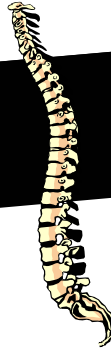


BACK TALK



Advertising Material
December 2003

A (mostly) true encounter with Dr. Tort 'Reformer'

by Paul McConnell

I was in my doctors office for a routine exam, partially clothed in a compromised position, when he said, "You're a lawyer."

Taken alone, this is a simple enough statement, and true to the core. His tone, however, lead me to believe this was neither a statement of the obvious nor a question. Being faithfully interpreted, I think it meant: You're one of those subhuman lawyer types who sues doctors and stands in the way of all that's truthful and good, and that makes me angry. So I'm going to make you really uncomfortable.

My carefully considered response

took time to compose. Timing was crucial. Once I settled on a pithy comeback— and was safely seated on the exam table— I bravely replied, "Yes...?"

"You're a trial lawyer," he said, growing bolder.

I could tell where this was headed. But my physical well-being was

in his



hands— and I recalled with sudden trepidation that I have actually sued a doctor or two. I spoke again, "Does it matter?" I wondered if doctors kept a list of law-

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FYI

by Bryan A. Larson

I was recently involved in a case for Premiere Medical Group, Inc. for diagnostic imaging and nerve conduction studies performed on a patient of Dr. Matthew Peterson. Dr. Peterson's charges were for less than three thousand dollars without the additional charges of the diagnostic imag-

ing and nerve conduction study charges. Combined, the charges exceeded three thousand dollars and would be sufficient to justify a case. However, Allstate Insurance Company chose to determine that the nerve conduction study and diagnostic imaging services were not reasonable and necessary. By virtue of their disallowing those charges, it put the case in the position of

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CA Seminar...

The Fundamentals of a Personal Injury Practice

Thursday, December 18, 8:00 a.m.— 1:00 p.m.

Location is our office on 1218 West South Jordan Parkway (10600 South), Suite B

Cost is \$35 per person which includes handouts, breakfast and lunch.

There is limited space, so call Megan at (801) 446-6464. Our receipt of your check reserves your spot.

*Dr. Tort**Continued from pg. 1*

yers who had ever sued doctors.

“Well,” he began, “my malpractice rates just doubled.” He shivered as he said it. As if to make sure I understood, he jabbed my chest with a gloved finger as he repeated, “They *doubled!*”

I countered deftly, “Geez, Doctor, they doubled?”

“It’s these damned trial lawyers,” he said, now making direct eye contact.

I normally appreciate eye contact. However, seated in only my skivvies on a stainless-steel exam table—having recently been physically violated—I felt a little, well, vulnerable.

“They’re boosting our rates again because the trial lawyers keep suing. We need tort reform.”

There it was, out on the table for all to see in its ugliness, just like me.

The moral justification came next.

“Without tort reform to protect us, pretty soon, no one will be able to afford medical care.” The subtext spoke even louder: And it’s all your fault— you and your bloody trial lawyer friends.

I gathered my remaining wits and retorted— the word “retort” is interesting, is it not? It’s like a tort that gets repeated— “But, Doctor, have you ever asked your insurer for proof that their claims paid have doubled?”

“In my experience, nothing boosts my professional confidence quite as much as wearing clothing.”

“Any fool knows why they’ve doubled,” he countered. “One of my colleagues in this clinic was sued.” The thought that someone he knew had been sued gave him the willies.

I knew the case: Dr. “Handy” had finally been caught being naughty. “Every profession has a few bad eggs,” I suggested.

“I recognize that,” he agreed reluctantly.

I pulled on my pants, realizing the exam was over and that this was just straight billable time— for him, not for me. In my experience, nothing boosts my professional confidence quite as much as wearing clothing.

“Maybe if doctors policed themselves better, there would be fewer claims,” I heard myself say, feeling better as I laced up my shoes.

He smiled wryly, realizing the futility of talking to a lawyer.

I continued: “Maybe insurers *like* to publicize the occasional big loss to justify your ridiculous premiums.” The way he stuck out his lower lip told me he hadn’t considered that. “Do you have any idea how hard it is to win a malpractice claim?”

I knew immediately that I had blundered. The Dr. Welby facade dropped at once. His look said, I *knew* you were one of them.

