

FIVE ESSENTIALS FOR LITIGATING CHRONIC PAIN

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1. KNOW THE BASICS

Chronic pain symptoms are by and large, subjective, and as such, cannot generally be corroborated by objective findings on physical examination or imaging such as CT scan or MRI. There has been ongoing controversy in the medical community, in particular with regard to the legitimacy of fibromyalgia, largely due to the subjective experience of the complainants' pain. Nonetheless, despite the ongoing controversy surrounding fibromyalgia, chronic fatigue and chronic pain sufferers are increasingly getting their proverbial "day in court" and are obtaining successful results from the judiciary.

As a personal injury practitioner handling chronic pain claims, it is important to understand the essential characteristics of chronic pain and fibromyalgia, and to appreciate that sufferers frequently present with psychological features. In addition, it is important to understand that inherent personality traits may also contribute to enhanced perception of pain and illness behaviour.

I have read the excellent paper prepared for this conference by **Dr. Angela Mailis-Gagnon**, Director of the Comprehensive Pain Program at the Toronto Western Hospital, which provides a useful synopsis of the basic concepts involved in understanding chronic pain. I urge you to read this paper and to keep it handy as a guidebook for understanding the litigants who present before our courts claiming to be chronic pain sufferers. In particular, I draw your attention to the section of Dr. Mailis-Gagnon's report dealing with the DSM IV (Diagnostic and Statistical Manual of Mental Disorders, 4th edition) Classification of Chronic Pain Disorders. In my experience, the experts who tend to be accepted in court have extensive familiarity with the DSM IV and the 3 types of Pain Disorders recognized by the 2004 edition:

- a) **Chronic Pain Disorder associated with a Medical Condition;**
- b) **Chronic Pain Disorder associated with a Medical Condition and Psychological Factors;**
- c) **Chronic Pain Disorder associated with Psychological Factors.**

Dr. Mailis-Gagnon explains in her paper that the latter two types of Pain Disorders (Syndromes) feature psychological factors which are “considered important in the generation, maintenance and exacerbation of the pain.” In the third Pain Disorder listed above, Chronic Pain Disorder associated with Psychological Factors, the underlying disability is actually based on psychological factors.

As such, if you are acting on behalf of a Plaintiff with chronic pain, getting to know your client is essential to establishing a road map for your case.

2. KNOW YOUR CLIENT WELL

It is my practice, to conduct a thorough and extensive initial interview with a potential Plaintiff who claims to suffer from chronic pain. After all, my first impression is not likely to be any different from that of a trier of fact. By and large, each case will be determined on its own set of facts, but the credibility of the Plaintiff will determine the course of the litigation and the strategy to be employed in the case by the lawyers on both sides.

Judges and juries are far more inclined to find in favour of persons who present honestly and credibly without over-reaching. The first meeting is therefore, critical in determining how credibly the Plaintiff will present. In addition, defence counsel will be making a similar assessment of the Plaintiff at the examination for discovery. At the initial interview, I take careful note of the following:

- Is the client maintaining eye contact when she is speaking?

- Is she exhibiting overt pain behaviours?
- Does she have a tendency to exaggerate?
- Is her account of her symptoms consistent with her body language?
- Has she sought out and received treatment for her symptoms?
- Has she been under the regular care of a doctor since the alleged disability began?
- Is she forthcoming about any pre-existing physical or emotional health issues?
- Has she made any previous claim for damages for personal injury or any claims for disability, CPP or WSIB?
- What type of work does she do and what is her education, training and experience?
- Has she attempted to work or look for work despite her symptoms?
- Does she have family and friends who are supportive of her?

A favourable first impression by the Plaintiff at the initial interview bodes well for her case. Concerns in verbal and non-verbal presentation should be carefully noted so that they can be addressed at further meetings and in particular, when the client is being briefed to prepare her for her examination for discovery.

More and more, Plaintiffs will require the use of translators to give their evidence when English is not their first language. Careful attention should also be given to finding a suitable interpreter for the Plaintiff's examination for discovery to ensure that the evidence

is communicated in the most optimal and coherent fashion.

Overall, a Plaintiff with supportive lay witnesses, a supportive family physician (or treating physical medicine/chronic specialist), who has pursued treatment that has been recommended for her, and who has a strong work history possesses the essential ingredients for a successful outcome in the litigation.

