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## **The One Strategy for Preserving the Landscape**

By Arthur Croft, DC, MS, MPH, FACO

Before I begin with the subject of this editorial, I'd like to mention a couple of recent personal events. In a publication for chiropractic orthopaedists, a paper was published on the subject of whiplash. The authors noted that certain unnamed DCs put on seminars that teach doctors to practice in mischievous ways (read that to mean an "overtreating" practice style - "stop me or I'll treat again") by applying certain inaccurate interpretations of the medical literature. I only know of a handful of people who teach seminars on the subject, so I became somewhat concerned. These slurs didn't apply to me (honest), yet I was ticked. As with any of you, my reputation is valuable to me and when it needs protecting, I'll do so.

While the organization which published the piece and I were negotiating as to how we'd deal with this "problem," the *ACA Journal* reprinted it without realizing it had become a sore and controversial subject. In the end, redress came in the form of a sort of rebuttal piece in the Journal's opinion section, along with a "corrected" reprint of the original article in the orthopaedic journal, and we all walked away.

Most recently, a long-time acquaintance (with whom I have a history of similar vitriolic interludes) wrote me a letter and told me in a catty way, among other things, that the chiropractic academics he'd spoken to (unnamed again) thought I was biased. I'll admit to being somewhat biased, if being biased means that you simply believe in something strongly. But, if that were the true definition, it also would mean that the world's top nuclear physicists were "biased" toward quantum mechanics or that UNICEF was "biased" toward children.

To me a bias, among other things, is a state of mind in which one specifically overlooks evidence suggesting that one's thinking is flawed. I am not in that state. I am an equal-opportunity critic and will criticize literature, science, theory, or speculation on both sides of the fence. It's interesting that my most vocal critics are the ones who often debate the very existence of whiplash or late whiplash. With thousands of reports in the literature, and nearly every civilized nation reeling from the costs of this condition, it takes a

considerable bias to maintain such beliefs. It comes close to denying the holocaust, as some have. So I wonder whether some of my critics would also admit that they are biased, and perhaps even more egregiously so. It seems their vapid, repeating excursions into their own literature are usually nothing more than old wine in new bottles.

The reason for risking an introduction that sounds like no more than the defensive posturing of a crybaby scorned, was to transition to my main theme: Use it or lose it. And I'll be completely forthcoming with you: This is an unabashed cheerleading adventure for me, and I hope you'll indulge me. I'm referring to that often neglected corner of practice called personal injury (PI). We're all too familiar with the concept of losing a piece of the landscape of our livelihoods. We've seen pieces of it whittled away little by little over the years. We've sometimes lost entire sections of this real estate; we've occasionally reclaimed some of it too. PI, like workers' compensation (WC), has its special rules of engagement, but, unlike WC and all other facets of daily practice, it is tied in an ineluctable concatenation to the law. And this is why the landscape will shrink before it grows. Already we've seen this corner of practice change drastically in several states in recent years. Some of it has been the result of abuse by practitioners and lawyers, but not all of it. If you are a regular reader of this column, you'll no doubt be aware by now that the lion's share of the evidence shows that whiplash injuries are real; they are rampant and epidemic; they have been increasing in recent years - not decreasing; and they benefit from reasonable and rational care. And this is care dictated by the patient's condition and recovery - not some formula for care that a few of my critics incorrectly believe I teach. Sadly, for many victims of this injury, insurers often refute claims, offering as their pretext flawed literature and junk science, often issuing from the mouths of doctors and other experts actively engaged in fiscal relationships with these same companies. More often than not, the majority of cases are treated in the style of Napoleonic law from their inception: as fraudulent until proven otherwise.

Meanwhile, defending these cases has become a boon for those willing to do so - many of whom, not surprisingly, and of necessity, have become the chief critics of this "biased" author. An entire enterprise has evolved; a sort of paint-by-numbers approach which is alarmingly successful, despite the fact that it is based almost entirely on pure flights of baseless theoretical fantasy, on misinterpretation or misrepresentation of good literature, and reliance on flawed literature. The message: If you can make it sound plausible, the jurors will likely buy it. Sound familiar? The pot calling the teakettle black, you say? Well I can only offer my work as my defense; you be the judge.

Meanwhile, plaintiff attorneys around the country are in dire need of help in bringing these suits successfully to trial. That requires treating doctors who know how to blow the whistle on the shenanigans foisted upon jurors by these "experts" and stop their reign of error; doctors who can at least level the playing field. Without this assistance, plaintiff attorneys are falling by the wayside, much to the delight of auto insurers and the consternation of victims everywhere. The plan, after all, has always been to inculcate these attorneys that these cases are "unwinnable." Incredibly, although they know that the old hack, "no crash, no cash" (i.e., a Johnny- Cochranesque insurance company slogan implying that no property damage equates to a lack of possible injury and, hence, no compensation) holds no water, these attorneys accept it! "It's too hard to fight (the truth)," they say, and it's not a good situation for the plaintiffs of the world. For the insurers, however, it's perfect, since the irony is that the largest category of whiplash injuries actually occurs with little or no property damage.

Ultimately, if the victim loses the right to fight these cases, the insurers will almost certainly reject them out-of-hand or offer only remedial care - a travesty of our health care delivery system, but something we've seen happen elsewhere. Of course, it also means that practitioners will be forced to ask patients to pay for treatment in cash (if that is even allowed by the insurer). And it means that advances in crashworthiness, which should help to curb some of these injuries, will not be forthcoming for a variety of economic and political reasons.

Having been there and done that, as many of you have, it's difficult for me to see the affiliation between auto insurance company and health-care-provider-as-professional-expert-witness as anything more than a consanguineous marriage of convenience. And it will never end. The only successful strategy is to arm yourself with knowledge. Knowledge leads to wisdom, and wisdom to enlightenment. I'm referring to the kind of expert that can effectively - and dare I say easily - turn the tables in medicolegal cases. These are the doctors we need so dearly in this field, and they are the ones who will preserve this little corner of practice.

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