

# Thomson Rogers Webinar Series

Friday, March 25, 2021

## Session 13:

**Best Practices for Health Care Providers in Support of Arbitrations and Mediations**

Presented by:

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**LAWYERS**



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# ACCIDENT BENEFITS

# Accident Benefits

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- Initial and ongoing discussions with counsel.
- Initial assessments include:
  - COVID deterioration;
  - meaningful needs;
  - anticipation for future needs; and
  - worst case scenario.

# Accident Benefits

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- Progress reports:
  - not a cut & paste of previous reports;
  - highlight new or different issues;
  - tell the client's stories;
  - quote the client when available; and
  - discuss plan with lawyer at the offset.
- Collateral information.
- Review and cohesion with other reports
  - E.g., “I agree with the recommendations of this other health care provider because...”.
- Recommendations for other treatment if required. Be creative and specific to the client.  
E.g., invisicare.

# Accident Benefits

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**FOCUS ON FUNCTION:** “significantly impedes”.

- How does psychological impact physical?
- Remind clients to keep: invoices and journals, etc. document struggles and out-of-pocket expenses. Ask them if they need help organizing for the litigation process from the lens of your expertise.
- Assume you will testify at hearing. If so, stand behind your recommendations.
- Change recommendations as required.

# Accident Benefits

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**CUEING AND PROMPTING:** pain related, cognitively related.

- How would they handle an emergency? E.g., broken leg vs. alternative thinking.
- “Any difference in their life that is subject accident related is not their fault and needs to be fixed”. E.g., stairs – no recommendation, new handle, chair lift, new home.
- Ask the reasonableness and necessity of the request for treatment.
  - Physio – what do they need and why?
  - “Why does the client need me specifically?”
  - Are you better than a provider and/or assistive device?

# Accident Benefits

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## **ROLE OF TEAM MEETING/CASE MANAGEMENT:**

- What do your clinical notes look like: less is more?
- Problems with lapse of treatment.
- Up-to-date CV.
- Communication – schedule call with lawyer if concerned about something.
- Consistency in AB forms. OCF-18s – what have we said in the past. Send with report or comment in the back (Report is better).

# Accident Benefits

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- WHAT IS THE ISSUE ON LAT: E.g., Attendant Care or CAT.
- FOR CAT: GOS-E or Situational done by the treating O.T. Use your history with the person. Have lawyer explain the needs of the test/assessment.
- Warn lawyer of pending denials and ask for help.



# TORT

# TORT

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## As treatment provider:

- Observations of the client “looks sad”.
- Client management issues:
  - Avoid legal advice or comparing lawyers or giving timelines and expectations. Provide support in the area of your expertise.
- Pre- and Post- accident narrative reports (if applicable).
- Update/progress reporting.
- Continued treatment post AB settlement, pre-mediation.
- Causation/Connection to accident, whether exacerbation, increase and decreased, or resolved.
- Examples of longevity of symptoms and projection of future needs.

# TORT

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## As treatment provider:

- Prognosis and recommendations: Does the client need me forever? What does the treatment look like in years to come?
- Variables – can be ok but may still need issues in the future.
- Call lawyer if unclear about what is required.
- Team meetings, etc.
- Degrees of function: as specific as possible.
- Stories to personalize the client. How can an insurer see this person as more than a file.
- Correlate with other treatment providers.
- Impact of COVID-19.
- Avoid duplication of treatment but confirm duplication of recommendations.

# TORT

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## Transition from treatment to Expert:

- File review and document summary.
- Focus on OT/PSW/RSW and **collateral**.
- Know your boundaries of expertise.
- Cueing and prompting.
- Role of the expert: acknowledgement and understanding of the legal tests.
- Answer specific questions.
- Clear on timelines.
- Agree with recommendations of other experts when applicable. E.g., Future Care Plan.
- Rebuttals should be expected so be ready when initially reporting.
- Assume you will be called to trial so you are in a position to support your opinion .
- Degrees of function: For E.g., income – “may be able to work a little bit or with support of RSW” as opposed to “can never work”.

# QUESTIONS

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