

A Chiropractic Dream Team; Showing the Public the Power of Chiropractic

By Allen Fraley, DC and David Marcarian, MA

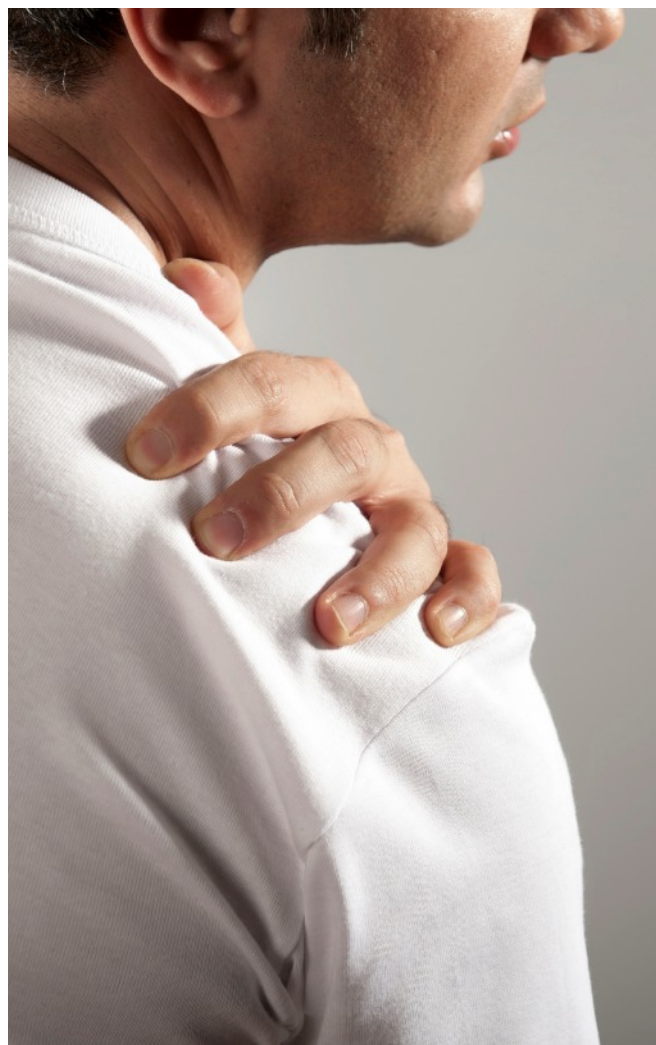
Today's healthcare environment is changing rapidly - and not necessarily to your benefit. Profitable practice methods, revenue streams, and reimbursements have become moving targets, making "adapt or die" the mantra of the day for chiropractors.

DCs in search of business autonomy have also discovered that the "cash" practice isn't all cash, after all. And personal injury cases—solid opportunities for practice growth—can be intimidating. But some recent landmark litigation has dramatically changed the personal injury arena for chiropractors. The "legal game" of PI isn't what it used to be, thanks to the dedicated efforts of a chiropractic "Dream Team" that fought the courtroom battles—and rewrote the rules.

Personal injury cases are a "love it or leave it" experience for many chiropractors. High on the list of objections is losing to the opposing side's "medical experts," whose opinions have historically held more weight in court. "Although chiropractors are considered as equal to a variety of medical professionals under Medicare law, DCs have not been given equal status in the courtroom," says Jason O. Jaeger, DC, fCBP, Administrative Director, Aliante Integrated Physical Medicine, Las Vegas, NV, and a Dream Team member. "This inequality has dissuaded many doctors from pursuing these cases and, ultimately, doing what is best for their patients," says Dr. Jaeger.

But, it's the facts that matter, says John K. Maltby, DC, FICA, FICAC(H), practicing in Blythe, CA. "When expert testimony relies primarily on the status of the expert, and is not based on solid data, it is purely opinion and nothing more," says Dr. Maltby. "Data is indisputable and it easily wins over the status or rank of those offering medical opinions."

Dr. Maltby and the other Dream Team members have been winning PI cases with new technology that provides indisputable data—ending the contradiction that arises when injured patients show normal range of motion and still report pain and other symptoms. And it was Dr. Maltby's presentation of such data that changed the course of litigation for Sue Smith,



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DC (not her real name), a chiropractic patient severely injured in a hit-and-run MVA. Her numerous injuries included rib fractures, cervical and lumbar disc herniations, cervical ligamentous injuries, torn meniscus in the knee, airbag deployment burns, various thoracic injuries, and cervical whiplash. She benefited from chiropractic care, but the extent of her injuries left her with ongoing pain.

Two subsequent IME exams ordered by her auto insurer supported her injuries, putting the case on-track for an expected settlement. Instead, the insurance company hired a third prominent medical expert to dispute Dr. Smith's injuries, bringing a contentious turn to the litigation. It was Dr. Smith's opinion that she was being subjected to increased scrutiny due to her being a chiropractor. Essential to her case was the fact that although her ranges of motion were mostly normal, her pain, objective findings and other symptoms persisted. It was the medical expert's opinion that because Dr. Smith had not pursued drugs and surgery that her injuries were fully resolved.

