

Bridging the Damages Silos Part II: The Evidence Mounts

*By Thomas G. Sinas
Sinus Dramis Law Firm (Grand Rapids)*

INTRODUCTION

MAJ Magazine once featured an article by this author entitled, “*Bridging the Damages Silos: Understanding the Serious Health Risks Caused by Changes in Lifestyle.*” The inspiration for this article was a series of recent medical studies that showed the long-term health effects of various lifestyle changes — changes that frequently follow a serious injury. The article discussed, for example, the epidemiological relationship between physical inactivity or diminished social interaction and the increased risk of serious conditions like cardiovascular disease.

The goal of the article was to help those of us who represent injured people to think a bit differently about the way that we present our damages evidence. It was meant to brainstorm a new way to articulate the effects of our clients’ lifestyle changes that follow a serious injury. So instead of simply thinking about those lifestyle changes alone, we should consider what those lifestyle changes mean for our clients’ long-term health. For example, the article was meant to help us consider that there may be more to the story of a tibial plateau fracture than just the surgery required and the increased risk of arthritis. The physical inactivity that follows presents a series of other health risks that should be considered as well.

This author would like to thank those MAJ members who reached out after the first “*Silos*” article was published. What followed was a series of interesting discussions over email and in person about this concept and how to use it as an effective tool for our clients.

But we weren’t the only ones discussing this issue recently. Rather, the last few months have seen the publication of other milestone medical studies that show even more long-term health risks from lifestyle changes that often follow a serious injury. Simply put, the medical literature shows that our clients — and also their loved ones — face an even greater uphill battle than we ever thought. The purpose of this follow-up article is to summarize some of the newest research.

THE AMERICAN HEART ASSOCIATION'S 2015 STUDY LINKING DEPRESSION TO STROKE

In May 2015, the Journal of the American Heart Association published a milestone study entitled, "*Changes in Depressive Symptoms and Incidence of First Stroke Among Middle-Aged and Older US Adults.*"¹ The study, which was reported extensively in the media, examined the relationship between depression and stroke.

The authors noted at the outset of the study that medical science has long known that the diagnosis of depression predicted an elevated risk of stroke. The unanswered question, however, was whether the elevated risk of stroke remained even after the depressive symptoms resolved. Otherwise stated, the study asked: does the existence of long-term depression mean that a person faces a permanent increased of stroke?

The results were stunning and frightening. *The study found that patients who experience long-term depression doubled their risk of stroke. Moreover, the study found that this doubled risk of stroke remained even if the depression was successfully treated. As the authors stated:*

"In this nationally representative cohort, we found that participants with persistently elevated depressive symptoms over a 4-year exposure period experienced double the hazard of incident stroke in the 2-year period after exposure assessment compared with participants with consistently low depressive symptoms. Stroke risk remained elevated even among participants whose depressive symptoms remitted over the exposure period, and differences between the [hazard ratio] of participants with remitted depressive symptoms and those with persistently high depressive symptoms were not statistically significant."

In addition, this doubled increased risk of stroke affects everyone equally. That is, the study found that the effects of depression did not vary across race, and that there was not a statistically significant difference between men and women. Simply put, the study concluded that any person who experiences long-term depression, no matter how successfully the depression is treated, has forever doubled their risk of stroke.

¹ Paola Gilsanz et al., *Changes in Depressive Symptoms and Incidence of First Stroke Among Middle-Aged and Older US Adults.*, 4 J. Am. Heart Assoc. 5 (May 2015), available at <http://jaha.ahajournals.org/content/4/5/e001923.full>

COLLATERAL HEALTH DAMAGE TO THE CLIENT’S LOVED ONES: THE 2015 LANCET STUDY ON INCREASED RISK OF STROKE FROM WORKING LONG HOURS

Attorneys representing injured people know that the lifestyle effect of a significant injury is not limited to the injured person alone. We know that the injured person’s spouse, children, and extended family also experience their own lifestyle changes.

The effect is perhaps most clearly shown in the working habits of an injured person’s spouse. These days, a majority of American households have two working spouses. Most families in our country have come to depend on income from two people in order to make ends meet. Yet we also know that serious injury most often affects a person’s ability to work. It is unfortunately all too common to see an injured person suffer a complete loss or substantial diminishment of their return to work. Yet under our no-fault system, an auto collision victim is entitled to collect only three years of lost wages from their no-fault insurer.²

What happens when a family loses the income of one working spouse? Most often, the other spouse is required to work more. It’s simple arithmetic. If the family budget needed both salaries before the injury, then someone has to make up for that lost income. And that person is most often the uninjured spouse. This much we know from experience.

