Medicolegal aspects of chronic pain disorders and their economical impact in the Swiss social insurance system

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16% of all Swiss suffer from chronic pain syndromes
Every sixth patient is unable to work because of pain representing a loss of

203‘000‘000 working hours per year (77% of all absences or 53 hours per full time job)*

* Bundesamt für Statistik 2005
Long term working disability

Over 50‘000 persons in CH are entitled to a disability pension (IV)

10.5 Billion CHF/year

* Bundesamt für Statistik 2006
Pain and work

- Prevalence of pain related to work: $7.0 \pm 5.8\%$*
- Musculoskeletal pain
- Most affected jobs:
  - Health and care (16.4%)
  - Construction industry (11.8%)
  - Restaurants and hotels (10.9%)

*Douleur et travail. Queneau et al. Douleur analg. 2009*
Pain and work

Main localisations:

- Low back (55%)
- Shoulders (48%)
- Upper extremities (36%)
- Lower extremities (31%)
- Neck (22%)
- ...

*Douleur et travail. Queneau et al. Douleur analg. 2009*
Low back pain has reached epidemic proportions being reported by about 80% of people at some time of their life.

WHO: Dr. Gro Harlem Brundtland: Bone and Joint decade (2000-2010)
Low back pain

„Das Kreuz mit dem Kreuz“
The back as a link between somatic and psychiatric disorders
Poor correlation with radiologic findings
High level of direct and indirect costs
(4 Billion CHF/year)
Most cases with spontaneous recovery after 4 to 6 weeks
Poor rates of work rehabilitation after 6 months of working disability (after 1 year less than 18%)
Aetiology of chronic pain

- Chronic somatic damage
- Residual symptoms after damage
  - Fixation
  - Dysfunctional behaviour
- Psychiatric disorder (depression, somatoform disorders…)
- Sociocultural aspects

Deconditioning = Loss of ability

Inadequate management (long term sick leave)

Diminished psycho-physical resistance

Deconditioning = Loss of ability

Inadequate management (long term sick leave)

Diminished psycho-physical resistance
Pain chronicity

Risk factor: PATIENT

- Sociocultural and contextual factors
- Poor education or professional qualification
- Early beginning of work (before the age of 20)
- Occupational dissatisfaction
- Monotonous and/or strenuous work
- Poor personal resources
- Poor knowledge about health
- „Fear of pain“
- Poor social support
- Low motivation to return to work due to negative financial incentives

*Douleur et travail. Queneau et al. Douleur analg. 2009*
Pain chronicity

Risk factor: **Physician (GP)**

- Sociocultural environment
- Diagnostic uncertainty („Red flags“)
- Fear of „missing something ...“
- Inadequate (invasive) diagnostic procedures (repetitive MRIs without therapeutic consequence, non validated procedures etc.)
- Inadequate therapeutic management (multiple therapies, failed back surgery...)
- Stigmatisation of patients

*Douleur et travail. Queneau et al. Douleur analg. 2009*
QUESTIONS:

Is there any health damage?

Is this damage insured?

Which insurance covers the damage?

( SUVA, UV, IV, MV, private insurances… )
Insurance Medicine

Health damage
  ↓
Functional impairment
  ↓
Working disability
  ↓
Financial damage
  ↓
Insurance coverage
Legal Basis

Bundesgesetz über den Allgemeinen Teil des Sozialversicherungsrechts (ATSG)

Federal law of 6.10.2000
Health damage

- Disease (IV)
- Occupational disease (SUVA)
- Accident injuries (UV, MV, SUVA...)
- Accident-like injuries (UKS)
Definitions

Disease (Art. 3 ATSG):

• „...any type of impairment of physical, intellectual or psychological health, not resulting from any accident, requiring medical investigation or treatment and / or resulting in an inability to work...“
Accident (Art. 4 ATSG):

• „...is the sudden, unintentional, damaging effect of an unusual external factor on the human body, resulting in an impairment of physical, intellectual or psychological health... or death...“
Definitions

AUF: Occupational disability (Art. 6 ATSG):

