



# No second string

## A physical therapist may be a very good option for testimony by a “treater” at trial

By **ELINOR LEARY**

*The Veen Firm, PC*

The surgeon’s fee schedule declared that he would charge \$50,000 to testify at trial. Fifty.

Yet how precisely would he help the jury understand the plaintiff’s harms? Would he be able to testify about her current pain levels? Would he render accurate opinions about her functional capacity? Did he know which activities of daily living she was now able to accomplish and which were still impossible for her? No. He would only be able to cover a tiny corner of the picture of her harms. He was very expensive paint.

Enter the physical therapist — the often overlooked yet highly qualified practitioner of the art and science of physical rehabilitation. She is the expert on the “physical or corrective treatment of any bodily or mental condition” of a patient. (Bus. & Prof. Code § 2620) By law, a physical therapist must evaluate the patient and devise a treatment plan. A physical therapist uses all manner of therapies as well as active, passive, and resistive exercise during treatment. Like an attending physician or surgeon, a physical therapist must document and maintain patient records.

Unlike a surgeon or specialist with limited face-to-face time, a physical therapist will often see a patient for at least one “12-pack” or 12 individual sessions that may last up to an hour. These visits are usually conducted in a condensed period of time, allowing the therapist to develop a good impression of the patient. This can also mean a personal connection that will be expressed to the jury during testimony.

### Certified and licensed

Before laying hands on a patient, a physical therapist is required to complete an accredited program, typically a masters or doctorate. (Bus. & Prof. Code § 2650) The program must include both academic course work and at least

18 weeks of a clinical internship in physical therapy. On the local level, for example, UCSF and SFSU offer a joint program for an entry-level Doctor of Physical Therapy (DPT) degree. This program lasts 3 years.

After completing three years of coursework and clinical work, candidates are required to take and pass the National Physical Therapy Examination (NPTE) Physical Therapist or Physical Therapist Assistant Examination and the California Law Examination (CLE), which relates to the practice of physical therapy in California.

DPT curricula are meant to train therapists to identify and address disability challenges, and to evaluate and plan to optimize patient function. Said another way, a physical therapist is specially trained and imminently qualified to identify disability challenges and come up with a long-term plan to help and fix those challenges — and can provide crucial input for your life care planner and, ultimately, your jury.

### Trained to assess

Like physicians, a physical therapist is trained to make an independent diagnosis. Once a PT makes a diagnosis, she must develop a plan of treatment goals. Treatment goals are a well-defined way to explore the space between your client’s then-current level of functioning and the desired level of functioning.

During treatment sessions, a physical therapist works one-on-one with your client, for up to an hour. Compared to the five or ten minutes spent with a primary care doctor or surgeon, this time provides a rich mix of assessment and treatment. A physical therapist knows how the patient’s impairments affect the ability to perform various tasks in daily living or work. S/he also applies her expertise to relieve pain and improve the body’s movement and function.

A physical therapist’s practice includes making written records, including reports that are intended for review by

attending physicians. So, PT reports often contain an abundance of useful information. Besides things like range of motion and strength, a physical therapist is often a detailed recorder of pain. Not only will a PT record general pain levels but she will also note when a patient’s pain fluctuates with certain activities, and whether a patient is exhibiting objective manifestations of pain, such as grimacing, wincing, or limping. A physical therapist will often note whether a patient is giving full effort in attempting various movements, which can help counter the predictable defense claim that your client is exaggerating his pain complaints.

After carefully and objectively measuring these important things, a physical therapist must establish a plan of care and goals. S/he may also provide referrals to a specialist if patient goals are not being met. Also, it is appropriate for a physical therapist to render a prognosis about a patient in her care.

Practically speaking, a physical therapist may be more accessible to discuss his or her opinions about your client, and may be more engaged in the process and in his or her role in the litigation than other health professionals. What is the value of testimony from a competent, qualified health professional who knows your client well and can speak from the heart? Priceless.



Leary

*Elinor Leary is the team leader of the Leary Trial Team at the Veen Firm, PC which handles complex cases that involve life-altering injuries or death. The Leary Trial Team has expertise with cases that involve construction and worksite injuries, defective products, dangerous property conditions, negligent security, car and truck collisions, and incidents that involve pedestrians and bicyclists. Ms. Leary has tried cases to verdict as well as reached large settlements in numerous other cases, including cases listed in The Recorder’s “Top Settlements” publications.*