What few of us know or consider, however, is the health effect on the uninjured spouse that results from having to work more. Does working more than 40 hours per week subject one to increased risk of serious disease? This was the question in the recent study published in *The Lancet*, “*Long working hours and risk of coronary heart disease and stroke: a systematic review and meta-analysis of published and unpublished data for 603,838 individuals.*”³

Again, the results were startling. The study found that employees who work long hours have a higher risk of stroke than those who work standard hours. And the risk of stroke increases the more hours that a person works. *For those who work more than 55 hours per week, the risk of stroke was 1-3 times greater than that for the normal population.* This risk affected all races and gender equally. As the authors stated:

“Our findings show that individuals who work 55 h or more per week have a 1.3-times higher risk of incident stroke than those working standard hours. There was no evidence of between-study heterogeneity, reverse causation bias, or confounding. Furthermore, the association did not vary between

² MCL 500.3107(1)(c).

³ Mika Kivimäki, et. al, “*Long working hours and risk of coronary heart disease and stroke: a systematic review and meta-analysis of published and unpublished data for 603 838 individuals,*” 386 *The Lancet* 10005 (October 2015), available at [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(15\)60295-1/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(15)60295-1/abstract).

men and women or by geographical region, and was independent of the method of stroke ascertainment, suggesting that the finding is robust.”

PUTTING IT ALL TOGETHER

So let's put the medical literature summarized above and in the earlier *Silos* article together in the context of a true-to-life hypothetical. Suppose that you represent a young, married mother who suffered serious orthopedic injuries in an auto collision. Before her injury, she worked fulltime, regularly exercised, and had a healthy social network of friends and family. Her orthopedic injuries have prevented her from returning to work, made it impossible to exercise and, because she can't get out, caused her to become isolated from her social network. She then becomes depressed. Suppose further that her husband must now work 60 hours/week to pay the bills.

According to the medical literature, the auto collision caused the following changes to the wife and husband:

- The wife's lack of physical activity has rendered her the health equivalent of an obese person.⁴
- The wife's lack of social relationships has turned her into the health equivalent of a smoker.⁵
- The wife's depression has doubled her risk of stroke.⁶
- The husband's long hours has tripled his risk for stroke.⁷

In sum, simply in terms of lifestyle changes alone, this injury has turned an otherwise healthy couple into the following: a wife who is now the health equivalent of an obese smoker with a two-fold increased risk of stroke, and a husband with a tripled risk of stroke.

⁴ See I-Min Lee *et al.*, *The Impact of Physical Inactivity on the World's Major Non-Communicable Diseases*, 380 *Lancet* 219 (July 2012), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3645500/>.

⁵ See Julianne Holt-Lunstand, "Social Relationships and Mortality Risk: A Meta-Analytic Review," 7 *PLoS Medicine* (July 2010), available at: <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1000316>.

⁶ See note 1, *supra*.

⁷ See note 3, *supra*.

IMPLICATIONS FOR NO-FAULT PIP CASES

This medical literature does not apply to only liability claims. It also helps our clients' treating medical providers establish that the services that they provide are "*reasonably necessary*" within the meaning of MCL 500.3107(1)(a).

Consider, for example, exercise therapy. The earlier *Silos* article summarized the medical research establishing that physical inactivity substantially increases the risk of developing serious conditions like diabetes.⁸ Suppose that a patient loses her ability to be independently physically active as a result of an auto collision injury. Don't cases like *Scott v. State Farm Mut. Ins. Co.*, 278 Mich. App. 578 (2008), hold that the no-fault insurer is obligated to pay for the diabetes treatment? Certainly, it is more cost-effective to pay for exercise therapy than lifelong diabetes treatment.

Our courts have told us that we must look closely at the words of the statute. Only those services that fall within the ambit of "*care, recovery, and rehabilitation*"⁹ are compensable. Yet our courts have also given us this definition: "*Expenses for 'recovery' or 'rehabilitation' are costs expended in order to bring an insured to a condition of health or ability sufficient to resume his preinjury life.*"¹⁰ Suppose a patient's pre-accident life was full of physical activity and, by definition, free of the serious health risks of physical inactivity. Shouldn't the no-fault insurer pay for the services that, as much as possible, enable the physical activity needed to bring the patient's health profile back to her pre-injury state?

CONCLUSION

We are seeing only the tip of the iceberg. To date, modern medicine has only begun to understand the long-term health effects of lifestyle changes or chronic conditions like depression. Yet the findings from recent studies all share one common conclusion: the human body is more interconnected than we ever thought, and a change in one aspect of a person's lifestyle has ripple effects throughout the body.

This recent medical literature is important for all who represent injured people. For one, we need to educate adjusters and defense counsel about the long-term health effects of lifestyle changes that they may otherwise minimize. And we must remember our jury pools. This medical evidence is ripe for a jury of older adults who may be cynical about the usual "*pain and suffering*" claim. And it's likely to pique the interest of the millennial generation who, as researchers tell us, want data-driven justifications for their decisions. The literature allows us to teach all members of our potential juries this simple syllogism:

⁸ See note 4, *supra*.

⁹ MCL 500.3107(1)(a)

¹⁰ *Griffith v State Farm Mut. Ins. Co.*, 472 Mich. 521 (2005).

serious injuries cause lifestyle changes, and those lifestyle changes then cause significant damage to a person's long-term health and the health of their loved ones.