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A ProAssurance Program

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BRIEF **CASE**

SUMMARY: In this case it was alleged that the insured failed to appropriately diagnose and appreciate the significance of a patient's injury following a motor vehicle accident.

The Patient and Condition

The patient, a 36-year-old male, initially presented to the insured three weeks following a motor vehicle accident in which his vehicle was struck from the rear. He had complaints of burning pain in his hands and aching pain in his lower and upper back. The insured provided gentle adjustment and scheduled the patient for a return visit two weeks later for an X-ray and a more in-depth examination.

The Treatment

When the patient returned, he complained of moderate low back pain, a feeling of heaviness and tingling in his legs, moderate neck pain, numbness and tingling in his right hand, and headaches. The patient reported a history of prior chiropractic treatment following a motor vehicle accident a year earlier.

Upon examination, the insured noted the presence of clonus bilaterally of both feet on dorsiflexion, but reflex tests were found to be within normal limits. Palpation produced tenderness over the C1, C2, C3, C5, C6, T1, T2, T3, T10, T11, L2, L4, L5, and S1 regions. X-rays revealed L5 disc degeneration, degenerative disc disease in the C5-C6 region and malposition in the C1-C2 regions.

The insured diagnosed acute cervical acceleration/deceleration injury, lumbosacral sprain/strain injury, discal tearing of the lower cervical and lumbar spine. The insured felt the patient would benefit from a course of chiropractic treatment utilizing the directional non-force technique. He also felt an MRI might be necessary if a lack of progress with treatment given the patient's specific complaints of weakness in the left leg. The patient was scheduled to return for treatment daily for the next two weeks.

The following day, the patient continued to have lower back pain, a sore and stiff neck and gait difficulty. The next day, the patient reported less heaviness in the legs. A day later, the patient reported his leg heaviness was still present, but diminishing. Two days later, the patient reported experiencing a strange paresthesia of his right flank and that cold water felt hot. However, the patient stated he was walking better and had decreased neck pain. The following day, the patient stated that his left leg had buckled. The next day, the patient presented with a left foot drop, which was still present the following day. At that time, the insured ordered an MRI of the lumbar spine to determine the cause of the foot drop.

The insured continued to provide chiropractic treatment pending the results of the MRI. Two days following the MRI, the patient reported minimal neck pain and the leg weakness below the knee was improving except for the foot drop, which remained.

The insured documented that the MRI report was positive for a protrusion of the L3-4 disc with potential impingement on the L4 nerve roots, as well as protrusion of the L4-5 disc with potential impingement on the L5 nerve roots.

The report also noted non-compressive central disc herniation and congenital spinal canal stenosis. According to the report there were no contraindications to conservative management of the patient. The insured did not feel the MRI of the lumbar spine explained the patient's foot drop, so he ordered an MRI of the brain. The MRI of the brain revealed an abnormal signal in the patient's paranasal sinuses and right middle ear. The insured then referred the patient to an orthopedist for further evaluation of the foot drop.

The Injury

The patient never returned to the insured chiropractor. Instead of seeing the orthopedist, the patient presented to another chiropractor the following week. That chiropractor ordered X-rays and performed several spinal adjustments and electrical stimulation on two occasions.

Four days after the last visit with the other chiropractor, the patient saw an orthopedic surgeon who referred him for a stat thoracic MRI. Two days later, the patient underwent a cervical MRI which noted a large disc herniation with cord impingement at C5-C6 causing impingement of the right C6 nerve root as well as cord edema. The following day the patient underwent neurosurgery for cord compression at the C5-6 level.

The patient recovered from surgery but continued to have permanent spinal cord injuries and neurological deficits resulting in difficulty with ambulation even when using an ankle brace and cane. He continues to experience daily severe pain in his right upper extremity, right hip and thigh, and is no longer able to work.

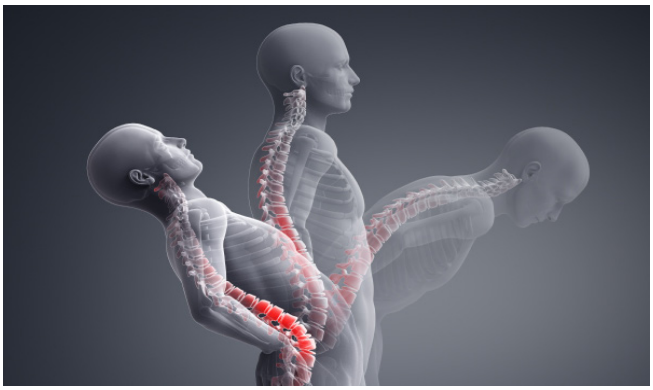
Risk Management Tips

- **Get a clear picture of the patient's medical history.** Obtain a thorough history and perform a physical examination prior to initiating treatment.
- **Always document everything.** Document both positive and negative findings and address any negative findings.
- **Avoid "tunnel vision."** Consider and document differential diagnosis based upon the patient's presentation.
- **Refer the patient as soon as necessary.** If there is a possibility that the patient has a serious condition, such as a spinal cord compression, immediately refer the patient for further testing and workup.
- **Change treatments when the patient is not improving.** If the patient's symptoms do not improve as expected, re-evaluate the patient and modify the treatment plan or refer the patient for further evaluation and/or testing, if indicated.

The Allegations

The patient hired an attorney and filed a lawsuit against the insured and the driver of the car who caused the motor vehicle accident. The patient did not allege the insured caused the underlying herniation or injury. Allegations against the insured related to the failure of the insured to appreciate the significance of the patient's injuries. Allegations against the insured included:

- Failure to appropriately examine the patient prior to the initial chiropractic adjustment.
- Failure to recognize the patient had neurological symptoms consistent with cervical myeloradiculopathy.
- Failure to timely refer the patient for a consultation with an orthopedist or neurosurgeon.
- The absence of a prompt referral caused a condition that could have been treatable to become a permanent injury.



The Defense

The defense enlisted expert reviews by a chiropractor, three neurosurgeons, and a chiropractic neurologist. The consensus of the experts was that based upon the patient's initial presentation with a clonus, an indicator of potential spinal cord issue, and clinical manifestations in all four of the patient's extremities, an immediate referral for a cervical MRI and further workup was indicated. Additionally, the patient's condition deteriorated during treatment with the insured which worsened the outcome and permanency of the neurological deficits.

The Outcome

In the absence of expert support for the defense and the potential for a high verdict (in excess of the insured's policy limits), the insured agreed to settle the case prior to trial.

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