IMPROVING CLIENT OUTCOMES:

How a proper diagnosis and proper treatment will help an attorney meet insurance company objections and increase recovery 600%

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Addressing the “Problem Case”

- Patient injured in auto accident
- Normal MRI, normal CT, normal X-rays
- Doctors says “chronic cervical sprain or strain”
- Insurance company says “soft tissue injury, with no objective medical findings.” then says the patient is faking, and then “pre-existing injury.”
- Later insurance company relents and offers $3,500 settlement for soft tissue injury case
- If the physician tries other treatments, the insurance carrier claims treatment is not warranted

For patient injured in auto accident- the attorney must

- Establish causality—make sure the other party was at fault- so use the accident reports
- Determine insurance policy limits-contact the insurance company
- See if Personal Injury Protection (PIP) is available
- See if the client's company will pay for expenses and subrogate the expenses to the "at fault" party's insurance company
- Check for pre-existing accidents or conditions, since the insurance company will try to say symptoms were pre-existing
- Check on the honesty of the client, using the Pain Validity Test, which can predict with 95% accuracy who will have abnormalities on medical testing.
- Make sure client is not exaggerating- use Pain Validity Test

Addressing the Normal MRI, normal CT, normal X-rays

- Sandhu from Cornell, reports that 78% of the time the MRI will not be able to detect a damaged disc in the spine, compared to a **provocative discogram.** This is due to using an anatomical test (MRI) to try to find a physiological problem (pain). This produces a “false negative” finding. The disc pain fibers are damaged, but the MRI can not detect this. This is the problem of using the wrong test, no matter which doctor reads the MRI.
- CT will miss damage 56% of the time compared to a **3D-CT**, as reported by Zinreich, at Johns Hopkins Hospital. Again, this is due to the quality of the test, not the doctor reading the tests.
- All auto accident patients complain of worse neck or back pain when they lean forward or backward, but 98% of the time, doctors do not take X-rays with the patient leaning forward and backwards, but only in the upright position. This error is due to the quality of the doctor, who doesn’t use common sense. **Use flexion-extension X-rays.**

Doctors says “chronic sprain, strain, or whiplash”

- Doctors typically spend only 11 minutes with a patient, during which time they speak 8 of the 11 minutes and interrupt the patients within 37 seconds.
- Since the doctor doesn’t take enough time with the patient, taking a careful history, he misdiagnoses patients 40%-80% of the time, according to doctors from Johns Hopkins Hospital.
- Since he has the wrong diagnosis, he orders the wrong test, furthering the misdiagnosis, according to Landro, in a Wall Street Journal article.
- The **Diagnostic Paradigm** from MCD, asks 72 questions, with 2008 possible answers. It is computer administered, so it never misses or forgets to ask a question. It takes a patient 30 to 60 minutes to complete. The Diagnostic Paradigm gives diagnoses with a 96% correlation of diagnoses of Johns Hopkins Hospital doctors.
- **The Diagnostic Paradigm** takes only 5 minutes of staff time to set up a patient to take the test (in English or Spanish) and results are available within 5 minutes of the completion of the test.

Insurance company first tries to say the patient is "faking," then say "pre-existing injury"

- If an insurance company tries to say a patient is faking, then the **Pain Validity Test** can be used to offset the insurance company assertions.
- The **Pain Validity Test** has been used in 30 cases in 9 states and always been admitted as evidence.
- The **Pain Validity Test** can predict with 95% accuracy who will have abnormalities on objective medical test, i.e. a valid complaint of pain
- The **Pain Validity Test** can predict with 93% accuracy who will have abnormal findings intra-operatively, i.e. surgery was justified
- The **Pain Validity Test** can predict with 85% -100% accuracy who will not have abnormalities on medical test, i.e. exaggerating, possibly due to a pre-existing injury or a faker, so the attorney can decide to take the case or not. His paralegal can verify pre-existing injuries.
- The **Pain Validity Test** takes only 5 minutes of staff time to set up a patient to take the test (in English or Spanish) and results are available within 5 minutes of the completion of the test.

The insurance company offers a $3,500 settlement for soft tissue injury case based on normal MRIs.

- The **Diagnostic Paradigm** provides diagnoses with a 96% correlation with diagnoses of Johns Hopkins Hospital doctors.
- These diagnoses can be confirmed with objective medical testing, other than MRI of spinal discs, CT and X-rays
- Based on the diagnoses from the Diagnostic Paradigm, a number of interventional medical tests can be ordered, such as facet blocks, root blocks, provocative discogram, bone scans, flexion-extension X-rays, etc., which will confirm diagnoses from the **Diagnostic Paradigm.**
- The **Diagnostic Paradigm** predicts with 100% accuracy what pathology a surgeon would find if he operated.

The insurance company claims the treatment and surgery are not warranted.

