



CHOICE MEDICAL CENTERS CHOICE WORDS

Soft Tissue Injury Hard On Earnings

by A.M. Gamboa, Jr., PhD

The 2000 decennial census provides, for the first time, both earning data and employment data on persons with a physical disability. The Census Bureau identifies those persons who have difficulty with lifting, carrying, bending, twisting or climbing as having a physical disability. Such persons when employed year round full time earn less than persons without a physical disability. In addition, persons with a physical disability experience significantly lower levels of employment than persons without a disability. The differences exist for both men and women at all levels of educational attainment.

Employment levels in combination with probabilities of life serve as the building blocks of a worklife expectancy; therefore, lower employment levels result in a reduction of worklife expectancy for persons with a physical disability. Lower earnings when employed in combination with a reduction in worklife expectancy produce a lifetime loss of expected earnings for persons with a physical disability.

Chronic soft tissue injury often results in permanent exertional restrictions that are comparable to the Census Bureau's definitions of physical disability. Therefore, use of the Census data provides an excellent source to help define the lifetime loss of expected earnings for persons who wrongfully sustain a soft tissue injury. The wrongfully injured individual who sustains a chronic soft tissue injury resulting in permanent

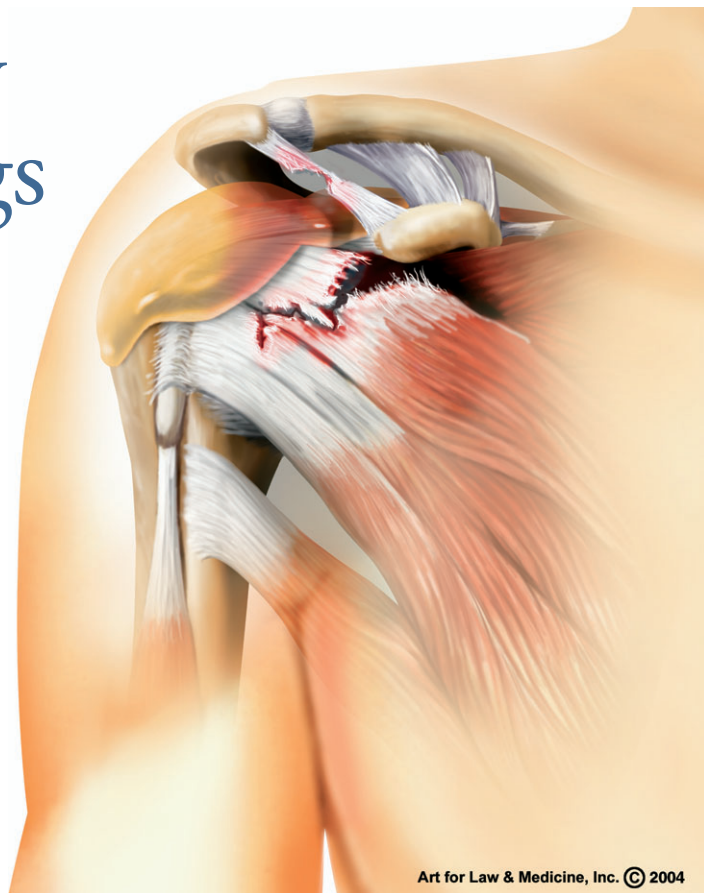
physical restriction will likely experience a lifetime loss of expected earnings. The degree of loss requires a vocational economic assessment that considers the unique qualities and attributes of the individual who sustained injury.

Typically, the individual's age, education, previous work history, previous earning history and transferable skills are considered in combination with the type of exertional restrictions that exists. An appropriate healthcare provider establishes the predicate off of which the assessment is conducted. The predicate must include permanency in terms of exertional restrictions that are contraindicated for the person sustaining soft tissue injury.

Once established, the vocational economic assessment provides an analysis of the lifetime loss of earning capacity as a result of physical disability through use of statistical data through use of statistical data. Earnings data and worklife expectancy data are specific to the individual in terms of age, gender, level of education and disability vs non disability status. Analysis examines lifetime expected earnings from the perspective of pre- and post-injury or without and with a physical disability the difference between the two is the lifetime loss.

Case Study

By way of example, let us assume that a 25-year old male with a 11th grade education sustained a soft tissue injury in a vehicular accident at



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What is soft tissue? Soft tissues are non-osseous or not boney. Tendon and ligament ruptures, as pictured above, are typical soft tissue injury. Other kinds of soft tissues that are susceptible to mechanical injury are nerves, blood vessels, epidermis, intervertebral discs, and the connective tissues that compose joints.

age 22. He is restricted to lifting in excess of 30 pounds and is unable to bend, stoop, crouch or crawl. His work history includes heavy manual labor and subsequent to injury he was unable to return to such work. During the three years after injury, he worked as a telemarketer for three weeks, a greeter at Wal-Mart for ten months and a delivery person for a local pizza chain for two months. He is presently unemployed.