“If the legislature doesn’t drop damages, the poor won’t be able to afford care,” he shot back.

There it was, that all-encompassing love of the underprivileged that so characterizes the medical profession. I could see the headline: “Trial Lawyers Prevent Access to Health Care for America’s Poor.” My doctor’s photo would appear below it with the caption, “Loving doctors willing to care for poor.” The sidebar would discuss the advantages of caps on damages. The “evil lawyer” photo— taken through a peephole Dr. “Handy” drilled— would show me pulling on my pants.

I decided not to go into the fact that average— and often low-income jurors are often the decision-makers in malpractice claims or that insurers aren’t hurting for profits. I jumped instead to a topic I knew would be close to his heart.

“I get nervous about monkeying around with the free-market system, don’t you, Doctor? It seems that things may be bad, but regulation rarely helps. Take HMO’s, for example.”

“That’s different!” he shouted, rising from his seat. “Doctors need to be free to treat their patients in the patients’ best interest. We don’t need bureaucrats making medical decisions.”

The way he said “bureaucrats” was almost as

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*Dr. Tort**continued from pg. 2*

bad as the way he said "lawyer." In my professional opinion, he had entered the stage that doctors call "ranting."

"Did you know that doctors are fleeing the state it's too costly to practice medicine?" he asked. "We need tort reform, I tell you!"

"Like Canada?" I asked.

"Yes, just like Canada." He seized on the common ground. The light in his eye said, Ah, I'm getting through at last. "They've got damage caps in Canada," he said.

"Do you ever treat patients from Canada?" I asked. This literally backed him up. His rolling stool was against the wall. Suddenly, I realized how much taller I was than he, seated on my high table and he on his little rolling stool.

"Sometimes," he grumbled. "Any doctor around here sees patients from Canada seeking care at all levels."

"Do you know how many doctors are fleeing Canada?"

"I've heard it's a problem."

"Do you know how long Canadians have to wait for an MRI? Or radiation? Or heart surgery, for

crying out loud?" Now *I* was ranting and pointing. I slid to the foot of the table and perched my feet on the little slide-out step.

He touched his stethoscope lovingly.

Canada is a hot button for me. I've buried too many elderly relatives there. "They've had damage caps for years, and they're closing hospitals right and left. The rich come here, and the poor just die waiting!" I tied my tie. "Caps haven't helped anybody get medical care."

He stood up and went back to the Dr. Welby persona. "Your labs look good, Paul. I'd like to see you in a couple of months. I'm glad we had this chat. Check with my front desk for your next appointment. Take care."

And just like that— with a quick handshake— he stuck a prescription in my hand and was gone. At the bottom, he'd written in doctorly scrawl: "F/U SOB."

While I was standing there thinking he'd had the last word, the nurse came in and took the chart. "Oh," she said, "follow up: 'shortness of breath.'" She glanced at me and said, "Come out when you're done getting dressed."

Confused, I looked down and realized I'd pulled my boxers on over my slacks. *The end.*

Myths

Myth #1: My patient does not want to drive to Salt Lake so I should not encourage the patient to retain Bryan Larson and his crew.

Nothing could be further from the truth. We represent people throughout the state of Utah and sometimes from outside the state as well. With modern communications and inventions such as telephones, fax machines, email and the automobile, we are able to successfully represent people no matter what their location. It is not necessary for us to have a face to face meeting before work is begun on the patients file. We routinely sign people up over the phone and with a detailed written questionnaire and the fee agreement sent through the mail. In significant cases, we will even drive to the patient's home or to

the hospital itself if the patient's condition warrants it. Even when the patient's condition doesn't warrant it, we can arrange to meet with the patient either the next time they are in Salt Lake or the next time we are in their home town. We file law suits throughout the state and routinely try cases outside of Salt Lake. Therefore, if you want your patient represented by somebody you know and can trust someone who will return and honor *lein* for services. Don't encourage your patient to retain just any attorney. Get them to retain the best.

Myth #2: My patient has signed a *lein* so I am protected even if the patient wants to represent themselves.

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Myths*Continued from pg. 3*

You are probably treating that patient for free. A lein is a three way contract or agreement and requires the attorney's signature in order to be completely effective. In most cases, if the settlement money runs only through the hands of the patient, you are at grave risk that the patient will decide not to pay you at the end. We've even seen grandma's get greedy assuming that you will not ever pursue them for the balance of their bill. More fundamentally, like the old saying goes, if your patient represents themselves, they have a fool for a client. They generally don't know what they are doing and will probably get "hosed" by the insurance company.

