

Traumatic-brain-injury experts 101

Ensuring your brain-injured client gets the medical treatment they need

By Belinda Theam

Your client walks into your office after being in a car crash, trip and fall, or premises-liability incident and hands you a five-page discharge summary from their emergency department visit. As they begin to ramble off their scattered thoughts about soreness and stiffness in various body parts, you scan through four of the five pages they just handed to you. The pages are seemingly non-serious discharge instructions about how to deal with a whiplash or neck pain at home. There are no MRI or CT scan results. No mention of a Glasgow Coma Scale dipping under 15.

Your client certainly does not look like they have suffered from a cranial fracture or subarachnoid hemorrhage. No sign of a burr hole surgery. No head bandages. No tubes. You then flip back to the first page and these words immediately jump at you: *Diagnosis: Concussion*.

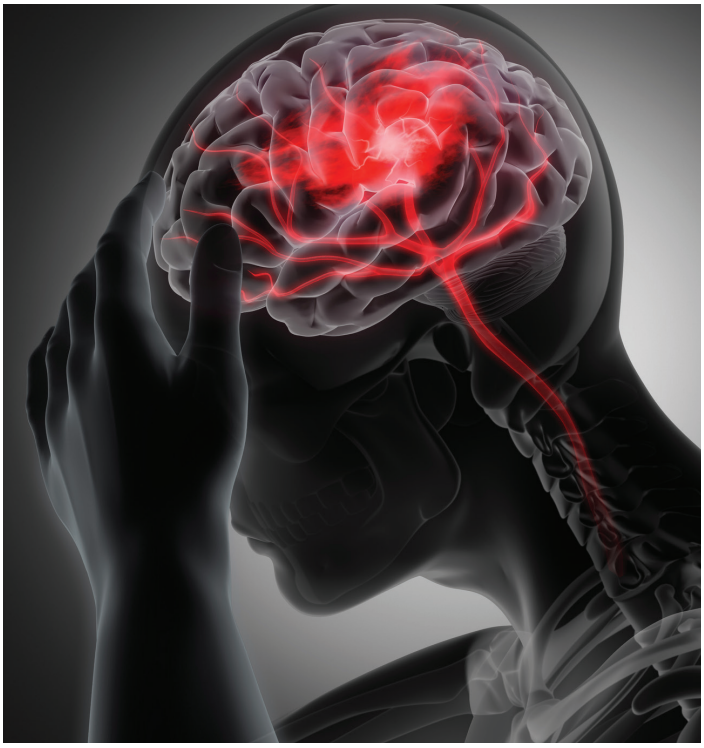
Could it be a brain injury? "Did you lose consciousness at the scene?" you ask your client to which they respond with a hesitant, upward inflection, "I don't think so?"

Traumatic brain injury

A traumatic brain injury, or TBI, is an injury that affects how the brain works. (cdc.gov/traumaticbraininjury/get_the_facts.html) A brain injury does not only occur when there is loss of consciousness, a cranial fracture, or some type of brain bleed. A brain injury may manifest itself in many combinations of symptoms. According to the Centers for Disease Control and Prevention (CDC), there are three main categories of traumatic brain injury: Mild TBI (MTBI) or concussion; Moderate TBI; and Severe TBI.

Mild TBI

The CDC has set forth the following four groups of symptoms for a mild traumatic brain injury (MTBI):
1. Physical: bothered by light or noise; dizziness or balance problems; feeling tired; headaches; nausea or vomiting; vision problems;
2. Thinking and remembering: attention or concentration problems; feeling slowed down; foggy or groggy; problems with short or long-term memory; trouble thinking clearly;
3. Social or emotional: anxiety or nervousness; irritability or easily angered; feeling more emotional; sadness; and
4. Sleep: sleeping less/more than usual; trouble falling asleep.



Moderate to severe TBI

Next are the CDC's definitions of symptoms for moderate and severe TBIs. In addition to the more obvious physical symptoms such as hematomas, hemorrhaging, skull fractures, moderate and severe TBIs are characterized by:
1. Thinking and learning: difficulty understanding and thinking clearly; trouble communicating and learning skills, problems concentrating; difficulty remembering information;
2. Motor skills, hearing, and vision: weakness in arms and legs; problems with coordination and balance; problems with hearing and vision; changes in sensory perception, such as touch;
3. Emotion/mood: Feeling more emotional than usual; nervousness or anxiety; feeling more angry or aggressive than usual; sadness, depression; and
4. Behavior: trouble controlling behavior; personality changes; more impulsive than usual. (cdc.gov/traumaticbraininjury/get_the_facts.html)

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Navigating your client's medical treatment

As an advocate for your client, you must not only identify that your client is suffering from a traumatic brain injury, you also need to ensure they seek the proper medical treatment. Delayed treatment may result in devastating long-term effects. There is no doubt that safeguarding your client's pathway to justice is your duty as an attorney at law, but dare I say, ensuring your client's pathway to health should be your duty as a good human being.