Table 1 defines each of the five steps in the vocational economic assessment. The present value of the lifetime loss of expected earnings is \$483,614, stated in terms of present value. It is important to note that a


proxy is used to measure both pre and post-injury earning capacity because of the individual's age. It is common to find both low levels of earnings and low levels of employment for younger workers with less than a high school diploma. Therefore, lifetime expected earnings and the reduction in earnings as a result of a physical disability are best defined through the use of proxies both pre and post-injury. Both pre and post -injury earning capacity figures are greater than the highest actual earnings obtained in any one year which was \$12,000.

The March Supplement of the Current Population Survey defines

Soft Tissue Injury cont.

disability in terms of work disability as opposed to physical disability. Persons identified as having limitations in terms of the amount or kind of work they can perform in a job because of physical or mental impairment are defined as having a work disability. Not all persons with a physical disability are work disabled. An 11th grade dispatcher with the limitations defined as a result of a soft tissue injury would likely not identify himself as having a work disability even though the definition of physical disability is met.

Table 2 examines lifetime loss of expected earnings using a data set specific to work disability versus no work disability. The Census Bureau began collecting both earning data and employment data on persons with a work disability in 1982 and table 2 is specific to the March Supplement of the Current Population Survey which is work disability specific as opposed to impairment specific. An examination of the table reveals a lifetime loss of expected earnings of \$449,896, stated in terms of present value.

It is striking to note the similarities between the two different definitions of disability emanating from two distinctly different surveys. The lifetime loss of expected earnings is in a range of \$449,896 to \$483,614, stated in terms of present value. The loss is significant. It demonstrates that a soft tissue injury resulting in permanent exertional restrictions is hard on earnings. 

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Table 1: Decennial Census Physical Disability

| | Pre-Injury | Post-Injury | Difference |
|---------------------|-------------|-------------|------------|
| Earning Capacity | \$36,767 | \$35,506 | |
| Fringe Benefit Rate | 23% | 23% | |
| Worklife Expectancy | 24.6 years | 14.4 years | |
| Totals | \$1,112,496 | \$628,882 | \$483,614 |

Table 2: CPS Work Disability

| | Pre-Injury | Post-Injury | Difference |
|---------------------|-------------|-------------|------------|
| Earning Capacity | \$31,521 | \$29,016 | |
| Fringe Benefit Rate | 23% | 23% | |
| Worklife Expectancy | 32.5 years | 22.7 years | |
| Totals | \$1,260,052 | \$810,156 | \$449,896 |



The Advantages of Single-Source Care in Protecting Patients' Rights



The injured patient who is in pain has a great need for medical care to be administered with a minimum degree of difficulty. Unfortunately today our increasingly complex medical system places serious additional stress on a patient who is struggling to heal and to overcome the physical and psychological challenges of their injury. For professionals who

must protect a patient's rights, single-source care centers present a viable option.

In this model, one center meets the patient's diagnostic and therapeutic needs in a single, convenient facility. There is one set of charts and a complete, comprehensive treatment program addressing all aspects of the patient's case. In the best of these centers, a multidisciplinary

approach combines physical medicine and rehabilitation, orthopedic care, neurology, chiropractic care, and licensed massage therapy in a single facility, along with complete in-house diagnostic and testing capabilities.

In addition to convenience and therapeutic benefits, the single-source care delivery model also offers significant advantages in helping patients recover damages and compensation. The staff takes particular care to produce documentation that is complete, clear and credible – typically reporting back to patients and their legal advocates within 24 to 48 hours.

The best of these facilities recognize two primary responsibilities. The foremost responsibility is to relieve a patient's pain and address the underlying causes. But another

important responsibility is to fully and accurately document patients' cases so that they can be compensated appropriately.

Another hallmark of a facility that can address these responsibilities well is that its physicians be available for depositions and expert witness testimony whenever a patient's legal council deems necessary. On those infrequent occasions when an insurer's medical examination findings contravene the medical center's recommendations, the best centers will respond immediately, providing additional documentation and, if necessary, prescribing additional testing, often within hours. This prompt response is important in order to verify and document any changes in the patient's condition.

Centers that maintain complete in-house diagnostic capabilities

Voters to Decide Three Medical Malpractice Questions

The long-running debate over medical malpractice issues will be placed in the hands of Florida voters this fall. Of the eight proposed constitutional amendments that will appear on the November ballot, three deal with medical-legal issues.

The amendments resulted from widespread dissatisfaction among both physicians and lawyers after the Florida Legislature passed a medical malpractice compromise during a special session in 2003. The compromise placed a sliding scale cap on medical malpractice cases, angering lawyers and patients' rights advocates, but also made other changes to the tort system that were opposed by doctors groups.

Both sides decided to take their case to the voters, resulting in three proposed constitutional amendments that will appear on the November ballot:

■ **Amendment 3 – The Medical Liability Claimant's Compensation Amendment:** This amendment is sponsored by the Florida Medical Association's political action group, Citizens for a Fair Share. The amendment would provide that a claimant in a medical liability case who enters into a contingency fee agreement with an attorney would be entitled to at least 70 percent of the first \$250,000 in damages he or she may receive, and at least 90% of any damages in excess of \$250,000. The amendment makes provisions to exclude "reasonable and customary costs," but its clear intent is to place a cap on the contingency fees lawyers may receive.