Myth #3: The patient does not need to retain legal counsel until after they go over the \$3000 no-fault threshold.

Wrong. We want to get started on every case as early as possible. Occasionally some cases do not have medical bills or expenses that exceed \$3000. In those instances, we will withdraw from representation and the patient does not owe us anything. However, the majority of cases will involve medical and chiropractic care worth \$3000. We want to be involved in photo-

graphing property damage before it is repaired. We want to interview witnesses before the insurance company gets to them. We also want to be involved in the care of the patient as early as possible so that we can monitor the patient's progress before mistakes are committed that could damage the case later on. Early involvement in the investigative process allows us to preserve evidence more effectively. This will strengthen the clients case. Waiting to retain legal counsel damages your patients case.

Myth #4: A good CA doesn't need any training.

The truth is, it takes years of training and experience for a CA to be good. He or she needs to understand the ins and outs of how insurance works and how a patient's file should be managed and maintained. While documentation needs are critical, most chiropractic physicians need to spend a lot more time training their CA's than they typically do. We are offering a CA training session on December 18, in our offices. This is a small, closed door and "intimate" instruction session. Please see the advertisement elsewhere in the newsletter concerning this seminar.

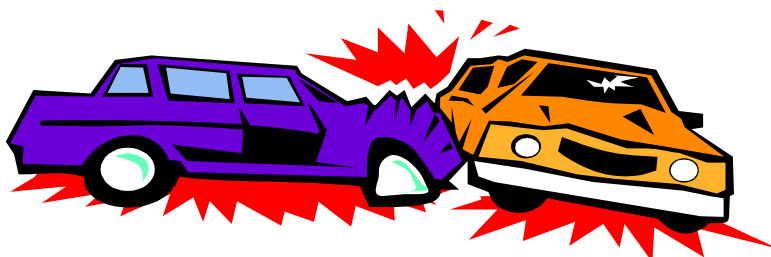
The end.

FYI*continued from pg. 1*

having to prove the efficacy of the nerve conduction study or the case would not be worth pursuing since there could not be any damages for pain and suffering as a matter of law.

Premier Medical Group was contacted and we requested their voluntary participation by making available their Physician and experts for depositions, technical support and participation at time of trial. Their response was luke-warm at best. They indicated a willingness to maybe allow a video tape deposition of one of their physicians rather than the actual live witness participation that I wanted for persuasion purposes. Furthermore, the neurologist that actually read the test results, is no longer with that company and is also uncooperative on different matters. Consequently, my suggestion to any physician reading this is that if you want to have any nerve conduction studies performed, if it involves this particular entity, and your patients case is involved in liti-

gation, not only is it likely that the insurance company will refuse to pay the bill, but Premier is not likely to participate in litigation that might force the insurance company to make payments. Therefore, for what it is worth, if I was a practicing Chiropractic Physician who needed nerve conduction studies performed on a patient, I would seek utilization of a local entity and forgo use of Premiere (or optimal) Medical Group. *The end.*





Dr. Jack Cracker is on vacation this month. Please excuse his absence, but look forward to hearing from him in our next issue. In the mean time, we at Larson, Turner, Fairbanks & Dalby would like to wish you and yours a very happy and safe holiday season.

As busy as we are, we also remember that the work that we do is only a means to an end and not an end in itself. Whether you sell health care services, legal services, or repair automo-

biles, always remember that your family and quality of life need to come first. Every hour that you spend at work involves a tradeoff. While working is essential for all of us, please remember this holiday season that work is not the most important thing in life. Please be kind to your employees to the extent that you're able to do so. They are much of the reason for your success.

While some law firms take this opportunity to bring around chocolate candy purchased at Costco in hopes of inspiring increased business association, we take a different approach. Most of us don't really need the candy. Instead, what you need is a connection with an honest law firm that you can trust. We invite you to call us with your problems, questions or concerns and give us an opportunity to earn your trust and confidence. We can make your business a success.

in the meantime, we wish you, your family, and your employees all of the best for this holiday season and the upcoming year!



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Specializing in help for injured accident victims and the doctors who treat them.

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