



Herrick & Associates Newsletter

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How to Detect Client Malingering in Head Trauma and Neurological Disorders

Many attorneys are faced daily with the question of client malingering, especially with the high unemployment we are facing along with lack of health insurance coupled with a high rate of drug abuse in this area. Then there are people looking to attorneys for post trauma, or medical malpractice help who are honest legitimate cases. This puts you in the position of justify why you take one case and not another and you end up spending money on costly resources along with the time wasted trying to decide which case do you take. I decided to concentrate on traumatic brain injury as I suffered one myself but fortunately I recovered.



Did you know you can have a seizure for up to six months after having a concussion or being in a motor vehicle accident? That is what happened to me and it almost killed me. I am one of the fortunate ones. When you have a concussion you do not have to hit your head. Thanks to seat belts and air bags I did not hit my head. But a brain shaking against a hard skull in a hard enough impact will bruise your brain. Postconcussional disorder causes amnesia, post traumatic seizures, headache, short term memory loss, dizziness, insomnia, anxiety, depression, irritability and you may fatigue easily. For this diagnosis you must have three to four of the aforementioned symptoms, and they must be present for a minimum of three months. This diagnosis cannot be truly diagnosed for at least three months. You can compare this with “shaken baby syndrome” we have heard of.

Mild head injuries are in 75-90% of the cases in head trauma. Your client might claim post concussion syndrome but you must look at the medical history at the time of the accident to at least 3 months after the accident. To classify for moderate head injury you must be unconscious for less than 20 minutes and have a negative CT scan. Severe head injuries are less than 10% of the cases and your client will be unconscious for more than 6 hours and /or have amnesia for 24 hours, speech problems and neurocognitive deficits that may last for 2 years.

Following are signs of malingering you can quickly check to make a decision on what you might do. Thinking and following directions are inconsistent. They say they cannot remember how to get from home to the store but when you give them directions to your office they say they found it easily. They claim they lost consciousness but the ambulance report states they were talking when they arrived on the scene. The chart will reveal a negative MRI or CT scan. They also have no history of post traumatic amnesia even for minutes. Complaints of illness are greater than objective findings and tests. The client will not cooperate in treatment and diagnosis. Their post accident work duties will not change. Eyewitness's at the scene of the accident will say the plaintiff looked fine at the scene. The claimant's vehicle sustained minimal damage. My Cadillac was totaled when the drunk driver turned in front of me. The client's neurological exam and radiological studies are negative. They will complain of chronic headache, chronic pain, they will present with vague complaints and state no one can diagnose them. Fibromyalgia will often be diagnosed and this is a disease that is still being used when there is no other diagnosis to give them.

When you have doubts these people should always be seen by a Neuropsychologist and ask the psychologist to write a report in layman's terms so the report will be easily understood by you and the jury.

The neuropsychologist will do a battery of tests on learning, memory, intelligence, motor skills, verbal skills, orientation, attention and concentration among others.

I hope this brief amount of information will give you a course of action to follow on those cases you are not sure of. You could be throwing out legitimate cases and keeping cases that have no merit. As you know some people are very good at faking symptoms and the medical chart is full of information to help you make your decisions.



Resources:

Authoritative Textbooks:

Vicki Mallazo Institute of Certified Legal Nurse Consulting

Spren, Otfried and Strauss, Esther. *A Compendium of Neuropsychological Tests*, Third Edition. New York: Oxford University Press, 2006

Rogers, Richard. *Clinical Assessment of Malingering and Deception*, Third Edition. New York, NY: Guilford Press 2008

My own personal experience: Anna Herrick., RN, CLNC®

Herrick & Associates is located in Saginaw, MI and takes cases from all over the country. The Company was Founded by Anna Herrick, RN, CLNC®. She is also a member of the National Alliance of Certified Legal Nurse Consultants® and works with specialists to give you the best chance of an optimal outcome of your case.

Next Month: Ordinary Back and Neck Pain Cases That if Misdiagnosed Can Lead to Death