Surviving the Medico-legal Process

Dr Jeannie Higgins

February 2002

Invited paper

International RSI Awareness

Repetitive Strain Injury (RSI) & Overuse Injury Association

Canberra, Australia
Overview

• The Process

• Systemic Factors that impact on the Medico-legal process

• What might happen?

• Unhelpful behaviour by injured people

• Helpful behaviour by injured people
The Medico-legal Process

• Getting injured

• Taking it seriously

• Helping other people to take your injury, seriously

• Organisational context and the decision to lodge a compensation claim

• The process of having liability accepted (including medico-legal assessments).

• The process of ongoing liability and financial access to helpful maintenance and return to work strategies in the face of poorly understood and complex conditions e.g., psychological distress, RSI, chronic pain (including repeated and sometimes contradictory medico-legal assessments).
Some Systemic Factors That Impact on the Medico-Legal Process

- Potentially conflicting agendas i.e. identifying medical conditions and obtaining appropriate levels of initial and ongoing compensation and treatment (injured person) versus financial considerations and pecuniary interest in denying or minimising liability (insurance and/or organisation)
- The invisibility of psychological injury, RSI, chronic pain and the societal tendency to distance from pain and suffering and to devise simple understandings and interventions
- Gender and power issues
- Adversarial processes that may encourage minimisation or maximisation of symptoms and disabilities and discourage the capacity of injured people to reclaim control and joy in their lives in way that is also very respectful of the constraints of their injuries and their pain
- Ethics, pecuniary interests and true accountability of the medico-legal consultants contracted by the insurance company.
- Ignorance about the role of psychological factors in terms of cause, effect and moderation of health and vocational outcomes and their frequent entanglement with financial and liability concerns
• The inability of non-suffering people to "know" psychological injury, chronic pain or RSI

• Living in a throw away society with very narrow and limited definitions of success
Four Broad "Types" of Medico-legal Consultants

1. Always report nothing wrong or injury and pain caused by pre-morbid or non-work-related factors (especially pre-injury psychological or gender-related factors). Usually regularly contracted by insurance companies.

2. Always report "everything" wrong since injuries and all consequences completely attributable to the injuries (usually recruited and regularly used by injured person's legal representatives).

3. Truly independent consultants who are simply ignorant about multiple and interacting contributing factors and their effects (potentially very dangerous because only usually recognisable by some injured people and the 4th group of consultants).

4. Truly independent consultants who are truly knowledgeable about the complexity of these "invisible" conditions (refreshing but rare).
What might happen? (1)

- Family, friends, organisational colleagues and supervisors, health and rehabilitation professionals, medico-legal consultants and legal representatives might be treat you with respect and an appropriate degree of helpfulness and understanding throughout the entire process.

- Might experience profound secondary consequences and/or victimisation e.g. called a liar or malingerer, sexual harassment, given various psychological diagnoses (i.e. conversion disorder, personality disorder {dependent, avoidant, narcissistic, borderline or histrionic}, called menopausal and in need of HRT, or broader interests to cure the empty nest, social and occupational ostracism, relationship difficulties, major and very serious psychological distress.

- Could have information and comments taken out of context and misrepresented or distorted. May feel like an object rather than a person.
What might happen? (2)

• Will need to repeatedly reveal intimate personal information to complete strangers some of whom may not have the inclination skills, knowledge or integrity to treat this information with the kind of respect it deserves

• Might be constantly pursued and filmed by private investigators

• Potential profound loss of opportunities, money, job mobility and meaningful work opportunities

• Continued expectation to engage in work duties that aggravate conditions and persistent pressure to increase working hours (through ignorance, neglect or pecuniary interest)

• May be summarily cut off from compensation payments and necessary treatment after a "one off" 20 minute medico-legal assessment

• May incur substantial costs for legal advocacy and unnecessary or aggravating treatments
Unhelpful behaviour by injured people

• Giving personal power away to other people and staying a victim, perpetrator, or passive bystander rather than an active bystander in own medico-legal and recovery process

• Disconnecting from normal and powerful feelings of emotional pain, anger, fear and guilt over profound present and future losses and thereby amplifying negative impact on every area of functioning including subjective experience of pain

• Not seeking or being indiscriminate in choice of health, rehabilitation and legal professionals

• Putting life and rebuilding process on hold until court proceedings or liability issues are determined

• Assuming that other people (including respected professionals and organisational colleagues) will necessarily behave with the same integrity and concern that injured people may expect from themselves

• Viewing personal worth as being entangled with physical well being

• Soldiering on, neglecting self and operating with a "boom/ bust' approach to injuries and chronic pain

• Staying in a "Cinderella" role and expecting to be rescued by "Prince Charming with a stethoscope" rather than seeing self as central to own physical, psychological and vocational rehabilitation and taking
this agency in the management of chronic injuries and pain
Helpful behaviour by injured people (1)

• Keeping of copies of every piece documentation and recording and reporting breaches by professionals or organisations

• Taking a credible and trustworthy witness to medico-legal assessment interviews

• Believing in your own truth and inherent value irrespective of what other people may say, write or do

• Seeking help where necessary and remembering you are a consumer of health, rehabilitation and legal services. These people work for you, not the other way around and they can be replaced

• Making formal complaints when and if necessary e.g., Professional Associations, Community and Health Complaints Commissioner, Ombudsman

• Contracting legal professionals on a "no win no pay" basis. Read the "fine print"

• Reclaiming psychological well being and personal power by working with feelings, thoughts, relationship to self and body, relationship to others and understanding the role of the various systems and people involved in medico-legal processes (this process may be facilitated through with skilled and informed psychological treatment, see below)
Helpful behaviour by injured people (2)

• Feelings Learning to constructively express a full range of feelings including those associated with multiple losses, anxiety, pain, depression, compensation systems, health professionals and workplace relationships e.g. journal writing, safe physical release of anger, drawing, music, dance

• Behavioural and Interpersonal Partner & family information and support, mastery and pleasure tasks, identifying and enacting appropriate intrapersonal and interpersonal boundaries, conflict resolution, listening and assertion skills, behavioural pacing & graded exposure to tension-eliciting recreational and work-related activities, management of medication usage i.e. time Vs pain contingent

• Thinking Reconceptualising who owns responsibility for quality of life e.g. discussing the differences between management and treatment, and identifying and challenging unhelpful ways of thinking. Development of positive ways of making meaning of self, the world and the future that incorporates the injuries and pain. Practising new thinking skills in graded work and recreational activities.

• Bodily Sensations Lowering baseline physiological arousal. Connecting bodily sensations to feelings, thinking and behaviour e.g. emotional awareness track down, progressive muscular relaxation visualisation, meditation, self-hypnosis, physical reconditioning

• Self-Advocacy Co-ordinated liaison with multiple professionals and systems involved. Seek appropriate emotional, informational and practical support from people who are able to understand and remain emotionally present to you as you explain the gravity of your experience e.g. Injury Associations, some professionals, some family and friends