3. PREPARE YOURSELF AND YOUR CLIENT DILIGENTLY FOR DISCOVERY

Even if the medical evidence supports the Plaintiff's disability, the case will be substantially weakened if the Plaintiff comes across as evasive, vague, untruthful, or excessively forgetful at her examination for discovery. Similarly, the case will be damaged if the Plaintiff presents as a "whiner" or overstates her condition.

i. Clinical Notes

Rarely, will the Plaintiff present with no significant pre-trauma history. Once the decision is made to take on a Plaintiff's case, a great deal of time will be spent reviewing the clinical notes and records of her treating health practitioners to corroborate the Plaintiffs' subjective account of her symptoms, and to establish a causal connection between her symptoms and the accident or trauma. In the case of a disability claim, the medical records are reviewed with a view to proving whether the Plaintiff is disabled within the meaning of the contract of disability in question. A Plaintiff with an extensive history of pre-existing complaints will face a more significant hurdle to prove causation and to establish a valid claim.

Clinical notes and records are used by defence counsel to call the Plaintiff's credibility into question. If the Plaintiff testifies in a manner that is not consistent with what is written in her doctor's records, it diminishes her overall credibility. In a chronic pain case, the importance of the clinical records cannot be underscored, especially with clients whose chronic pain symptoms include impaired memory and concentration, which is frequently the case with fibromyalgia sufferers. Clinical notes and records of treating physicians should

be obtained well in advance of the discovery. The salient features of same should be reviewed with the Plaintiff so that she is prepared for questions that may arise therefrom.

It is vital that the Plaintiff be aware of her doctor's comments, as her case will be dealt a damaging blow if her discovery evidence is inconsistent with the doctor's notes.

ii. Surveillance

Plaintiffs should be aware from the inception of any litigation that they will be placed under surveillance at some point during the litigation. Even the most successful Plaintiff's counsel cannot control the words and actions of the Plaintiff at all times. Most chronic pain sufferers will honestly say that they have good days and bad days, and that on good days, they try to carry on to the best of their ability with their activities of daily living- the difficulty being to put forth a consistent effort on a regular basis on account of pain.

In a chronic pain case, the importance of surveillance must be reinforced throughout the litigation. The manner in which the Plaintiff actually lives her life must be consistent with the way she recounts her activities to her own health practitioners, to defence counsel while under oath at discovery, and to doctors retained by defence counsel to conduct defence medical examinations. The Plaintiff has to appreciate that in the context of a lawsuit, her choice of words is vital to her credibility. Being candid is helpful, but appearing consistent on videotaped surveillance with one's own accounts of one's symptomatology, will result in a successful outcome of the case.

At discovery, Plaintiff's counsel is entitled to request and receive particulars of the investigator who conducted the surveillance, the times, dates and places where the surveillance was conducted and a summary of the investigation, including a description of the activities and observations made by the investigator. At some point, if the Defendant intends to rely on videotape or photographic evidence, the *Rules* require production of same.

iii. Employment File

A Plaintiff with a work history of continuous employment, good attendance and positive performance reviews are excellent facts to support the Plaintiff's case. A careful review of the employment file is, therefore, a vital step in the litigation. The Plaintiff should be confronted with negative performance appraisals or spotty attendance to account for and to provide an explanation for same.

Statements from supervisors and co-workers who can attest to and support the Plaintiff's work ethic and strong performance in the work place will create substantial risk to the defence who will expect Plaintiff's counsel to argue that the Plaintiff would not voluntarily opt out of life when she had a good job and was excelling at same.

In addition, the Plaintiff who has been suffering from chronic pain and/or fibromyalgia for a long period of time may have continued to work at a reduced capacity or even on a full-time basis out of financial necessity, despite the tremendous physical and emotional toll that may have resulted in order to do so. Co-workers and family members are key witnesses who will give evidence as to the contrast between the Plaintiff's pre-accident and post-accident level of function.

4. CHOOSE YOUR EXPERTS CAREFULLY

Choosing the right expert in a chronic pain case is imperative. The expert must be well-credentialed, and should have an extensive clinical practice involving the care and treatment of patients suffering from chronic pain.

The preponderance of Plaintiffs who suffer from chronic pain have a wide array of symptoms. Experts will likely have to be retained and qualified in Court in different fields of expertise. Rheumatologists and physiatrists are often consulted in these types of cases, as are psychologists, psychiatrists and vocational specialists.