No two TBI cases are the same. Your severely or moderately brain-injured clients likely have already sought treatment at an emergency department or have completed some type of imaging. On the other hand, your client may not even have a TBI diagnosis at this point; they have sustained an injury, they know something is off about themselves, and are asking for your help. What do you do next?

Step one: Follow up with primary-care physician

Following up with a client's primary care physician (PCP) is key for continuity and information. We do not know what they were like before their injury aside from their vague, self-assessment to you. We do not know whether they suffered from headaches, anxiety or nervousness, already had low energy or visual disturbances, or had trouble sleeping prior to their injury.

Is that angry and crude client having an outburst across from you at your conference table really the same person he was before the subject injury – an emotionally available, happy-go-lucky man that the client's wife describes? Or was he already this way before the injury?

"Yes, I was in a car crash before this one. After I hit my head on the headrest of my seat, I saw a neurologist, had a brain MRI, did cognitive therapy, and my symptoms resolved two years ago," said no client ever! People already have difficulty remembering the date of their last doctor's visit. We cannot expect our clients to remember the details and dates of all of their prior injuries and treatment. It is our job to dig; do not make it a 21-Questions guessing game.

CACI instruction 3928, titled "Unusually Susceptible Plaintiff," sets forth the eggshell-plaintiff doctrine that says that a negligent defendant takes the victim as he or she finds the victim – even a victim that is as fragile or delicate as an eggshell.

"…even if Plaintiff was more susceptible to injury than a normally healthy person would have been, and even if a normally healthy person would not have suffered similar injury." (CACI No. 3928.)

CACI 3927, titled Aggravation of Preexisting Condition or Disability, provides that, although a plaintiff is not entitled to damages for a condition that the plaintiff had before the defendant's conduct occurred, a plaintiff can recover damages if a physical or emotional condition was made worse by the defendant's wrongful conduct.

"[Name of Plaintiff] is not entitled to damages for any physical or emotional condition that [he/she/nonbinary pronoun] had before [name of defendant]'s conduct occurred. However, if [name of plaintiff] had a physical or emotional condition that was made worse by [name of defendant]'s wrongful conduct, you must award damages that will reasonably and fairly compensate [him/her/nonbinary pronoun] for the effect on that condition." (CACI No. 3927)

You need all of your client's prior medical records to accurately and adequately prosecute their case. Period. Simply obtain all PCP records and read them. A PCP who has treated your client for the past five or ten years will likely know them far better than you. You could have a brain-injured client who innocently tells you that they have "never suffered from a brain injury before" yet their medical records could be flooded with repeat complaints of headaches, nausea, vision problems, or fogginess and grogginess.

If your client is not under the care of a PCP, find one or seek treatment from a medical doctor who can examine and assess your client's TBI.

Step two: If ongoing symptoms, report for appropriate referrals

If your client continues to suffer from ongoing symptoms, they should report their symptoms to their doctor so they can be referred to the appropriate specialists. A visit to their PCP alone or just undergoing conservative treatment may not be enough for treating a brain injury. Depending on your client's symptoms, your client may be referred to the following specialists: neurologist; neuropsychologist; radiologist; neuro-optometrist; audiologist; cognitive therapist; psychiatrist; psychologist/therapist; or vision therapist.

Neurology

A neurologist is a medical doctor who specializes in treating the brain, spinal cord, and nerves. Much like a quarterback in a football game who calls the signals and directs the offensive play of the team, a neurologist leads the patient's treatment plan, calls the patient's diagnoses, and directs the referrals to other specialists of the patient's medical team. To assist in diagnosing a TBI, a neurologist may order a brain/head MRI. A neurologist will interpret the MRI images in addition to relying on a neuroradiologist's interpretations. Thus, be sure your client's neurologist obtains the actual MRI images and not just the reports.

Neuroradiology

A neuroradiologist is a medical doctor who specializes in radiology and specifically, specializes in interpreting images of the brain, spinal cord, and the central nervous system. A neuroradiologist may interpret MRI images for any signs of a TBI such as bleeding, swelling, inflammation, white matter, atrophy, or any other abnormalities.

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Be aware of the type of MRI scanner that your client's imaging facility uses. The MRI ordered by the neurologist may be a 3 Tesla (3T) rather than a 1.5T. 1.5 Teslas are the traditional scanners while 3Ts are exactly as they sound – twice the strength than that of 1.5Ts.

The MRI may also include additional ways to view the images such as diffusion-tensor imaging (DTI) and susceptibility weighted imaging (SWI). DTI detects white matter fibers that connect different parts of the brain. SWI is a technique that looks into various compounds such as blood, iron, and diamagnetic calcium. Help your client with reading the prescription closely and making sure the facility has the correct equipment because doctors may specifically order a 3T MRI or these techniques.