• „... partial or total incapacity of working in your former occupation resulting from an impairment of physical, intellectual or psychological health...“
EUF: Working inability (Art. 7 ATSG):

• “...partial or total incapacity of gainful employment resulting from an impairment of physical, intellectual or psychological health...“
Definitions

Invalidity (Art. 8 ATSG):

„Permanent remaining working inability after all therapeutic and rehabilitative procedures have failed...“
Legal requirements for recognizing invalidity in CH

1. Objective health damage
2. Working incapacity
3. Causal connection between 1 and 2
Patients‘ willingness

• What you can reasonably expect or ask from a person as an effort of will to overcome pain ...  

Recognized reasons for reduced working capacity

- Safety issues (risk of accident)
- Health issues (risk of progression of disease)
- Reduced productivity
- Risk of psychiatric decompensation
Patients‘ responsibilities

• Patients are expected to do everything possible to reduce the economic consequences of their invalidity

• Patients have to fully inform their insurance system about any changes in their health condition
Loss of earnings due to invalidity

= Difference in % between the earnings before health damage (HD) occurred and the possible theoretical earning after

- Earnings before HD: 50‘000,- CHF per year (A)
- Earning after HD: 35‘000,- CHF per year (B)

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15‘000,- CHF per year (C)

Loss (C/A): 30%
Disability pension

= IV-Pension

Based on loss of earnings

Loss of 20% : No pension
Loss of 40% : Quarter-pension
Loss of 50% : Half-pension
Loss of 60% : Threequarter-pension
Loss of 70% : Full pension
Case presentation: Mrs. S. M., 1957

Family and social history

- Woman, born in Kosovo, 5th of 9 children
- Parents died at age of 65 resp. 67
- 4 years of elementary school in Ex-Yougoslavia
- No professional education
- Marriage 1977, husband since 1979 in CH (construction worker)
- Immigration in CH 1993
- Works from 1995 until 1999 in chocolate fabric
- Works from 1999 until 2004 as cleaning lady in small hospital
- Husband gets full IV-pension due to back pain since 2002
Case presentation: Mrs. S. M., 1957

Personal history

- Usual children’s diseases
- Appendectomy 1975
- 2002 Hp-positive gastritis, treated with PPI
- 2003 Diagnosis of hypertension, treated with ACI
Case presentation: Mrs. S. M., 1957

Complaints

- Low back pain since over 10 years
- 2002 first medical consultation (GP)
- Prescription of NSAR and physiotherapy
- 2003 exacerbation of pain after lifting heavy object -> First sick leave
- First consultation with rheumatologist
- MRI of spine: degenerative (Osteochondrosis C5/C6 as well as L4/L5 and L5/S1 with disc bulging)
Case presentation: Mrs. S. M. , 1957

- Stationary Rehabilitation January/February 2004 (3 weeks)
- Diagnoses: Chronic cervical und lumbovertebral pain syndrome, psychosocial stress situation
- March 2004 patient tries to work 50%, after 1 week exacerbation of pain, again on sick leave
- Extension of symptoms on the right side of the body
Rheumatological evaluation:

- Chronic panvertebral pain syndrome, PHS tendinotica right shoulder, Fibromyalgia
- Working disability: in the former occupation 100%, adapted work 50%.
Psychiatric evaluation:

- Depressive episode and chronic somatoform pain disorder
- Working disability: 100% for all type of work
Case presentation: Mrs. S. M., 1957

Present symptoms

- Permanent pain of the whole right side (VAS: 8-9/10)
- Cannot sit, stand or walk (max. 15 minutes)
- Sleeping disorder
- Tiredness, exhaustion
- Does not do anything at home anymore
- No physiotherapy since 1 year
- 1 consultation per month with psychiatrist
- Medication: Paracetamol 3 x 1g, Tramadol 2 x 100 mg, Trazodone 1 x 30 mg, Perindopril 1 x 10 mg, Omeprazole 1 x 20 mg
Case presentation: Mrs. S. M., 1957

Clinical findings

- Demonstrative behaviour
- Obese (BMI 35.6), RR 155/95 mmHg, normal cardiopulmonary status
- Myostatic insufficiency, muscular dysbalance
- 18 positive tenderpoints, 13 positive control points
- 5 positive Waddell signs
- Normal function of spine and joints
- Normal neurologic examination except for „Hemihypesthesia“ of the right side
Mrs S. M., 1957

Is the patient’s working capacity reduced?
- in her former occupation?
- in an adapted occupation?