In the decision of *Laudon v. Roberts*¹, Justice DiTomaso qualified an expert physician/psychotherapist called by the Plaintiff as an expert in chronic pain treatment and chronic pain medication, overruling an objection by the defence. The defence objected on several grounds, but most interestingly, objected to the necessity of the evidence as it would violate the rule against oath helping in that the evidence would overlap with evidence to be provided by a different expert in family medicine and palliative care.² Although Justice DiTomaso found that there were areas where certain doctors confirmed other's opinion, he nonetheless qualified the expert, noting that independent medical reports were prepared with a view to providing individual opinions.

The exceptional credentials of a medical expert were emphasized in the July 2, 2009 Ontario Superior Court decision of Justice Gray in *Degennaro et al. v. Oakville Trafalgar*³. In that case, Justice Gray accepted the evidence of physiatrist, Dr. Gordon Ko, who in this case happened to be a treating doctor, stating at paragraph 85 as follows:

“It is difficult to imagine an expert witness who is more qualified in the subject of chronic pain than Dr. Ko. He has a curriculum vitae that runs to 39 single-spaced pages. He is a diplomate of the American Board of Pain Medicine. He is the Medical Director of the Physiatry Pain Treatment Clinic, Sunnybrook Center. He has attended dozens, if not hundreds, of courses and lectures on the subject of chronic pain. By my count, he has authored or co-authored 29 peer-reviewed articles on the subject of chronic pain.”

¹ [2007] O.J. 1702 (S.C.J.)

² Ibid. at para.30, as stated on pages 16-17 of “*The Latest on Chronic Fatigue Syndrome and Fibromyalgia: Best Practices for Successful Management and Litigation of Chronic Fatigue and Fibromyalgia Claims*,” by Richard M. Bogoroch, prepared for the Canadian Institute's Conference on Managing and Litigating Invisible Disabilities, June 18, 2007.

³*DeGennaro v. Oakville Trafalgar Memorial Hospital*, 2009 CanLii 34035 (ON S.C.), decision of Justice Gray dated July 2, 2009, currently under appeal.

It is incumbent upon counsel to ensure that the expert is provided with all pre-accident medical records going back 3-5 years, post-accident or disability medical records, rehabilitation records and any defence medical reports. Surveillance particulars should also be provided to the expert for review and comment.

An expert in a chronic pain case must take a comprehensive history from the patient including pre-accident medical history, personal history, life adjustment and general stressors, analyze symptoms and consider differential diagnoses. An expert must be thorough and consider causation carefully. The expert's analysis must be detailed and balanced, and must consider the larger picture of bodily symptoms and of the effects of stress and life experience, rather than focusing on small or isolated areas of bodily function. According to Dr. Henry Berry in a recent paper he prepared⁴, many experts neglect to elicit the existence of widespread bodily symptoms and conduct a functional inquiry. At page 19 of his paper, Dr. Berry states that:

Functional Enquiry is a detailed and systematic questioning about bodily functions that begins with general questions about weight, energy, and sleep, and then continues into the organ functions from head to toe and includes the head, neck, lungs, heart, abdomen, genitourinary, and musculoskeletal and nervous systems. The presence of multiple positive responses is a feature of somatic preoccupation, of the hypochondriac, of somatoform disorders, and of illness behaviour as a way of life.⁵

⁴“*Fibromyalgia, Chronic Pain and the Chronic Fatigue Syndrome: Chronic Disability Without Objective Abnormality*,” by Dr. Henry Berry, M.D., D. Psych., F.R.C.P. (Lond.), F.R.C.P. Associated Professor (Neurology) University of Toronto prepared for the Canadian Institute's Conference on Managing and Litigating Invisible Disabilities, June 18, 2007

⁵Ibid. at page 19.

In a chronic pain case, the expert should be asked to specifically comment on the Plaintiff's credibility. Again, if the Plaintiff is consistent throughout the course of the litigation as to her symptoms and complaints, and their impact on her activities of daily living and ability to carry out the essential tasks of her employment, the case is further strengthened.

An expert who conducts a paper review only opens himself up to rigorous cross-examination, and his evidence is likely to be afforded little weight by the trier of fact seeing as an actual physical examination of the Plaintiff never took place. In *Degennaro*⁶, the Defendant called a physiatrist who conducted a paper review only. Although highly credentialed, he had never seen the Plaintiff and his evidence was consequently not accepted by the Court.

