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Plaintiff's Past Medical History Should Be Deemed Relevant

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A plaintiff is caused to suffer a dramatic reduction in his earnings because of a medical condition, which also causes him to suffer terrible pain and suffering. Then, the negligence in question in your case occurs. And, of course, the plaintiff attempts to attribute all of their wage losses, and pain and suffering—from the moment of the alleged negligence forward—to the alleged negligence alone.

But, what about that past pain and suffering, and the impact that it already had on earnings? Is that past history relevant when considering whether, or at least how much, damage the alleged negligence at issue at trial actually caused to a plaintiff? Isn't the question of how much damage that alleged negligence actually caused to a plaintiff a good deal of the point of any negligence trial?



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professionals, as well as other licensed professionals, including architects and engineers, zoning and land use appeals litigation, commercial litigation, and insurance defense litigation.

While most lawyers—for plaintiffs and for defendants—expend tremendous effort focusing upon the nature and extent of a plaintiff's injuries after an accident, the other side of the damages equation—what the plaintiff was like before the accident—is sometimes given relatively short shrift. And it shouldn't be.

In cases where a plaintiff, on their own behalf or on behalf of a decedent, seeks monetary compensation for future lost earning capacity—and especially when that assessment is alleged by a plaintiff to be rosy, in terms

of what the plaintiff would have accomplished or how long the plaintiff would have lived—the question of what trajectory the plaintiff was already on before the alleged negligence (including what impact pre-existing medical, psychiatric, or substance abuse problems had on a plaintiff's ability to work, and upon his or her life expectancy, before the alleged negligence occurred) obviously very much comes into play.

A plaintiff's decision to pursue a claim for lost future earnings, and to base those claims upon assumptions about both a plaintiff's life expectancy and anticipated future academic and work endeavors, makes evidence of that plaintiff's past highly relevant evidence for the jury to consider, as seen in *Carrol v. Avallone*, 939 A.2d 872, 877 n.2 (Pa. 2007); *Kraus v. Taylor*, 710 A.2d 1142, 1143-44 (Pa. Super. 1998); and in *Guidry v. Johns-Manville*, 547 A.2d 382, 386 (Pa. Super. 1988). In order for a jury

to make an intelligent decision about the overall veracity and value of a plaintiff's purported lost-future-earnings claim, a jury will, or course, actually need to hear about that plaintiff's past.

But what about cases where a plaintiff doesn't assert a future-economic-damages claim and, instead, focuses their theory of recovery upon a plaintiff's, or else the plaintiff's decedent's, alleged pain and suffering? Should evidence of a plaintiff's past medical, psychiatric or substance-abuse history be relevant and admissible at trial in those cases, as well? The answer is, I believe, still, yes.

Pennsylvania Suggested Standard Jury Instruction 7.130 provides that one of the factors that a jury must consider in determining the amount of pain and suffering damages to be awarded to a plaintiff is "the health and physical condition of the plaintiff prior to the injuries."

The quantification of pain and suffering damages, of course, is not, and cannot be, an exact science. But on the other hand, it is not a purely hypothetical undertaking, either. What Pennsylvania Suggested Standard Jury Instruction 7.130 articulates, in its seventh listed factor for calculating pain and suffering damages, is that the undertaking is one that compares: what the injured

party felt like before the alleged negligence and what the injured party felt like after the alleged negligence. It is the spread between those two points within the specific and subjective context of the injured party's actual existence—not what that spread might look like if measured using the reasonably prudent person as a frame of reference—that a jury must calculate.

That calculation is one that requires a jury to actually hear what a plaintiff's "health and physical condition ... prior to the injuries" was. A jury simply could not make the required analysis of the level of a plaintiff's pain and suffering that the Pennsylvania Suggested Standard Jury Instructions say it must, if it did not have information—given to it as evidence duly admitted during a trial—about a plaintiff's past medical health, mental health and substance abuse history to consider.

Many a plaintiff was definitely not free of pain and suffering before the alleged negligence in question in his or her litigation occurred. Many plaintiffs were, sadly, in a great deal of pain, and suffered mightily, because of pre-existing medical or psychiatric issues long before the alleged negligence they file suit over transpired. So according to the Pennsylvania Suggested Standard Jury Instructions, a

jury is affirmatively required to hear not only about a plaintiff's post-accident pain and suffering, but also about a plaintiff's pre-accident medical past—so that the jury is able to actually do the required calculus necessary to properly analyze a plaintiff's pain-and-suffering claim.

Evidence is considered relevant if it logically tends to establish a material fact in the case, tends to make the fact at issue more probable, or supports a reasonable inference or presumption regarding the existence of a material fact. According to Pennsylvania Suggested Standard Jury Instruction 7.130, evidence that tends to establish a plaintiff's "health and physical condition of the plaintiff prior to the injuries" is relevant and, therefore, admissible at trial. That evidence must, by necessity, be allowed to include evidence of what a plaintiff's past medical history, psychiatric history and substance-abuse history was. •