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The Ad Hominem Attack: Don't Take it Personally

By Michael Credico, DC

Some time back I received a fax from one of the doctors going through my program. Apparently he had mentioned me in some way in a report he'd written and the defense medical examiner (a DC/MD), who saw the patient on behalf of the insurance company, took exception to that. In his (the defense doctor's) report he made a number of disparaging comments designed to portray me as a seminar guru, and not any kind of authority on cervical spine conditions. These ad hominem attacks, it turns out, are fairly common, if ineffectual, defense countermeasures. By now I've become inured to this sort of invective, having even been occasionally lambasted in the press. It goes with the territory, as they say, but it provides me with a column for this issue of DC: a few dos and don'ts of rebuttal.

By now you've already heard the first "don't." Skip the ad hominem remarks, unless, of course, you find some utility in appearing childish and in providing ineffective, oblique arguments. The letter I mentioned in the first paragraph read very much like the kind of "My dog's better than your dog" patter you hear from grade schoolers. Not much was written about the real issues being rebutted -- the facts questioned by the defense doctor. Suppose it's true that I'm "merely a seminar jockey," or a "whiplash guru." Does that preclude me from providing real facts to seminar attendees? Well, I guess not. Invidious attacks on me fail to help the doctor prove his point.

I see this kind of thing in narrative reports with some regularity. Dr. Sluggo (my favorite metaphor for defense doctors -- remember the Mr. Bill show on "Saturday Night Live"?) writes in his defense report that the patient should have recovered in three weeks. The fact that another person in the car was killed has no bearing on the recovery of the injured individual because, as we all know, injuries between occupants can vary greatly. And, despite the patient's claims that the treating doctor kept him on the job and relatively comfortable, the treating doctor was, in Dr. Sluggo's opinion, overtreating after that three week point. Dr. Sluggo goes on to refute the treating doctor's diagnosis, proposed mechanism of injury, thoughts regarding impairment, the need for future care, and prognosis.

The treating doctor is naturally a little bit miffed by this kind of report because, after all, Dr. Sluggo has, with a stifling and pompous air of authority, proclaimed that the treating doctor: 1) has essentially committed insurance fraud; 2) is an inept diagnostician; and 3) does not have much understanding of occupant kinematics, biomechanics, and trauma pathophysiology. Moreover, Dr. Sluggo's report has provided the insurance company with the necessary pretext to refuse to pay the treating doctor's bills, which it will do as sure as the night is black.

In a fit of unbridled rage, the treating doctor shoots back his rebuttal to Dr. Sluggo's report. Dr. Sluggo, he notes, has a reputation in town for doing only defense work. He's ignorant of chiropractic. He does not have a treating practice himself, is retired, and probably not current with the literature. And on and on.

The problem is that all of this is merely an ad hominem attack -- literally, attacking the man. OK, so Dr. Sluggo's a jerk; clearly believes chiropractors are poorly trained, cultist- quacks; he works for insurance companies exclusively; and he is retired from active practice. Does any of that prove his opinions wrong? No. Does it have any effect on Dr. Sluggo? Not likely. So the treating doctor does no more than show how easily one can bruise his ego. The solution is to attack the points, not the person.

Common strategies for rebuttal arise out of the general weaknesses of actually doing a defense medical examination. Having performed many hundreds of them myself, I well recognize the limitations of attempting to determine the relative severity of an injury, and the subsequent need for care long after the fact. These injury post-mortems require a lot of careful work. You must carefully interview the patient. You must examine the patient. You must examine all the records in the case and then determine, based on all of this -- including your experience with similar cases and your knowledge of the pertinent literature -- whether, in fact, an injury occurred; how severe it was; whether the care provided was necessary; and whether any ongoing impairment/dysfunction/symptoms can be rightfully attributed to the accident in question. And then there may be questions of apportionment, prognosis, and future care. This is quite an undertaking.

Most defense doctors don't spend much time with patients, nor do they spend much time with the records. This often becomes clear from reading their reports, and this is a good starting point for the rebuttal. In a very professional style, and being careful not to allow any interjection of hostility, call attention to these errors if they are important enough to have affected the doctor's important opinions in the case, or if they suggest a general lack of attention to detail. For example, if the defense doctor reports a date of injury of

2-6-97, when it was actually 4-6-97, one would probably sound trifling in pointing out the mistake. But, if he reported that the patient was a passenger when, in fact, he was the driver, it suggests that fairly important details were misunderstood and this calls the accuracy and credibility of the rest of the report into question.

More commonly, treating doctors can find a ground for rebuttal by relying on their own records. Defense doctors may not find any limitations of motion or other objective findings a year after the accident.

Although not surprising, it frequently becomes part of their (illogical) argument for a lack of initial injury.

The treating doctor needs merely to refer back to the initial examination findings, re-exam records, and daily SOAP notes to effectively rebut defense reports.

This brings me to an important corollary point. Treating doctors should not feel obligated or compelled to rebut the philosophical musings of file reviewers, accident reconstructionists, or others who comment on whether a person "should have been injured" in a certain accident. Apart from sounding absurdly judgmental, in reality (a commodity not familiar to some of these folks) nobody (not even the Pope) can say whether a person should have been injured. As to whether someone probably would have been injured, we can only speculate.

As a treating doctor, you deal with tangible, palpable, and observable reality, not probability. That, in fact, is the case in nearly all medical environments. Young female myocardial infarction victims are not refused reimbursement for treatment simply because they shouldn't have had a heart attack. Yours is a fairly concrete world in the sense that people are either injured or they are not. A comprehensive history and physical examination will answer the question; there is no need to second-guess the gods of fate who presumably preside over the important decisions of who "should" suffer a particular fate.

Limitation of motion, trigger points, muscle spasm, positive orthopaedic, neurological, and chiropractic tests, in concert with consistent subjective reports from the patient, confirm both the injury and the need for care. Ongoing treatment records, in the form of re-exams and SOAP notes, will substantiate clinical improvement, the need for outside consultations and further diagnostic work, and the appropriate time for release from active care.

Your opinions on the subject of prognosis are guided by your training as a chiropractor, your previous clinical experience with similar cases, your knowledge of the pertinent literature, and your relevant postgraduate training. Your opinions belong to you exclusively. The fact that others may not share them enthusiastically should neither upset you nor surprise you. In instances in which Dr. Sluggo disagrees with

you, you need say only that you strongly disagree. You might also point out the chief reasons for that disagreement.

One further point. Don't miss the opportunity to make appropriate and thoughtful rebuttals. I know doctors who take the attitude that they are a waste of time and serve no useful purpose, lowering the treating doctor to the same level as the defense doctor. But these folks are missing an important opportunity and, perhaps, obligation. When you make a skilled rebuttal of a report, you very often destroy that doctor's credibility on the case. Later, should the case go to trial or arbitration, the defense will either have to hire a new expert or take their chances salvaging Dr. Sluggo from his own illogical, unfounded, or poorly grounded opinions. This can have an unraveling effect that just might precipitate favorable closure of the case with reimbursement of the treating doctor.

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