duty to exercise ordinary care to maintain the premises in a reasonably safe condition in order to avoid injuring any person who is on the premises. However, the duty owed will depend on the status of the visitor; as a guest, employee, trespasser, minor, etc.

Washington law on premises liability can be complex, and finding

the right persons or entities that own or control a particular premises can be difficult. If your patient has a potential premises liability claim, it is important that he or she promptly contact and consult with a qualified personal injury attorney.

Our law firm has successfully represented clients injured as a result of poorly maintained sidewalks, improperly marked or lighted stairways, poorly marked hazards on walkways and floors, and improper security at public facilities.

Our attorneys and staff have worked as a team as advocates for the injured since 1979. We are here to answer questions you or your patients may have about premises liability or other injury cases.

## Jason Epstein Spotlight

**J**ason Epstein has been dedicated to representing injured people since beginning his legal career in 1999. A Seattle native, Mr. Epstein received his undergraduate degree in Philosophy from the University of Southern California in 1995, and his Juris Doctor from Pepperdine University in 2001.

After graduating from Pepperdine, Mr. Epstein moved back to the Seattle area and opened his own law firm focusing on protecting the rights of the injured. Mr. Epstein next took a position as an associate attorney with a Puget Sound law firm where he represented seriously injured people and victims of catastrophic medical malpractice, including a failure to diagnose a subarachnoid hemorrhage which resulted in a settlement for over \$2.5 million. Mr. Epstein next joined another Puget Sound personal injury law firm where his focus remained helping the injured achieve full recoveries, including a \$1.06 million

settlement for a surveyor who was struck when another driver passed out at the wheel. In April of 2006, Mr. Epstein joined Graham Lundberg & Peschel where he continues his work of holding insurance companies accountable by representing injured people.

Mr. Epstein is a member of the American Bar Association, the Washington Bar Association, the United States District Court for the Western District of Washington, the American Trial Lawyers Association, and the Washington State Trial Lawyers Association. Mr. Epstein has also completed a certificate in Alternative Dispute Resolution from Pepperdine University and the Trial Advocacy Skills program through the National Institute of Trial Advocacy.

Mr. Epstein lives on the Eastside with his wife and son. In his spare time, Mr. Epstein enjoys spending time with his family, playing golf, exercising regularly, and taking in the great outdoors.

## TOP 10 WAYS TO STAY OUT OF COURT

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

Join us in a discussion regarding:

- **Early Recognition of Potential Issues**
- **Working with Your Patients Attorney**
- **Helping to Document and Preserve Evidence**
- **Monitoring Your Patient's Treatment and Recovery**

**This is one seminar you cannot afford to miss! Seating is limited so sign up today!**

Wednesday, **October 18**  
**Tacoma** – La Quinta Inn

Thursday, **October 19**  
**Everett** – Holiday Inn

Thursday, **October 26**  
**Bellevue** – Red Lion Bellevue Inn

Thursday, **October 26**  
**Port Orchard** –  
McCormick Woods Country Club

Wednesday, **November 1**  
**Tacoma** – Holiday Inn Express

Thursday, **November 2**  
**Renton** – Holiday Inn

Thursday, **November 9**  
**Seattle** – Best Western Executive Inn

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

- All Seminars: 12:30 – 2:00 pm
- Complimentary Lunch Will Be Served
- Doctors of Chiropractic, Massage Therapists, and Physical Therapists will earn 1.5 CE credits
- Registration is limited to four attendees per office



**W**e 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.

**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
- Lacey**.....360-786-1717
- 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
- Silverdale**.....360-876-5005
- Tacoma** .....253-627-7701

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 Martha McDonald  
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 Melanie Shotts  
 Julia Tyabji

**Health Care Provider's Testimony, continued**

Overall, the doctor proved himself to be confident and credible witness that would be able to impress upon a jury, in layperson's terms, the value of the care provided and why, despite the minimal damage to the car, our client had sustained injury. The doctor's deposition testimony made a difference in tipping the case toward resolution.

Shortly after the chiropractor's deposition, our firm was able to negotiate a compromise that was

fair and reasonable for our client and that avoided the cost and risk of trial. The moral of this story is that legible and complete chart notes, documentation of injuries and impact of injuries on activities of daily living, proper and thorough preparation for deposition, and a good relationship between the patient, doctor and attorney can make all the difference in getting cases resolved before trial.

*Or Call Toll Free*

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**800-422-4610**

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

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