- The **Diagnostic Paradigm** is able to diagnose 109 of the most common post-traumatic injuries. A list of these diagnoses is available
- The **Diagnostic Paradigm** provides diagnoses with a 96% correlation with diagnoses of Johns Hopkins Hospital doctors.
- References documenting the efficacy of treatments and surgery for each of the diagnoses will be provided by the clinic company.
- With the verification of the validity of the complaint of pain, with the **Pain Validity Test**, the accurate diagnosis provided by the **Diagnostic Paradigm**, and the references providing documentation of the efficacy of the treatments for each of the diagnoses found by the **Diagnostic Paradigm,** the attorney will be able to justify the use of the treatments and surgery.

Missed Diagnoses-Neck and Back Pain

- Overlooked Physical Diagnoses in Chronic Pain Patients Involved in Litigation, Hendler, et al Psychosomatics, ’93
- N= 60
- 67% were misdiagnosed “lumbar strain, cervical strain, chronic pain syndrome, whiplash, soft tissue injury, conversion reaction.”
- Overlooked Physical Diagnoses in Chronic Pain Patients Involved in Litigation: Part II Hendler, et al Psychosomatics,‘96
- N= 120
- 40% were misdiagnosed “lumbar strain, cervical strain, chronic pain syndrome, whiplash, soft tissue injury, conversion reaction.”
- These 180 patients, from two studies, really had facet syndrome, disrupted discs (internal disc disruption), thoracic outlet syndrome, nerve entrapments, and radiculopathy, confirmed by objective physiological testing. In these patients 50%-55% need surgery, but could have had stem cell injections as a first step

Whiplash, Sprains and Strains

- Sprains are defined as stretching ligaments which hold joints together (Bonica and Teitz -The Management of Pain p 375, 1990).
- Strains are defined as over-extension of a muscle, which move bone, with separation of muscle fibers (ibid, p.376).
- Whiplash is a “severe cervical sprain.”
- Sprain cause an average of 7.5 days restricted activity, 2 days of bed disability, and 2.5 days work loss (DHHS # PHS 87-1592, 1987).
- Spasm is an epi-phenomena, due to protective mechanism of gamma motor reflex loop, a spinal cord reflex. This means the spasm is not really the problem, but a result of the problem. What are the underlining problems that cause spasm ?
- You cannot have a sprain or strain that lasts 2 years! It must be something else! What could it be?

Why Patients are Misdiagnosed

- Doctors do not spend enough time with a patient taking a history.
- Doctors rely on anatomical tests (MRI, CT, & X-ray) for diagnosis
- MRI miss disc damage 78%, CT miss damage 56%, X-rays miss damage 98%
- Pain is a physiological condition. Pain fibers don't show on anatomical tests
- Physiology is measuring a response to a stimulus-facet block, root block, etc.
- Anatomy is taking a picture. You can't take a picture of "pain."
- Is the oven hot? (Does the patient hurt?)
- Would you use a photo or a thermometer to determine this? A thermometer is a physiological test.
- Doctors need to use physiological tests, such as provocative discogram, facet blocks, root blocks, nerve blocks, bone scan, neurometer studies for sensory nerves, Indium 111 scans, PET scan

Value of Pain Validity Test for Lawyers

- **Always admitted in court in over 30 cases in 9 states**
- **You can determine if a client has a valid complaint of pain or not/**
- **Predicts with 95% accuracy who will have test abnormalities**
- **Don't waste your time and money "putting on a case" for a client without any real pain.**
- **You can keep the Pain Validity Test as attorney work product, or use it in court, as part of medical testimony, depending on the results.**
- **Only 6%-13% of clients are exaggerating.**
- **87%-94% of clients have a valid complaint**
- **Of these clients, 50%-63% will need surgery or stem cell treatment to get well (see next slide).**

Fusion for Occult Posttraumatic Cervical Facet Injury

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Note that the diagnostic tests used for neck injury, by this team of doctors from Johns Hopkins Hospital, were facet (zygapophyseal joint) blocks, root blocks and provocative discograms, in patients with normal MRI & CT. From a group of 70 long term "sprain" patients, 44 had well indicated surgery (63%). Good relief was obtained in 93% of patients. Lead author was chairman of neurosurgery at Hopkins

Abstract: Persisting neck pain and headache is a common complication of acceleration/deceleration injury. Seventy patients with normal imaging studies and persisting pain after injury (median 1.7 y), who had failed all usual conservative forms of care were offered a diagnostic block protocol to determine the origins of the persisting pain. Blocks included C-2-3 roots bilaterally; C-2-3-4 zygapophyseal joints, and provocative discography at C-3-4, 4-5, 5-6, 6-7. Seventy patients entered the study; 67 completed the block protocol. On the basis of response to blocks, 44 patient were chosen for posterior cervical fusion of C-1, 2, 3, 4 in several combinations. Seventy-nine percent of patients achieved complete pain relief; 14% received satisfactory pain relief; fusion was achieved in 95%. These data support the hypothesis of Bogduk and associates that upper cervical facet injury is a common consequence of acceleration/deceleration accidents. The symptoms can be relieved by upper cervical fusion in some patients selected by concordant blocks.

