

LITIGATION OUTCOME ASSESSMENTS WITH USING DYNAMIC FUNCTIONAL CAPACITY TESTING

The need to accurately document your care is becoming more paramount. Disciplinary actions with state boards, national data banks, individual state data banks, and litigation, documentation is critical. We as Chiropractors need to defend our treatment plans and show reasonable and necessary medical care. We must also be able to defend and protect treatment plans and opinions concerning patient care.

There are currently a variety of requirements in place that mandate us to meet minimum standards in patient care. State statutes, state boards and medical malpractice litigation require us to “act as reasonable physicians”. We also have a “duty of due care” in meeting a standard of care existing in the same or similar community by other members of the chiropractic profession. All states require the chiropractor to meet minimum record keeping requirements. Most include a case history, examination, x-rays, treatment plan, daily progress notes, any and all past history records by other physicians, diagnostic tests, medical consents etc. If we fail to meet these standards then we may be disciplined by the state board or if the patient perceives that you injured then you may face a malpractice suit. Now with the new Healthcare Insurance Portability Accountability Act (HIPAA), which deals with patient confidentiality, and privacy issues, we face new state and federal laws that deal with patient care and documentation.

In looking at your patient, each individual differs in the length of time for treatment. In that every patient is an individual and should receive care that is appropriate for that patient’s condition. Since there is such a difference and no definite determination as to treatment duration of individual cases, the judicial system often has been required to address these issues in litigation. Remember, your records directly reflect on you as a chiropractor and you must be able to defend, not only your records in court, but also your opinions as to the care of your patients. One such way is clear, accurate and legible record keeping that demonstrates reasonableness and medical necessity in the care of the patient. You will need to document this from the first day to the day of discharge.

The most effective way to do this is through an outcome assessment that should be attached to every patient case. An **OUTCOME ASSESSMENT**, is a procedure of measuring a change in a patient’s condition over a period of time to determine if the condition has improved, remained the same or got worse. Keep in mind the patient’s diagnosis must change as the patient’s condition dictates. Very often the same diagnosis is used through the entire treatment plan, this is a red flag. In addition charting these changes in your progress notes is essential to the medical-legal arena. Critical areas I have noticed in reviewing medical malpractice cases are: poor and illegible record keeping, continued treatment without medical necessity or documentation and a lack of an informed consent. I have found these areas make up a majority of problems in medical malpractice cases that I have reviewed. Your records are vital to your defense in a malpractice action against you. They will either defend or prosecute you.

Outcome assessments relate to your treatment of the patient on a day-to-day basis. In addition to your chart information, diagnostic testing, when necessary can not only help you with the treatment of the patient, but also in your outcome assessment. With the proper type of testing you can establish medical necessity and document the need for further care. This is very important in cases involving personal injury or workers compensation cases. I place a great amount of emphasis on the proper diagnostic test that would be necessary for the condition, but also yield the most information to document your patient's progress and show the need for care.

From a medical-legal standpoint, especially involving personal injury case, documentation is very important for settlement purposes and litigation. We have seen in recent years a decline in settlements in personal injury case and reimbursement issues for doctors. Most of the time there is a lack of documentation to support the soft tissue injury. In some cases there is no testing done or the testing that was done comes back negative or normal. This is addition to issues I mentioned earlier about record keeping.

Knowing the biomechanics and the how the mechanism of an injury occurs would help you as the treating doctor understand what is needed to document you case. To have a diagnostic tool to visualize the injury through biomechanics, which is supported by over 30 years of research would be of a great value in your soft tissue injury case. Dynamic Biomechanical Video Analysis has been around for about 12 years, but research in this area has been around for 30 years. Most research has been through the University of Michigan and the National Institute of Occupational Safety and Health Institute. Few doctors use this diagnostic tool and many don't realize it is available. This type of testing can be performed in your office or on the job site. This type of testing can measure each joint angle during any given task and allows for measurement of the range of motion through the entire sequence of any given each task performed. The analysis track range of motion of each joint during the task and will predict the weakest points where the individual is injured. This can be displayed in picture form on the report, thus allowing you to visualize the injury. This type of testing can document you cases and identifies critical risk factors associated with unrestricted dynamic movements following an injury and objectively measures the severity of soft tissue injuries. This test is accepted in the medical community and court with over 500 published articles to attest to the validity and reliability of the results.

Having the ability to document your cases and visualize the soft tissue injury through testing can be of tremendous value to you, the attorney and in litigation. In addition you can determine strength, return to work status, safe lifting limits, and chance of re-injury. This is all done through dynamic motion testing, not static testing. From a medical-legal standpoint it is my opinion that this type of testing will increase you ability to compete in the personal injury and workers compensation market very effectively. Having the ability to analyze lifting, pushing and pulling tasks from a dynamic standpoint through the entire sequence of range of motion to determine and visualize an injury subjectively.

Documenting and showing medical necessity in your cases from a medical-legal standpoint is a growing concern. As more cases are litigated your ability to testify as an expert witness and to document your care will play a significant role in the outcome assessment of your patient. Any tools you can have at your disposal that are medically necessary and document your cases objectively will go a long way in the medical legal arena. If you perform diagnostic testing, choose it wisely and make sure it gives you the most objective data that will document your case. There are many legal statutory changes on the horizon that will affect healthcare, both from a state and federal standpoint. All of these changes will have civil remedies attached to them, but some will also have criminal penalties. Most changes involve privacy, confidentiality, medical records and documentation issues that will affect your outcome assessment. Keep good records, document your files and use objective testing if needed to show medical necessity and the need for further care.