

Understanding



Latent Effects

Psychologists Can Help Lawyers Unveil Clients' Post Trauma Stress

THE physical impact of medical malpractice and personal injury is usually obvious and can be easily related to by members of the jury. A fractured bone, a lost limb, a damaged organ are all readily observable through X-ray, CT-Scan or MRI evidence. These injuries, resulting from either medical malpractice or personal injury can, and do, impair the victim's ability to function normally, to remain the breadwinner, and to otherwise engage in the pursuit of happiness. When a trial attorney presents a client's injuries to the court, it is relatively easy for the jury to see the extent and nature of the injury.

But frequently not as obvious are the hidden damages, the emotional injuries that lie beneath the surface, which, although often invisible to the jury, can have profound and permanent effects on victims and their families. These injuries fall under the realm of emotional damages and – while often overlooked by attorneys and victims – are often as devastating or even more so, than the physical damages with which they are concurrent.

Emotional damages may not be evident immediately and can actually increase in severity with the passage of time. Since they frequently are not apparent to the attorney, they are often overlooked. Some attorneys will recognize emotional trauma, but only when it is very obvious. On the other hand, some attorneys assume the existence of emotional trauma as a natural outcome of physical injury. These attorneys routinely screen their clients

for emotional factors and only *will not* pursue emotional damages in the absence of verifiable emotional trauma. This approach is especially useful when the attorney has the ability to draw upon the expertise of the psychological expert witness.

The existence of emotional trauma may not be readily apparent. Indeed, clients would be hesitant to admit the existence of emotional trauma, viewing it as a weakness rather than an injury, and fearing the stigma often associated with emotional illness.

The trial lawyer can circumvent this to a degree by being sensitive, open and approachable to these issues early in the relationship. Sometimes other family members and friends are better able to identify personality changes in the victim than the victim himself/herself. These ancillary contacts should be routinely made in order to be certain that a quick denial of emotional distress on the part of the victim would not obscure the presence of emotional factors.

Attorneys who recognize the importance of psychological factors in these cases will often encourage their client to seek treatment, as doing so will help the client and document the existence of emotional trauma.

To help determine the existence of emotional trauma, checklists written for attorneys are available for that purpose and can help to screen the presence, or absence, of these conditions within a few minutes. If the client scores above a certain cutoff point, further assessment is usually warranted in order for a thorough evaluation of a client's emotional state to be made.

In accident cases and certain types of medical malpractice cases, one of the more common emotional reactions is that of posttraumatic stress disorder. PTSD is often the psychological manifestation of an accident or any trauma that is extremely intense or prolonged, and which is outside the range of normal human experience. It frequently occurs immediately after the occurrence of the trauma and often manifests itself through anxiety, depression, disturbed sleep patterns, flashbacks, and various somatic problems and can be triggered by exposure to situations related to the original trauma.

Many attorneys are not aware that the onset of some PTSD cases may be delayed month, or years, after the initial trauma. In one such case, a police officer who was accidentally shot by his partner, and who initially denied the existence of emotional problems, deteriorated over the course of two years, and ultimately had to leave the force on a psychiatric disability.

Diffuse and varied physical complaints, known as a somatization disorder, can often hide the existence of underlying emotional trauma. These symptoms are often mistaken as strictly physical in origin. If a client complains about physical discomfort that appears not to have a physical origin, then emotional stress may be the causal factors.

Depression is another emotional injury that may not reveal itself immediately. It may take many months or even years for the full impact of the physical injury, and its impact on the victim's quality of life, to manifest. There are many types of depression, and some types can be triggered by a stress reaction to external events beyond the control of the individual. Depression can be subtle in its impact, often resulting in the loss of motivation, excessive drinking, drug abuse, and family problems. Other manifestations include weight gain or loss and problems in interpersonal relationships.

One often-overlooked cause of depression is the emotional impact of chronic pain. Many injuries, due to either medical malpractice or personal injury, result in the existence of chronic pain. This chronic pain does not have to be consistently severe, it can also be sporadic or mild. Not only does chronic pain exert an adverse biochemical effect on the brain by reducing serotonin levels, which can lead to depression, but the pain is also a constant reminder of the injury and its impact on the victim's lifestyle.

Consider the following example: A young man's knee was improperly operated upon, resulting in pain that make it impossible for him to jog – an activity that had been an almost ritualistic activity prior to his surgery. Two years after the surgical accident, and being unable to jog for that period of time, he was diagnosed with major depression. Psychiatric hospitalization led to a settlement that included an allowance for his psychiatric treatment and emotional suffering.

Chronic anxiety is another form of emotional injury that accompanies medical malpractice and personal injury. For example, in more than one case of misdiagnosed cancer, those victims who survived frequently became cancer phobic, obsessing about each and every pain or skin blemish. At the same time, many became untrusting of the medical profession for misdiagnosing them in the first place. They are often torn because their fear of cancer and their lack of trust in the medical profession. This situation may result in the client avoiding needed treatment, further jeopardizing his or her health.

THE claim of emotional damages can often be supported through the use of an expert psychological witness. These professionals, trained in both interview techniques and psychological testing, are experts in the interpretation of this data and skilled in explaining these findings to the jury in layperson terms.

While both psychologists and psychiatrists can receive training in forensic assessment, psychologists are further skilled in the application of forensic psychological testing. This latter skill can be used to generate useful information about the personality of the client, adding strength to the expert testimony.

Psychological tests are designed to ascertain levels of anxiety, depression, thought disorders, somatic concerns, and other clinical syndromes in the present, as well as determining long-standing personality traits reaching back several years. Many of these instruments, especially the computer-scored ones, have built in reliability and "lie" scales that are surprisingly sensitive to exaggeration and malingering. Other tests are scored on the basis of extensive training on the part of the psychologist and reveal the rich content of the victim's subconscious thought processes and concerns. These data are correlated with the results of the interview and a review of available medical and psychiatric reports. From these, a comprehensive evaluation is then generated.

Psychological experts are also called upon to determine if claims of emotional damage are exaggerated or are the result of deliberate manipulation by the victim. Here, the same evaluation procedures are called into play, with special emphasis placed on the detection of malingering. In recent years, new evaluation instruments have been developed that are more sensitive in detecting malingering than were previously available.

Frequently, experts are called into play by the defense counsel who may be suspicious of certain claims of emotional damages. Expert psychological testimony used in such situations can often be helpful in reducing awards to plaintiffs when their claims are deemed excessive.

Many skilled trial lawyers use psychological testimony effectively to protect their client's interests in the litigation process. This data can also assist in keeping awards within sensible bounds by refuting exaggerated and unsupported claims of emotional damages.

When searching for a psychological expert, check Diplomate status from at least one of the boards (such as the American Board of Professional Psychology and the American College of Forensic Examiners) that certify psychological experts. Be sure that your expert is clinically experienced, writes clearly, is detail-oriented, and above all, is able to testify in a professional, engaging manner.



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