■ **Amendment 7 – Patients' Right to Know About Adverse Medical Incidents:** This amendment is one of two sponsored by the Association of Florida Trial Lawyers' PAC known as Floridians for Patient Protection. Current Florida law restricts the information that is available to patients regarding

investigations into adverse medical incidents, such as medical malpractice. The amendment would give patients the right to review the records of adverse medical incidents involving health care facilities or providers, including those which could cause injury or death.

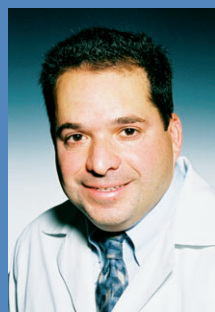
■ **Amendment 8 – Public Protection from Repeated Medical Malpractice:** This is the other AFTL-sponsored amendment, sometimes called the "three strikes and you're out" amendment. It would prohibit medical doctors who have been found to have committed three or more incidents of medical malpractice from being licensed to practice medicine in Florida.

Another proposed amendment sponsored by the AFTL fell just short of the required 488,722 signatures needed to appear on this year's ballot. That amendment would have required physicians to charge the same fee schedule for all patients, regardless of their insurance, Medicare or Medicaid status. Doctors argued its effect would have been to force many of them to stop accepting Medicare and Medicaid patients, since they would have been required to offer the same reduced fees to all their other patients.

Even after the November election, Florida lawyers, physicians and patients can be certain that the debate over medical malpractice and related issues will continue, as rising malpractice premiums cause doctors in some critically needed specialties to forego malpractice insurance or simply suspend their practices altogether.

For these reasons, regardless of the outcome of this year's three constitutional amendments, many observers expect the 2005 session of the Legislature may see renewed debate on medical malpractice issues, especially since the 2003 compromise left both sides so dissatisfied. 

MEET ERIC L. KERSTMAN, M.D., MEDICAL DIRECTOR



Eric L. Kerstman, M.D.,
Medical Director, Choice Medical Centers
Certification: Board Certified, Physical Medicine and Rehabilitation, Board Certified in Pain Management
Specialty expertise: Outpatient Acute/Subacute Patient Rehabilitation, Pain Management, EMG Studies
Advanced Training: Internal Medicine residency, Albert Einstein College of Medicine.
Honors: Cum Laude, Union college, Schenectady, NY

Dr. Kerstman is a family man and driven by his dedication to patients' recovery. He's been a Florida resident since graduating in 1995. Dr. Kerstman notes: "I find it both personally and professionally rewarding to help patients who are dealing with a wide variety of functional impairments."

As medical director of Choice Medical Centers, Dr. Eric Kerstman is responsible for all aspects of the medical care provided to the centers' patients. It is a responsibility for which he is particularly well qualified, since he is board certified in two specialties: physical medicine and rehabilitation (physiatry), and pain medicine.


"Pain management is a key concern for many of our patients," Dr. Kerstman noted. "In addition to suffering functional and structural impairments, many of them are also battling with residual pain. That is why our multi-disciplinary approach is so important – it enables us to apply the combination of therapies that deals most effectively with both their functional issues and their pain."

As a medical doctor, Dr. Kerstman can administer a variety of diagnostic and therapeutic procedures that are not available in other centers who do not have an M.D. on staff. These include needle EMG studies which can only be performed by a physician, usually a neurologist or a physiatrist such as Dr. Kerstman.

"Having access to a variety of therapies in a single center is important to our patients and to those who represent them," said Dr. Kerstman. "The ability to draw upon various treatment modalities not only enhances the healing process, it also simplifies the process for everyone concerned, since we are able to prescribe the most effective combination of treatment approaches including chiropractic care, orthopedics and physical medicine."

Dr. Kerstman makes it a point to see virtually every Choice Medical Centers patient personally either during the initial visit or soon thereafter. This commitment to hands-on care reflects his original motivation in choosing physical medicine as a specialty.


"I find it both personally and professionally rewarding to help patients who are dealing with a wide variety of functional impairments," he added. The center's patients seek relief for a range of problems including trauma, spinal cord injuries, strokes and other neurological and orthopedic conditions.

"Our multi-specialty approach allows us to prescribe the most effective patient care alternatives including physical therapy, medication and assistive devices, while also helping those who represent injured patients to thoroughly document both diagnosis and treatment," he added. 

Patients' Rights cont.

offer yet another advantage: immediate appointments are typically available for accident victims. All facilities ought to be reserved exclusively for the use of patients, so there are no long waits for specialized evaluations such as MRIs or deep-needle EMGs. The center ought as well to provide free transportation for patients from most areas of South Florida, and qualified staff members should be on call 24 hours a day, seven days a week.

The staff at a top center coordinates all insurance benefits and medical records. Patients ought not be required to pay for treatment in advance; rather, the company should wait for the responsible insurance to pay, and in the case of disputed claims, accept attorneys' letters of protection as guarantee of payment.

This single-source approach is increasingly popular – not only among patients, but also among those who protect patients' rights. 



Choice Medical Centers

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