Dr. Smith was then referred to Dr. Maltby for evaluation of her injuries using dynamic (active) range of motion analysis that simultaneously documents muscle guarding through the use of attached-electrode sEMG (DynaROM Motion sEMG). These two measures, when performed and graphed simultaneously, have been shown to be significantly more sensitive in proving soft tissue injury than endpoint ROM testing alone (Geisser, 2004). The exam results clearly indicated muscle guarding, validating Dr. Smith's injuries (Ambroz, 2000). And, according to the American Medical Association (AMA), muscle guarding is classified as a 5–8% functional impairment. (AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition)



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When deposed, Dr. Maltby presented the DynaROM Motion sEMG data, substantiating Dr. Smith's reports of pain during motion by clearly showing muscle guarding. This data so overwhelmed the experts' opinions that it resulted in Dr. Smith avoiding a jury trial in this \$1MM soft tissue case. The confidential settlement figure was beyond all attorneys' initial estimates. According to Dr. Maltby, “It

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all comes down to who is more credible, and that depends on who has the data and the evidence. Opinions can be challenged, but the data always wins.” Dr. Jaeger agrees. “This case's merits will definitely aid all DCs in succeeding with their personal injury cases.”

This case, and others like it, have dramatically changed med-legal strategies and outcomes for DCs and their injured patients. Armed with new technology and objective data, chiropractors can now refute the most highly credentialed medical expert's opinion. “When evidence and technology are applied and data are presented, it will always trump opinion,” says Dr. Jaeger. “And when you enter the med-legal arena, submitting the highest level of peer-reviewed evidence is what wins.” In the process, the value and status of chiropractic care are elevated in the eyes of the public, as well as in the medical and legal communities.

“As healthcare providers, we have a duty to our patients to do everything at our disposal to help them,” says Allen Fraley, DC, practicing in Moses Lake, WA. As a DC who has testified in court and won cases similar to Dr. Smith's, he is adamant that dynamic range of motion studies with sEMG technology should be the standard of care for all chiropractic patients. “I've noticed that many of the IME docs rely on antiquated objective testing methods, especially when measuring ROM,” says Dr. Fraley. “This new evidence-based data can substantiate injuries, validate a patient's progress under care and reveal malingering. In addition, it gives me confidence in my clinical findings and it helps direct my care.”

Dynamic range of motion testing, in combination with sEMG for measuring muscle guarding, has helped win a series of major PI cases for chiropractors and their patients. But the most influential case was in Florida, in Merritt vs. the State of Florida Department of Health (FDOH), in which the FDOH questioned the validity of this new technology for evaluating soft tissue injuries, and removed it from its list of approved diagnostic devices. In this David vs. Goliath case, the chiropractic profession's experts were up against the State of Florida and the 300 insurance companies that had joined the litigation. The subsequent decision in favor of the device was

upheld unanimously at the Superior Court level, with future appeals rejected by the Florida Supreme Court. (Florida Case Number 04-1149RX)

In her 44-page decision, the presiding judge concluded that the instrument in question “has significant medical value as a diagnostic tool with respect to the treatment of a patient suffering from injuries like those arising out of a motor vehicle accident.” The favorable decision in this case led to reimbursement for such testing under CPT Codes 96002 and 96004, and established admissibility of the DynaROM Motion sEMG instrument and data in all cases thus far. The reimbursement rate for these codes is five times higher than the reimbursement rate for endpoint ROM testing, without consuming additional time.

If you are still on the fence about handling PI cases, consider this: even “cash” patients are routine one day and injured the next. But the new ammunition provided by dynamic range of motion studies gives you the power to succeed. According to Dr. Fraley, “The DynaROM Motion sEMG data gives you confidence in the courtroom, making the process easy, and I know I’ll win.” An attorney who has worked with Dr. Fraley and witnessed the evidence at work, has this to say: “The greatest thing that I have learned from Dr. Fraley is that the sEMG studies are the best proof of soft tissue injuries, and essential in a litigation case.”

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The work of the Dream Team has paved the way for users of this technology to defend their clinical findings and succeed. When faced with solid objective evidence, opposing parties are far more likely to settle personal injury cases in order to avoid taking a losing case to court. Meanwhile, DCs can now enjoy greater credibility and equal courtroom status with their medical peers, without undue concern about being deposed or going to court.

Dr. Smith’s case is just one of several landmark PI cases won recently through the efforts of the Dream Team, and the evidence made available by this new technology. Among its supporters is Dr. Smith’s attorney, who had this to say: “Based on this experience, and as an attorney, I will always prefer to work with doctors who use combined testing for range of motion and muscle guarding.” Such comments, and the respect and trust of attorneys, are major perks for the chiropractic practice. The Dream Team members have spent countless hours working with legal groups in their states, making sure attorneys and other professionals know about their work and achievements, and how they can help.

Remember, when credibility and respect are high, so are referrals. Dr. Jaeger has this advice for DCs: “We now have the tools to make PI objective and evidence-based, so get on board and get it done! The rewards for your patients’ health and your practice are definitely invaluable.”

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Dr. Fraley has more than 17 years experience working with personal injury and injured-worker cases, and has testified in court on behalf of these patients. He is a frequent guest speaker on chiropractic topics for the Washington State Association of Justice, and is a featured speaker for MyoVision.
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Dr. Maltby is a respected expert witness and two-term past-President of the International Chiropractors Association (ICA). He also served as ICA Chairman of the Board, and was ICA’s Chiropractor of the Year in 2007. Dr. Maltby has represented the ICA on the Board of Directors of the World Federation of Chiropractic.
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NASA-Trained Researcher and inventor of high-tech biometric instrumentation, including the patented Wireless DynaROM Motion sEMG System which graphs muscle guarding and ROM simultaneously. This technology has established chiropractors as the leading experts in soft tissue injury. Upcoming CE Seminars can be viewed at www.myovision.com or by emailing david@myovision.com.