A neuroradiologist may also be key in prosecuting your client's case by interpreting and comparing multiple images. Say you have a client that was unfortunate enough to be a part of two car crashes. A neuroradiologist would be able to compare an MRI taken after the first crash but before the second crash with an MRI taken after the second crash to see if your client's brain injury has worsened, and if so, how.

Neuropsychology

A neuropsychologist is a psychologist who specializes in understanding the relationship between the brain and one's behavior. Your brain-injured client may have a neurobehavioral disorder or issues with cognitive processes. A neuropsychologist may review your client's medical records, diagnostic imaging, and administer a neuropsychological examination on your client.

The examination typically lasts all day and consists of various tests such as a clinical interview, The Dot Counting Test, Green's Word Memory Test, Finger Tapping Test, or Grooved Pegboard. A neuropsychologist comprehensively gathers your client's self-reported goals, background information, current complaints, cognitive symptoms, emotional symptoms, developmental and health histories, psychosocial information, educational background, and vocational history. The test results are typically provided in a report and shared with the client's neurologist and medical team.

Defense neuropsychological examination

If and when your client's brain-injury case goes into litigation, chances are the defense will purportedly notice an "Independent Medical Examination" by their neuropsychologist under section 2032.220 of the Code of Civil Procedure. Know your law. There is no mention of the word "independent" in the code, nor would it be accurate to call it so. Section 2032.220 permits a defendant to demand one physical examination of the plaintiff in any case in which a plaintiff is seeking recovery for personal injuries, if certain conditions are met. However, a mental examination of a plaintiff requires a stipulation by the parties or a court order. (Code Civ. Proc., § 2032.310 et seq.)

Neuro-optometry and vision therapy

A neuro-optometrist is an eye-care professional who specializes in the diagnoses, treatment, and rehabilitation of neurological conditions adversely affecting the visual system. Blurred vision, seeing double, dizziness and/or balance issues may warrant this type of care. A neuro-optometrist may also order vision therapy to try to rehabilitate and regain one's eyesight.

Audiology

An audiologist is a professional who diagnoses and treats hearing and balance problems such as hearing loss or tinnitus. Derived from Latin, tinnitus means "to tinkle, or to ring like a bell." Tinnitus symptoms may include a ringing or buzzing noise in one or both ears. These noises may come and go or stay constant. Tinnitus frequently affects brain-injured clients and is often concurrent with headaches. An audiologist may recommend audiogram examinations to monitor hearing sensitivity and any changes in hearing. An audiologist may also recommend binaural amplification devices for hearing loss and to treat tinnitus.

Psychiatry

A psychiatrist is a medical doctor who specializes in mental health. As a result of trauma, one's brain processes may be disturbed. Your brain-injured client may develop complex behavioral symptoms such as depression, psychosis or post-traumatic stress disorder (PTSD). A psychiatrist can diagnose these conditions, prescribe medications, and if needed, recommend cognitive therapy.

Cognitive therapy

Cognitive therapy can be provided by a psychologist, counselor, therapist, or a mental health social worker. These types of experts are not medical doctors but are qualified to provide mental health support to your brain-injured client. They are trained to help people view their own thoughts and work through any negative struggles they may be experiencing.

Maybe your brain-injured client was an accomplished executive and was used to working a fast-paced schedule prior to her brain injury, but now is struggling to remember her staff's names or times of standard weekly meetings. Perhaps she has become depressed and negative towards herself despite typically having a sunny disposition in the past. Cognitive therapy aims to reduce these symptoms and help the brain-injured client cope with their injury.

Step three: Don't forget other experts

A TBI can be caused by a bump or jolt to the head. A TBI can also be caused by a hit to the body that causes the head and brain to move quickly back and forth and strike the inside of the skull, which is known as a coup-contrecoup injury.

In addition to your medical experts who will help explain your client's injuries

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to a jury, don't forget other experts you may need such as an accident reconstructionist, biomechanical engineer, vocational rehabilitation specialist, or a certified life care planner. Family members, friends, and co-workers who knew your client before and after the injury are also paramount. As no two TBI injuries are the same, no two cases are the same. Which experts you will need will literally be determined on a case-by-case basis.

Conclusion

Most traumatic brain injuries are labeled "Mild TBIs," because they are not immediately life-threatening. In reality, "Mild TBI" is an oxymoron – how can even the lightest traumatic brain injury be considered mild?! Know your client. Know the law. Know your experts. Your client's case does not last forever, but effects from a brain injury can.

Belinda Theam is the managing attorney of Nguyen Lawyers, ALC, *a personal injury trial law firm in Long Beach. She currently serves as a member of the CAALA Board of Governors and is a Board Member of Los Angeles Trial Lawyer Charities.*


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