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"The Use of Medical Literature in the Brain Injury Case"

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There are approximately 11,000 brain injuries every year to Indiana citizens that require medical services at a hospital. Most of these brain injuries are not life-threatening and are classified as "mild". Fortunately, most "mild" traumatic brain injuries (MTBI) do not cause long-term disabilities. However, a small percentage of MTBIs do lead to long-term disabilities and chronic cognitive problems, such as short term memory loss, personality changes, lack of initiative and problems with staying focused on a task. Many times the real effect of the MTBI is not recognized until the injured person attempts to return to work when they realize they are having difficulties with tasks they have performed countless times before without a problem.

Representing a person who has suffered a MTBI can be very difficult. The injury is akin to a cervical extension/cervical flexion injury in that often diagnostic tests are negative and the injured person appears to be injury free. Because of the *invisible* nature of a MTBI, insurance adjustors, defense attorneys and even the medical profession will often be cynical about the claims that an injured person is making and will perpetuate myths that have been use for years in defending against the MTBI claim. The myths that I have encountered most often include:

1. There is no documented loss of consciousness; therefore, the person could not have sustained a MTBI.
2. The imaging studies (e.g., CT scans, EEG and MRI) are normal and therefore even if the person suffered an MTBI it could not have been anything other than a very mild injury.
3. The expert neurologist or other medical doctor who conducted an IME opines that there was no brain injury or if there was the person should have been fully recovered in a matter of weeks or a few months at the most as MTBI does not cause permanent deficits. Therefore, the neuropsychologist's findings that the plaintiff sustained a brain injury that is causing chronic problems is not entitled to any weight and should be dismissed as 'junk science'.

The following medical literature can be used by the advocate for the brain injured client to debunk these myths and at the same time educate the adjustor, defense attorney and ultimately the jury about the realities of MTBI and the adverse consequences it can have on economic and emotional well-being of the brain injured person.

Loss of Consciousness is Not Necessary for Someone to Sustain a Brain Injury.

1. CDC pamphlet "*Facts About Concussion and Brain Injury*" published in 1999 is available for free from the CDC and the Brain Injury Association of America. The first page of this publication states:

After a concussion, some people lose consciousness or are 'knocked out' for a short time, but not always - **you can have a brain injury without losing consciousness.** Some people are simply dazed or confused. Sometimes whiplash can cause a concussion.

2. The ninth revision to the International Classification of Diseases (ICD-9) is used internationally to promote uniformity in the classifications of medical conditions. In the United States it is used by Medicare and other insurers for diagnostic and billing purposes. **Code 850.0 of the ICD-9 refers to a concussion without loss of consciousness, but with mental confusion**

or disorientation. The ICD-9 also has a classification for Postconcussion syndrome, 310.2. The Appendix to ICD-9 contains a good definition of postconcussion syndrome.

3. The American Academy of Neurology (AAN) has developed guidelines for the diagnosis and management of concussion in sports. The AAN has broken down concussions into three grades. Grades I and II, by definition, require no loss of consciousness. Report of the Quality Standards Subcommittee, American Academy of Neurology, Practice Parameter: The Management of Concussion in Sports, 48 NEUROLOGY 581-85 (1997). Furthermore, the AAN website (<http://www.thebrainmatters.org/index.cfm?key=1.13.4>) informs that loss of consciousness is just one sign of a concussion with others including:

Impaired attention: vacant stare, delayed responses, inability to focus

Slurred or incoherent speech

Lack of coordination

Disorientation

Emotional reactions out of proportion

Memory problems

Standard Diagnostic Tests of a Person with a Brian Injury Can Be Negative

1. The CDC's pamphlet about concussions referenced above states on page 2

Sometimes the doctors may do a CT scan of the brain or do other tests to help diagnose your injuries [MRI or EEG, e.g.]. Even if the brain injury doesn't show up on these tests, you may still have a concussion.

2. Drs. Silver and McAllister, both neuropsychiatrists, have written:

With regard to minor brain injury, MRI has been able to document evidence of diffused axonal injury in patients who have a normal CT scan. However, most often MRI CT scans reveal no abnormality in victims of MTBI.

Thus, there has been hope that functional brain imaging will be able to reveal areas of brain damage.

J.M Silver & Thomas W. McAllister, *Forensic Issues in the Psychiatric Evaluation of the Patient with Mild Traumatic Brain Injury*, 9 J. NEUROPSYCHIATRY 107-08 (1997).

MTBI is Not Always a Minor Injury & Can Cause Long-Term Problems

1. Dr. Nathan Zasler is known throughout the world for his work and research in the field of traumatic brain injury. Dr. Zasler has cautioned the medical profession about assuming that because a brain injury is labeled as “mild” does not mean it cannot cause significant long-term disabilities.

From both clinical and research perspectives, one of the major problems faced by rehabilitation professionals is inconsistent nomenclature....Modifiers such as subtle, minimal, and minor are to be discouraged. **Practitioners must understand that the term “mild” describes only the initial insult relative to the degree of neurological severity; there may be no correlation with the degree of short-term or long-term impairment or functional disability.**

Nathan D. Zasler, *Neuromedical Disgnosis and Management of Post-Concussive Disorders* in MEDICAL REHABILITATION OF TRAUMATIC BRAIN INJURY (Horn & Zaslers eds., Hanley & Belfus, Inc. 1996).

2. The CDC also recognizes that the recovery from a mild brain injury can be a long-term proposition.

Because all brain injuries are different, so is recovery. *Most* people with mild injuries recover fully, but it can take time. Some symptoms can last for days, weeks, or longer.

3. Dr. Thomas W. McAllister in a chapter about MTBI in a book published by the American Psychiatric Press states:

Prognostic studies clearly substantiate the existence of a post concussive syndrome. Manifestations of the post concussive syndrome are common with resolution in most patients by

three to six months after the injury. **Persistent symptoms and cognitive deficits are present in a distinct minority of patients for additional months or years....Contrary to popular perception, most patients with litigation or compensation are not cured by a verdict.**

Thomas W. McAllister, *Mild Traumatic Brain Injury and the Post Concussive Syndrome*, in NEUROPSYCHIATRY OF TRAUMATIC BRAIN INJURY 359 (Silver et.al.eds., American Psychiatric Press 1994).

4. Agreeing that not all persons who suffer MTBI make a full recovery, Dr. Zasler writes:

The available literature suggests that a significant, albeit small, subset of patients with MTBI do not make a full recovery. Patients with long-term impairments may show some resolution of symptoms over a time, **whereas other may have permanent impairments and permanent functional disabilities.**

Nathan D. Zasler, *Neuromedical Disgnosis and Management of Post-Concussive Disorders* in MEDICAL REHABILITATION OF TRAUMATIC BRAIN INJURY (Horn & Zaslars eds., Hanley & Belfus, Inc. 1996).