5. KNOW THE LAW - RECENT JUDICIAL TREATMENT OF CHRONIC PAIN

Some recent cases in this area are set out below. This is not intended to be an exhaustive list, but rather, raise certain points of interest.

- ***DeGennaro v. Oakville Trafalgar Memorial Hospital, 2009 CanLii 34035 (ON S.C.)***

The case is currently under appeal, but the judicial comment with regard to chronic pain is clear and unequivocal.

In the *Degennaro* case, the 30 year old Plaintiff, Diane Degennaro, was tending to her child who was ill in the hospital during the spring of 1999. While calling her husband, she sat at the end of a bed that was actually a chair which could be folded out into a bed. The bed buckled and the end of the bed collapsed causing the bed to roll away. Diane fell onto the floor landing on her buttocks and low back. The evidence indicates that she fractured her sacrum during the fall. Approximately three years later in February 2002, Diane was in a motor vehicle accident and sustained upper body trauma. She was not diagnosed with fibromyalgia until 2003.

⁶ Ibid, Note 3.

At paragraph 2 of the decision, Justice Gray states as follows:

“Chronic pain syndrome is viewed in some quarters, with suspicion. That is primarily because there is no certain cause, and there are hardly any objective descriptions related by the injured party. However, the pain is real. The existence of the syndrome has been recognized by reputable experts and has been the subject of litigation.”⁷

In his analysis, Justice Gray adopts Justice Gonthier’s reasons in *Nova Scotia (Workers’ Compensation Board) v. Martin*, [2003] 2 S.C.R. 504, at para 1 as follows:

Chronic pain syndrome and related medical conditions have emerged in recent years as one of the most difficult problems facing Workers’ Compensation schemes in Canada and around the world. There is no authoritative definition of chronic pain. It is, however, generally considered to be pain that persists beyond the normal healing time for the underlying injury or is disproportionate to such injury, and whose existence is not supported by objective findings at the site of the injury under current medical techniques. Despite the lack of objective findings, there is no doubt that chronic pain patients are suffering and in distress, and that the disability they experience is real. While there is at this time no clear explanation for chronic pain, recent work on the nervous system suggests that it may result from pathological changes in the nervous mechanisms that result in pain continuing and non-painful stimuli being perceived as painful. These changes, it is believed, maybe precipitated by peripheral events, such as an accident, but may persist well beyond the normal recovery time for the precipitating event. Despite this reality, since chronic pain sufferers are impaired by a condition that cannot be supported by objective findings, they

⁷Ibid. Note 3.

have been subjected to persistent suspicions of malingering on the part of employers, compensation officials and even physicians.

Justice Gray adopts the Supreme Court of Canada's analysis and states at paragraph 128 of the decision that the expert witnesses called by both parties in the *Degennaro* case "acknowledge that chronic pain, including fibromyalgia, is real and can be the result of a precipitating event, including trauma."⁸

With regard to the issue of causation, Justice Gray held that the Plaintiff succeeded on the basis of the "but for" test, but added that it may be appropriate to apply the material contribution test. In either case, Justice Gray held that causation had been established. The important wording for the chronic pain case appears at paragraph 153 as follows:

If she cannot prove, to scientific precision, that the 1999 incident was the cause of her chronic pain, her difficulty in doing so is as a result of limits of scientific knowledge. As noted by the Supreme Court of Canada in *Martin*, and as acknowledged by all of the medical witnesses in this case, it is impossible to pinpoint a specific cause of chronic pain, based on current medical knowledge. ..it is clear that, at the very least, the 1999 incident was a materially contributing factor.⁹

Finally, on the issue of foreseeability, Justice Gray stated at paragraph 161 of the decision as follows:

In my view, it is foreseeable that chronic pain may result from a physical injury. While the actual cause of chronic pain is not known, it is known that

⁸Ibid. Note 3.

