



2015 Winter Convention  
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Plenary Session

**Mythbusting 2.0: Busting Through Bad Experts and Bad  
Defenses**

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## Debunking Dumb Defense Myths

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### Myth #1 The accident was *too minor* to cause severe injury.

Ask this:

- a. Do you deny when a crash caused more damage than in this case you still deny causation? Every single time?
- b. Do you deny a low impact crash can cause injury depending on factors like:
  1. Location of the body in the car
  2. Location of the impact
  3. Body habitus ie preexisting conditions?
- c. What studies show it is impossible to have an injury in a crash of this nature? (note: don't cite one with crash dummies or cadavers. )
- d. Contact this fellow and show some videos of folks in "low" speed crashes. It's pretty significant. <http://www.srisd.com/products.htm>
- e. Get this book (and not just because I have a chapter in it) Mild Impact Cases: Cross Examination. [www.trialguides.com](http://www.trialguides.com)
- f. Offer to show slides of cars in a low speed crash and ask the expert to diagnose the conditions of the passengers. Dr. Michael Freeman, Forensictrauma.com has such slides where folks died. Defense will object claiming it is asking the doctor to speculate which, of course, is what the doctor is doing in your case.

g.

As an aside:

What Are the odds of disk injury in 40 year old man who had crash being due to the crash vs. spontaneously developing?

1.8 million to one!

Freeman, Michael D, PhD, MPH, DC, Centeno, CjMD, Kohles, S.Sm Phd, A systematic Approach to Clinical Determinations of Causation in Symptomatic Spinal Disk Injury Following Motor Vehicle Crash Trauma, Clinical Review: Focused, American Academy of Physical Medicine and Rehabilitation, Vol 1, 961-956, October, 2009.

### Myth # 2 The patient should have healed by now...and be back to preinjury status

Prove it.

Says *who*?

What is average length of recovery for same age/gender body habitus?

Does everyone recover the same?

What month, week, hour, day minute and second my client was my client healed?

The defense again will object claiming speculation which, of course, it is!

**Myth # 3 There really is something wrong with the plaintiff, it's just that it's *all pre-existing*.**

Make a chart showing before vs. after symptoms, meds and doctor's visits  
Then point out a pre-existing condition makes it even more likely that part of the body can be injured in a crash.

Example

**Before d/a**

*Occasional* low back pain

Tylenol, *occasionally*

Pain level at a 3

Sees doctors 3 x in  
7 years

**After d/a**

Constant pain

+SLR

radiculopathy

pain level at a 7-8

sees the doctor 60 x in 2 years

Abnormal EMG

HNP per MRI

Need for physical therapy

Depression from pain and mes

Need for *schedule 2* narcotics

Fatigue from narcotic

GI upset from narcotic

**Myth #4 The patient has only a mild traumatic brain injury**

- a. DME says the ER missed it so it didn't exist, however, ER's miss mTBI 56% of the time! Powell J et al, Accuracy of Mild Traumatic Brain Injury Diagnosis, Arch Phys Med Rehabil Vol 89, August 2008, 1550 at 1552.
- b. Keep in mind the American College of Rehabilitation indicates a TBI can exist if there is alteration of consciousness and you don't have to have complete loss. Remember actress Natasha Richardson had a TBI and had no loss of consciousness at the scene and was dead the next day
- c. Also check the ER records for low red blood cells (due to bleeding) which can mean less oxygen to the brain after trauma thus making it worse
- d. And if your client is terrified at the scene, terror releases chemicals which can exacerbate a TBI

**Myth #5 (from a radiologist) The scans are *normal*. There was no injury.** Example:  
HNP

- a. Not all injuries end up on a scan
- b. Scan's don't show pain or nerve damage
- c. The doctor is probably misreading the scan.  
Suggestion: Get the best image on the scan showing the abnormality. (your radiologist can do it) make it into a document. Show it to the doctor. Ask him to pull one if his text books and copy the page showing an image representing a normal disc and a page

showing a herniated disc. What does the image of your client's disc most closely approximate in *his own* textbook? The one with the herniated disc

**Myth #6 Your client will be fine...**

- a. Great!! When can we celebrate? What day, hour and minute will my client stop hurting?
- b. Where is the literature that says 100% of all folks with this condition always heal?
- c. Do you treat work comp patients? Do you deny treating folks with this condition for years?

**Myth # 7 My 30 years of experience and these articles indicate \_\_\_\_\_ (fill in the blank) support my position**

- a. There are articles that support *our* position, right?
- b. It's not "*fair*" or "*honest*" to look only for articles supporting the source paying your bills, right?
- c. Show me in your file where you have articles that support our position showing you really did *do fair and even handed* research.
- d. Are some doctors better than others?
- e. Are there some doctors who are better than you?
- f. What if your 30 years was 30 years of practicing *bad* medicine?
- g. Would that be better than 5 years of good medicine?

**Myth #8 The patient is exaggerating.**

1. Do fakers go *this far*? Ie surgery, loss of job, painful discogram
2. Go to websites used by the doctor , ie if he is a surgeon go to AAOS.org and pull articles showing how painful the condition is.
3. Ask him to produce any science indicating it is not painful. Then ask:
4. CAN this condition cause pain?
5. Was the pain she experienced right after the crash legitimate ? (he will say yes or risk looking like an ass)
6. What month, week, day, hour, minute and second did the actual pain become malingered pain?
7. Walk me through the anatomy of how the pain always resolves in all persons
8. File Motion in Limine on malingering. You can download same at [www.dorothyclaysims.com](http://www.dorothyclaysims.com)
9. Malingering does not
  - a. Rule out or in a condition, ie brain injury, pain
  - b. Actually provide scientific information about motivation
  - c. There are many reasons folks can flunk these tests including interference by the doctor
  - d. The exams ask about symptoms and if the patient endorses "too many" or unusual symptoms it is concluded he or she is malingering...even if the symptoms are legitimate. Take away: GET THE RAW DATA and questions. And explain alternative reasons for "flunking" to the jury. Some gives points for malingering if an individual endorses pain or confusion caused by a real injury

e. Some malingering tests give points for malingering

**If the doctor claims malingering based on a test email me and I can send you orders and motions in limine on the tests at [dc@dorothyclaysims.com](mailto:dc@dorothyclaysims.com)**

Then, turn the tables on him:

“Doctor, there are rules, ethical standards, which doctors must obey, right?”

“You have to fairly report your findings, don’t you?”

“You can’t leave something out of your report just because it verifies what the plaintiff has been saying all along, can you?”

Then show what the DME left out.

Abnormal test results.

Multiple documentation of spasms

You proved exaggeration... the DOCTOR’S EXAGGERATION