

RECOVERY FOR ENVIRONMENTAL SENSITIVITY DAMAGES

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In recent years, a wave of damage claims has been brought for exposure to ill-defined or occult environmental toxins. This has been seen in workers' compensation actions as well as in traditional tort claims against manufacturers, builders, chemical companies, electrical power plants, pesticide distributors, etc. The claims are legitimized with a variety of diagnostic labels such as multiple chemical sensitivity, environmental illness, sick building syndrome, electric hypersensitivity, technostress, and others. The symptoms that purportedly result can be vague and non specific. They include sinus congestion, sore throat, headache, fatigue, skin rash, itching, burning, eye irritation, nausea, dizziness, disturbed taste and smell, musculoskeletal symptoms, as well as numerous emotional complaints. Typically, routine medical examinations and laboratory testing are within normal limits, and practitioners who claim to be specialists in environmental medicine or clinical ecology are frequently called in to make the diagnosis. Where opinions on causation rely on standardized and recognized scientific analysis of the environmental site, there may be plausible conclusions linking the identified toxin to the symptoms. But, in many cases, the effects of an environmental toxin are presumed on flimsy evidence or the account of a frightened patient.

Although chemical toxicity is certainly recognized as a medical diagnosis and poisoning through innumerable means and routes of entry is a common target of emergency treatment, environmental sensitivity is characterized by an extreme reaction to chemical substances, foods, synthetic products, vapors, and microorganisms in concentrations that are ordinarily well tolerated. Often poor air quality is identified as the source of symptoms. Even with no objective medical abnormalities, symptoms can persist, increase, and become disabling. In addition, symptoms can spread to others in the same environment who also may show no objective abnormalities. There are interesting cultural differences too, in the types of environmental sensitivity seen. For example, in the United States, multiple chemical sensitivity is a major concern. But in Sweden, electromagnetic field effects are commonly accused of noxious influence. Major medical organizations have discouraged such diagnoses because evidence for their existence is lacking. But, the growth of those claims continue. Studies have shown that even when patients with suspicion of environmental sensitivity are reassured that no abnormality is found after extensive evaluation, they frequently hang on to the belief that they are ill and may seek out practitioners who are sympathetic to their views. Their perceptions can become hypochondriacal and are promoted or reinforced by those practitioners. Subsequently, patients become so convinced of the diagnosis that they are unreceptive to alternative explanations.

What draws people to pseudodiagnoses is a complicated psychosocial and cultural question. Edward Shorter, in a very illuminating book, *From Paralysis to Fatigue: A History of Psychosomatic Illness in the Modern Era* discusses this phenomenon from a historical perspective. He reviews incidents of paralysis in young women during the 18th century which had reached near epidemic proportions. Now, in the 20th century, this disorder is rarely seen. It is retrospectively blamed on the sociocultural plight of young women growing up in a Victorian atmosphere of oppression. Some of these patients probably suffered from neurological diseases such as multiple sclerosis, but the majority of symptoms were psychogenic and hysterical in origin. At the time, however, they were given legitimacy, and then thrived. Shorter proposes that their disappearance came about because cultural changes created a different symptom

pool from which to select. Hysterical paralysis has given way to modern illnesses such as chronic fatigue syndrome, environmental sensitivity, and chronic pain.

Modern psychiatric thinking recognizes the role of somatization in many environmental sensitivity conditions. Previous terms, while still valid, such as hysteria and hypochondriasis, have found disfavor because of their pejorative connotation. Somatization is defined as the propensity to experience and report somatic symptoms that have no pathophysiological explanation, to misattribute them to disease, and to seek medical attention for them. Somatization may be acute or chronic, and coincidental medical illness may or may not be present. Although the tendency to focus on the physical aspects of one's distress is common, more serious somatization occurs in the context of psychiatric disorders, stressful life experiences, or major emotional upheavals. Somatization is not the same as malingering or factitious disorders which involve a conscious fabrication of illness. Were the somatizer is truthfully reporting his experience and at least not consciously manipulating or controlling others with the illness. Social and cultural factors, as well as physiological predisposition, can lead people to amplify physical discomfort, misattribute it to disease, and seek medical help. One of the most important factors in society which promotes this process is the medicalization of bodily distress and physical suffering that has been a part of contemporary western culture. Medicalization means that medical diagnoses are used to explain discomfort of all kinds, even that which is not caused by disease, and attempting to eliminate it primarily through medical treatment.

From a legal standpoint, environmental sensitivity presents problems of both causation and damage assessment. In spite of the need for scientifically reliable evidence in the courtroom under the Daubert principle, opinions regarding environmental sensitivity are routinely finding their way into testimony from many environmental or ecology experts. At times, these are well trained clinicians who have taken a tangential and poorly founded direction in the treatment of these suffering patients, becoming validators and advocates of their claim. At other times, these experts are individuals with marginal understanding of medicine, who ignore the complex and psychosocial variables that accompany their patients' claims. Causation is quickly attributed to spurious factors based on their patient's apprehension or on psychological needs for the symptoms. The psychological needs include primary and secondary gain issues that maintain the symptoms.

Primary gain refers to a psychological conflict or need that the physical symptom satisfies. It may be avoidance of an unpleasant or threatening personal situation or a means to gain an important response from the environment. The physical symptom serves an important psychological purpose and resolves a conflict with which the individual otherwise cannot deal adequately. The psychological issue is the main initiating and sustaining factor of the physical symptom.

Secondary gain refers to those perhaps unexpected environmental responses to the physical symptom that assist in sustaining it by reinforcement. Examples include financial reimbursement, attention from the family, or avoidance of less than satisfactory work conditions. There is obviously some overlap between primary and secondary gains, both features needs to be seen as a process as opposed to discreet variables. Both can also be present in other somatoform disorders besides environmental sensitivity.

So, where recovery is sought for environmental sensitivity damages, a more in-depth analysis is required. Validated and scientific environmental surveys which clearly demonstrate toxic agents or pollutants must be utilized and the mere presence of minimal abnormal concentrations should not

automatically lead to the conclusion that causation is established. Experienced clinical toxicologists should be employed who objectively analyze the data in relationship to the clinical presentation, and who have not become advocates for mysterious conditions which no one but they can identify. Psychosocial history of the suffering individual must be taken in detail to identify primary and secondary gain factors, and the need to maintain illness. The expansion of environmental sensitivity claims is a complex medical and cultural problem that needs to be understood in light of a historical perspective and its medical and legal reinforcers. (see Shorter, E: From Paralysis to Fatigue: A History of Psychosomatic Illness in the A Modern Era. New York, Free Press, 1 992 Barsky, A J. and Borus, J.F.: Somatization and medicalization in the era of managed care. JAMA 274(24): 1 931, December, 1995.)