⁹Ibid. Note 3.

some people will develop chronic pain after physical trauma. This chronic pain is foreseeable as falling within a range of consequences that may flow from a physical injury.¹⁰

- **Watts v. Donovan, 2009 Can Lii 26931 (On S.C.)**

The 29 year old Plaintiff was involved in a motor vehicle accident on December 16, 1999. At the time of the accident, she was married with 3 children under 12, had a history of abuse and depression, and deliberately overdosed on medication a few months before the accident. At paragraph 14 of the decision, it is stated that within two years of the accident, the Plaintiff was diagnosed with WAD II whiplash injury, completed physiotherapy, had psychological consultation and completed visual training treatment. She suffered from a constellation of symptoms including neck pain, headaches, poor sleep, visual blind spots, dizziness and perception problems, shoulder pain that resolved within two 2 years of the accident and mid-back pain, not fully resolved. The Plaintiff was diagnosed with fibromyalgia by one of her family doctors which resulted in reactive depression and marital discord. The Court held that the Plaintiff had no pre-accident back, neck or fibromyalgia type problems.

Justice MacKinnon assessed the Plaintiff's general damages at \$95,000.00. At paragraphs 24-25 of his reasons, Justice MacKinnon states as follows:

Her accident-related injuries include a whiplash associated disorder (WAD II), cervicogenic headaches, post traumatic visual syndrome, soft tissue injury to the cervical and thoracic spine resulting in chronic pain syndrome, and chronic fatigue which in conjunction with various trigger points has been described as fibromyalgia. She experienced a severe emotional response to her physical injuries and to the accident trauma. She has become highly anxious and is unable to manage the pressures, demands of social

¹⁰Ibid. Note 3.

interactions of day-to-day life. She continues to have chronic pain that limits her capacity to engage in regular activities. She paces her daily tasks to manage her pain. She has a reduced capacity to function. “But for” the car crash, she would not have experienced the detailed physical, cognitive and emotional sequelae.

...Ontario decisions have awarded damages for claimants with fibromyalgia-type or chronic pain-type symptoms over a wide range from \$60,000 to \$120,000. I assess her general damages in this case at \$95,000...¹¹

- **McIntyre v. Docherty, 2009 ONCA 448 (Can Lii)**

The Plaintiff was involved in a motor vehicle accident on April 23, 2000. She suffered from chronic pain, fibromyalgia, depression and anxiety. After the accident, the Plaintiff experienced daily pain. She testified at trial that if she paced herself, carefully, with pain, she could undertake most of her housekeeping responsibilities. The balance of the household work was performed by family members.

With respect to the issue of housekeeping only, at trial, the jury awarded:

\$5,000 - for past housekeeping insufficiency damages;

\$10,400- for past loss of housekeeping capacity; and

\$44,535 - for future housekeeping capacity.

The jury also awarded non-pecuniary general damages in the amount of \$92,500.00.

The Defendant appealed on the basis that any amount awarded for housekeeping

¹¹Watts v. Donovan 2009 Can Lii 26931 (On S.C.), decision of Justice MacKinnon released May 28, 2009.

insufficiency should have been included as part of non-pecuniary damages for pain and suffering, and not treated as a separate head of damages. The defence further challenged the Plaintiff's entitlement to awards for past and future loss of housekeeping, as she had not incurred expenses for housekeeping and had no plans to incur such costs because family members were providing the services.

Writing for the Court of Appeal of Ontario, Justice Lang stated at paragraph 73 of the decision that a Plaintiff who works "inefficiently" is required to work more hours after the accident to accomplish the same amount of work done before the accident. In this case,

her non-pecuniary award would be increased to reflect any increased pain and suffering. To the extent that the plaintiff's inefficiency also results in a less clean and organized household, this is the loss of an amenity that the award for non-pecuniary damages would also take into account.¹²

The Court of Appeal upheld the jury award for all heads of housekeeping damages finding that "when viewed globally, bearing in mind the lack of differentiation between inefficiency and third-party damages at trial, the total pecuniary and non-pecuniary housekeeping award of \$59,935 was supported by the evidence."¹³

As such, I submit that Plaintiffs' counsel will have to give careful consideration as to how to argue the issue of housekeeping losses at trial. Clearly, the losses are easy to quantify if third parties have been retained to perform the services. It is not so clear when family members are pitching in and when Plaintiffs are managing, albeit more slowly and with

¹²*McIntyre v. Docherty*, [2009] ONCA 448 (Can Lii) at para 73.

¹³ *Ibid.* Note 12 at para 82.

difficulty. Consideration will have to be given to lead evidence as to the extent of the Plaintiff's pain and suffering in performing housekeeping tasks, the standard of cleanliness that he/she maintained before the accident, the impact of the injuries on those standards, his/her loss of ability to do tasks formerly enjoyed.

