

Auto crash disability assessment needs overhaul

Hamilton Spectator and Straight Goods – April 5, 2002

By Dr. Gordon Guyatt

Brian Francis is outraged at Ontario's deeply flawed system of assessing patients claiming disability from automobile injuries.

In 1993, Janet Hough, a Ph.D. student and Francis' wife, suffered severe injuries in a car crash. Following the accident, her respected neurologist and psychiatrist concluded that Ms. Hough's brain injuries left her permanently disabled. A psychologist chosen by her insurance company disagreed, concluding that the accident was not responsible for Hough's symptoms and had caused no disability. The insurance company cut off payments for Hough's medical care and income replacement.

The couple fought back, but it was not until 1999 that they reached an out-of-court settlement including a permanent monthly income for Ms. Hough.

Ms. Hough's experience reflects a struggle between patients experiencing disability, and insurers trying to contain costs. Patients must deal with questions about the real nature of their problems, and may face accusations of malingering or fraud.

Janet Hough's story follows a typical pattern. The patients' own doctors conclude that the auto accident caused long-term disability, often requiring extended rehabilitation therapy. The insurance company, faced with a large pay-out, wants an independent assessment. The independent assessor disagrees with the patient's doctor, and this disagreement entitles the company to withdraw benefits. The patient must surrender, or fight a costly and emotionally taxing battle.

There are big problems, Brian Francis argues, with the independent assessment process. The physicians chosen by insurance companies usually make much, and sometimes all, of their income from the assessment process. The assessors develop reputations. Some appear eager to conclude that patients' problems, rather than due to their accident, represent a pre-existing problem, a psychological illness, or malingering and fraud.

Put yourself in the shoes of the insurance company, wanting to minimize pay-outs and maximize profits. Who would you choose to make your independent assessment? Not surprisingly, assessors with a reputation for siding with the companies do good business.

The independent assessors do not make a secret about their attitudes. In 1998, the Chief Medical Officer of AssessMed, a company that specializes in disability assessments, wrote an article entitled "Manufacturing Disability".

"I find many persons with minor injuries and residual impairments telling me they can never work again," Dr. Richman says in his article. "Based on my experience, the majority of these claims are simply not true. An increasing number of claimants willfully misrepresent their situation, often backed by health care practitioners. Physicians, lawyers, legal assistants, accountants, psychologists and other so-called rehabilitation specialists manufacturer disability where none exists."

As someone suffering disability after an auto accident, how would you feel about Dr. Richman, or someone working in his company, deciding whether your disability claim is legitimate? On the other hand, to many insurers, Dr. Richman's opinions make his company an attractive assessor.

Brian Francis suggests that, given the system's structural conflict, one would like to see the highest standards of competence and integrity of participants in the assessment process. Janet Hough was assessed by a family physician who disagreed with Ms. Hough's own doctor, an orthopaedic surgeon. The reviewing doctor should, Mr. Francis argues, have equivalent qualifications to the patient's specialist.

Ms. Hough underwent a neuropsychological assessment by a psychologist who, Mr. Francis discovered, did not list neuropsychology as his area of expertise. Another neuropsychological assessment was carried out by a psychologist whom the College of Psychologists of Ontario had found guilty of professional misconduct and conflict of interest.

In 1994, the NDP government attempted to address the problems by establishing Designated Assessment Centres, or DACs, that are supposed

to provide a neutral opinion. The patient must still attend an insurer's examination but the DAC may review disputed cases. Unfortunately, the DAC roster includes many of the health professionals chosen by the insurance companies. In 1998, 83 percent of all DAC disability assessments sided with the insurance companies, and only accepted 15 percent of the treating doctors' care plans.

The majority of automobile claims are settled without confrontation. Furthermore, automobile insurance companies vary in the extent to which they aggressively challenge disability claims. Some doctors who stand to benefit financially may offer extensive rehabilitation plans that are not justified. But overall, the system is not working well.

While no solution will create a problem-free system, three principles would help address the challenges. First, disability assessment should minimize doctors' conflict of interest. Second, standards of integrity should, if anything, be higher than those of ordinary clinical practice. Third, independent quality monitoring should ensure that assessors' records do not suggest bias.

After a citizens' revolt against a motor vehicle accident disability assessment system full of stories like Ms. Hough's, Colorado passed legislation making major changes to the process. The legislation requires that independent assessors be in the same specialty as the treating practitioner (including chiropractors, psychologists, or orthopedic surgeons), and earn less than half their income from disability assessments. Most important, their process ensures that the assessor is acceptable to both the insurer and the patient.

In the new system, 75% of assessments have concluded that the initial diagnosis and treatment was appropriate, 20% partly appropriate, and only 5% inappropriate or unrelated to the accident. Contrast this with the DAC record of rejecting 85% of treatment plans.

The Colorado experience suggests that improvements in the way Ontario deals with the assessment of disability for automobile accidents are possible. Ultimately, we should ensure the system meets standards of fairness and quality while minimizing the suffering of the accident victim.

Gordon Guyatt MD, FRCPC, lives in Dundas. He is an academic physician

at McMaster University's Department of Clinical Epidemiology and Biostatistics and Department of Medicine. He was an NDP candidate during the last federal election. His column appears every second Friday.