Is the patient suffering from a health damage which entitles her to an invalidity pension?
What about chronic pain syndromes without objective findings?
Chronic pain syndromes without objective findings

„Old“ Diagnoses:
- Neurasthenia
- Railway Spine
- Traumatic Neurosis
- „Tutto fa male“, „Balkan“ syndromes

„New“ Diagnoses:
- Fibromyalgia
- Chronic Fatigue Syndrome
- Whiplash associated disorders
- Persistent somatoform pain disorder…
Chronic pain syndromes without objective findings

**Common Symptoms:**

- Generalized, unspecific, diffuse pain
- Tiredness, effort intolerance
- Dysesthesia
- Weakness
- Dizziness
- Sleeping disorders
- Anxiety
- ...

And:

... No or only few **objective** findings („functional“ disorders)
**Persistent somatoform pain disorder:**

- **Definition according to ICD10, F45.4:**

  „... Persistent, severe, and distressing pain, which cannot be explained fully by a physiological process or physical disorder, and which occurs in association with emotional conflict or psychosocial problems, that are sufficient to allow the conclusion, that they are causative influences.

  The result is usually a marked increase of support and attention, either personal or medical...“
DD: Somatoform pain disorder/ dysfunctional behaviour

**Persistent somatoform pain disorder (F45.4)**
- Cannot be explained somatically
- Afflicted, suffering
- Desperate
- Cooperative
- Not interested
- Frequent psychiatric comorbidity
- Associated with other somatoform disorders
- Mental or physical trauma in youth

**Dysfunctional behaviour (Z72.8, Z73.3)**
- Cannot be explained somatically
- Not afflicted
- Dramatising
- Uncooperative
- Interested
- Seldom psychiatric comorbidity
- Not associated with other somatoform disorders
- No trauma
Förster’s Criteria

Are prognostically unfavourable:

• Presence of psychiatric comorbidities (depression, anxiety disorder)
• Presence of other somatic disease
• Chronicity
• Therapeutic resistance
• Unsuccessfull rehabilitation
• Social isolation
The diagnosis of persistent somatoform pain disorder (or of other chronic pain disorders without any objective findings) is not sufficient to legitimate working disability or invalidity according to Art. 4 IVG unless...“
Mosimann‘s Criteria

BGE 135 V 352:

- Presence of severe psychiatric comorbidities
- Presence of other chronic severe somatic disease
- Progression of disease despite adequate treatment
- Proven therapeutic resistance to all standard forms of treatment
- Unsuccessful work rehabilitation despite patients‘ efforts and motivation
- Social isolation (in all aspects of life!)
Is the patient’s working capacity reduced?
- in her former occupation?  NO
- in an adapted occupation?  NO

Is the patient suffering from an health damage which entitles her to an invalidity pension?  NO
Non-insured diseases

According to Swiss law

- Addictive disorders (BGE 99 V 28)
- Sociocultural or contextual factors (BGE 127 V 294)
- Persistent somatoform pain disorder (BGE 130 V 352)
- Fibromyalgia (BGE 132 V 70)
- ...
What can physicians do?

Reduce the risk of “iatrogenic” chronicity:

• Early Rehabilitation is more important than the exact diagnosis
• Consider “Red flags“
• No radiological examinations for patients between 20 and 50
• Avoid long term sick leave
• Inform patients about the benign aspect of their complaints
• Discuss psychosocial issues
• Contact employer and / or insurance
• Avoid physical and mental deconditioning
„Nobody ist entitled to be free of pain“

BGE 20.09.2002