# CHRONIC PAIN IN LITIGATION

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Chronic pain is a frequent subject of litigation, both in personal injury and workers' compensation claims. Often, pain persists well beyond the expected course and appears to be in excess of physical pathology. In recent times, the term *Chronic Pain Syndrome* has been used to describe this phenomenon which is conceptually based on a behavioral, conditioning process. In essence, patients are said to be so in tune with their pain and with fear of re-injury that they aggravate their healing. For example, in anticipation of pain, they create a heightened state of physiological arousal which actually increases pain. Also, by being overly protective about their pain, they reduce mobility and become weak and deconditioned. Finally, by receiving a positive payoff for having pain, through an operant conditioning mechanism, they reinforce it. Positive payoffs can include attention, sympathy or nurturing from family; avoidance of unpleasant work situations; and financial compensation through damage awards or disability payments.

Because chronic pain is still poorly understood, the diagnosis of Chronic Pain Syndrome has become extremely popular. It allows for vague physical and emotional features of a patients presentation to be grouped under a convenient label. But, a syndrome is not a disease since it does not have unique pathophysiological elements. Rather, it is an observation of frequently occurring features and behavioral responses that are categorized under a common title. Unfortunately, this is often on the basis of relative and sometimes arbitrary features. With the medicalization seen in society today, defining something as a syndrome gives it legitimacy. Take, for example, Battered Wife Syndrome, Sick Building Syndrome, Empty Nest Syndrome, Repressed Memory Syndrome, and so on. More importantly, syndromes are often employed for their political and social utility in which the pathological affliction may be only in the eye of the beholder. In litigation, of course, the beholder is the plaintiff or claimant who needs definition for the perceived harm that has occurred.

There is no question that many suffering people have entered into a vicious cycle of pain leading to stress, leading to more pain, and so on, as a result of an initial tortuous injury. For them, identification of the cascading set of circumstances that led to excessive chronic pain is the first step in its treatment. Recruiting medical and psychological disciplines in a team approach has offered them new hope for recovery. However, the phenomenon of chronic pain must be viewed from a cultural and epidemiological perspective. In the latter half of this century, chronic pain has grown in epidemic proportions and has become a crisis in contemporary life. It is inextricably bound to the meaning individuals and culture give to pain. Back pain disability, for example, has increased 168% within a decade, and pain from repetitive motion injury is running a close second - and gaining annually. While there may be industrial ergonomic factors which contribute to this trend, psychosocial issues play a leading role. In a large prospective study at the Boeing plant in Washington, the chief predictor of who will become disabled from back pain was not poor physical stamina and/or physical workload, but job dissatisfaction! Therefore, chronic pain syndrome must be viewed from a psychosocial as well as physical perspective.

Even where psychological factors play a significant role in chronic pain, this does not mean that patients are necessarily malingering. Terms such as compensation neurosis and greenback poultice have been used, at times pejoratively, but may not be accurate. One study, for example, showed that five years after the settlement of a claim, most patients who were disabled from back pain continued to be disabled. In fact, the majority of these cases are not due to deliberate fabrication of symptoms or impairment. However, more subtle

psychological dynamics can be operative and must be dissected. Identification of a chronic pain syndrome does not imply a homogeneous condition but, instead, a divergent group of disorders which can include the negative conditioning process discussed above, poor motivation due to situational circumstances or financial gain, undetected physical disorders, and primary pre-existing psychological disorders. Determining which of these conditions or combinations of conditions is present requires detailed and thorough assessment.

From a psychological standpoint, a number of mental disorders are possible sources of a chronic pain syndrome. These are defined under the general rubric of Somatoform Disorders (see *Diagnostic and Statistical Manual of Mental Disorders IV,* American Psychiatric Association). Among them is *Pain Disorder* with psychological factors and/or a medical condition. This disorder does not imply cause and effect, but only defines the symptomatic observations of that condition. Pain Disorder can certainly include secondary psychological complications to an injury, as well as pre-existing psychological factors. Another disorder within this group, *Somatization Disorder,* is clearly a long-term condition in which physical symptoms of a wide variety have occurred over several years, and the current pain condition may only be incidental to this psychosomatic predisposition. Still another condition, *Undifferentiated Somatoform Disorder,* may represent a non-specific state in which the physical symptoms cannot be fully explained by any medical condition, persist for six months or longer, and may represent the expression of personal, social or psychological problems. A careful review of the patient's history can identify the pre-existing issues and conflicts for which the physical symptoms are needed. In addition, many states of depression and anxiety can lead to physical complaints. Typically, it is said that patients who have suffered with pain for a prolonged period of time are likely to become depressed, and this is often the case. But, extensive Scandinavian studies have shown that where depression is seen in chronic pain conditions, it frequently precedes injury and pain, and is evident when the life history is thoroughly explored.

Even though pre-existing psychological conditions can be aggravated by additional insults and injuries, the traditional legal principle of the *thin skull* may not have analogous application to psychological conditions. Specifically, when there is a pre-existing psychological disorder, it is not merely a passive vulnerability which the claimed injury has shattered but, rather, an actively generating force that may seek symptoms as an expression of psychological conflict. In other words, whether conscious or unconscious, the mind is looking for pain to solve a problem. Here, the claimed injury is merely an incidental opportunity for that to happen.

In the evaluation of these litigants and claimants, the scope of inquiry should address the course of symptoms following an injury to determine whether it is typical or not of the type of physical harm usually sustained. Symptom magnification and exaggeration, negative conditioning, avoidance behaviors, physical deterioration, immobility, and investment in the rehabilitation process are all important points to assess. In addition, numerous other psychosocial variables should be considered: the presence of depression and anxiety states, pre- existing pain-prone personality, pre-existing life factors and work adjustment, history of the utilization of medical services, early developmental and family dynamics, and recent and past workplace adjustment. It should be obvious that this cannot be done by a brief interview and review of recent medical records alone, neither by physician nor lawyer. The complicated possibilities in chronic pain syndrome can only be understood in light of the sufferer's life history. Frequently, that history reflects the wear and tear and breakdown of the human spirit. Litigation of such claims, without a broader understanding of that history, seriously limits arguments on liability and damages.