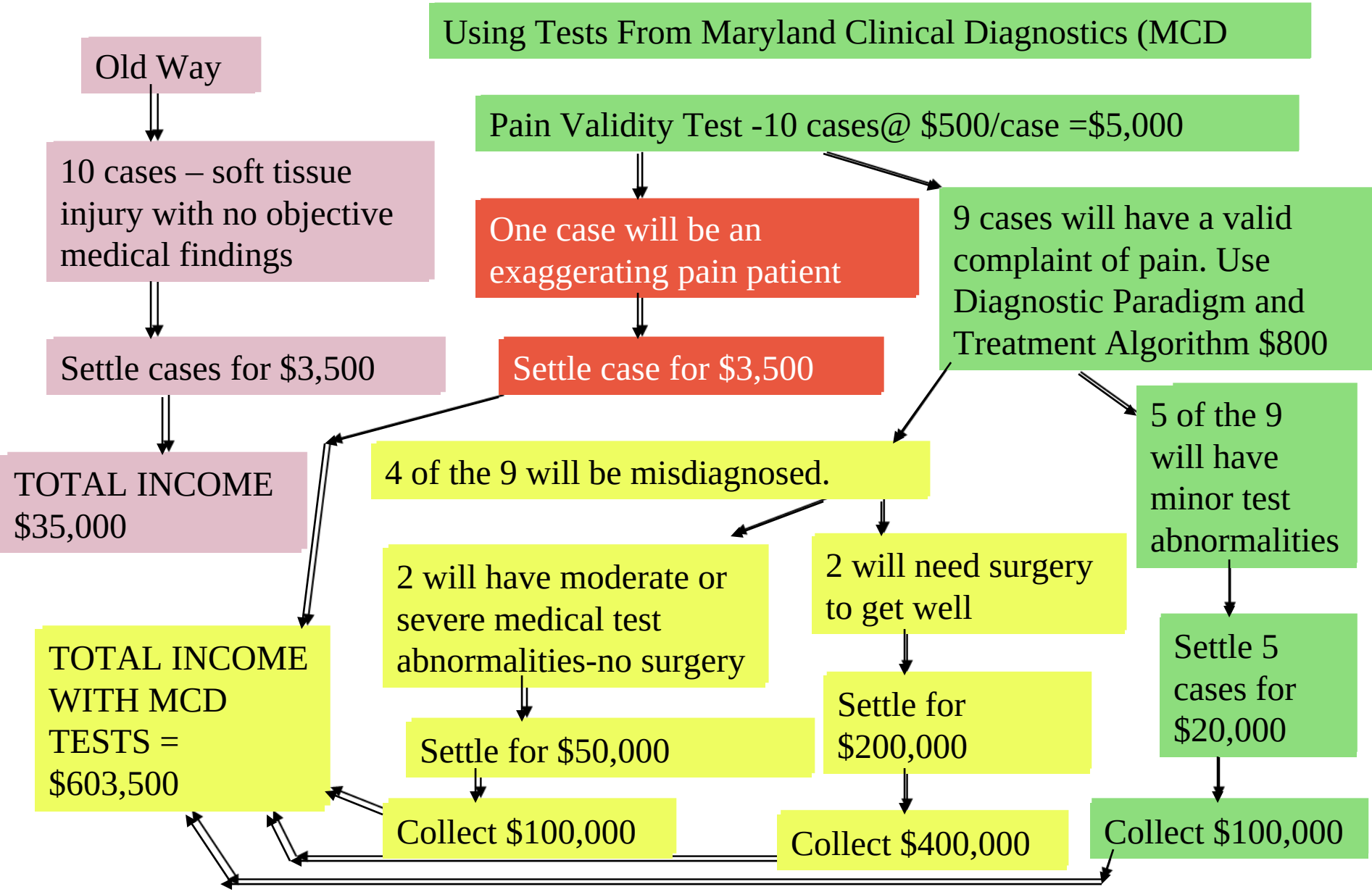
Key Words: facet injury, fusion, whiplash injury, neck pain, headache, pain relief

(*Neurosurg Q* 2006;16:129–134)

Diagnostic Paradigm

- 96% Correlation with clinical diagnosis of Johns Hopkins Hospital staff members
- Published article reported on 143 patients
- Generates a narrative summary and differential diagnosis for the treating doctor.
- The doctor develops a treatment plan and uses the **correct tests** to prove pathology.
- You take the **objective medical tests** to court. 50%-63% of patients will need surgery to improve
- Improve your outcome and get better client care

Trial Lawyers Increased Income for Ten Cases Using MCD



Background of Test Developers, and Authors

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