- **Sherman v. Guckelsberger, 2008 CanLii 68165 (ON S.C.)**

In this Bill 198 threshold decision, Justice J. A. Milanetti (Reasons for Judgment released on December 29, 2008), concluded after five days of trial that 32 year old Darlene Sherman, who was suffering from chronic pain and who had gone back to some form of work, albeit with difficulty, failed to adduce sufficient evidence of the "function" impairment to satisfy s. 4.2 (1) 2 of the threshold. She states that she considered the decision of Justice Morrisette in *Nissan v. McNamee*,¹⁴ and noted at paragraph 102 of her Reasons for Judgment that Justice Morrisette concludes that, "in her view, the Bill 198 legislative changes do little to change the Bill 59 legislation that predated it. Respectfully, I have a different view of the changes and their ramifications."

At paragraph 149 of her reasons, Justice Milanetti states that "[E]ven before the amendments, the Court of Appeal in *Meyer v. Bright*¹⁵ said that, "When the legislation qualified permanent impairment" by the word serious, it obviously intended that injured persons must endure some permanent impairment without being able to sue."

Although Justice Milanetti states at paragraph 150 of her Reasons that "each case depends on its own facts and that what is a serious injury to one individual is not necessarily to another, " this case is illustrative that the waters are becoming murkier under Bill 198 in the context of motor vehicle accident litigation."

¹⁴*Nissan v. McNamee* (2008) W.L. 1955825 (Ont. S.C.J.)

¹⁵*Meyer v. Bright*, [1993], 15 O.R. (3d) 129 (C.A.)

- **Ali v. Consalvo 2009 Can Lii 4241 (On S.C.)**

This January 2009 Bill 198 threshold motion was heard by Justice Wilson upon the conclusion of trial. The jury had awarded the 55 year old female Plaintiff involved in a motor vehicle accident in 2004 the sum of \$5,000 **gross** for general damages and nothing for future medical and rehabilitation costs.

Justice Wilson concurs with Justice Milanetti reasons in *Sherman*¹⁶ that Bill 198 changed nothing with regard to the precedent value of previous cases decided under Bill 59. She further agreed that each case will be determined based on its own set of unique facts. Justice Wilson found that the Plaintiff was not credible, did not disclose pre-existing osteoarthritis, downplayed any pre-existing treatment she had received for physiotherapy and chiropractic care, and thoroughly dismissed the Plaintiff's expert as an advocate. Justice Wilson therefore held that the Plaintiff's injuries were not caused by the accident and therefore, did not meet the threshold of a serious, permanent impairment under Bill 198.

It is clear from these two decisions (*Sherman* and *Ali*), especially in the context of a Bill 198 motor vehicle accident case, that the credibility of the Plaintiff, his/her candor in explaining other potential causes for the pain being experienced, and the presentation of the medical expert remain paramount in determining whether the Plaintiff succeeds in the litigation.

- **Rizzi v. Mavros [2008] O.J. No.935 (Ont. C.A.)**

The Plaintiff suffered from chronic pain and fibromyalgia as a result of injuries sustained moving construction materials. The Court of Appeal held that the trial judge erred in instructing the jury to assess the Plaintiff's non-pecuniary damages on a scale using the upper limit or cap as a maximum. The trial judge ought to have explained that the cap

¹⁶*Sherman v. Guckelsberger, 2008 CanLii 68165 (ON S.C.)*

was not to be seen as the upper end of the range of awards, but rather, was established for policy reasons. The Court substituted its own award for general damages of \$80,000 from the jury's \$41,000, concluding that it could do so as the Plaintiff's credibility was not at issue.

CONCLUSION

Chronic pain and fibromyalgia claims present numerous challenges to lawyers, health practitioners and triers of fact, but mostly, to those who suffer from these debilitating conditions on a day-to-day basis. Although challenging and often complex, these cases provide lawyers on both sides with the opportunity to be creative and to keenly hone one's advocacy skills. As chronic pain and fibromyalgia continue to attract greater recognition and acceptance in both the legal and medical communities, it is clear that a heightened level of expertise on the part of lawyers and health practitioners will be required in order to achieve a successful outcome in the litigation of these cases.

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