

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

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# The impact of pain in CH

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

„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

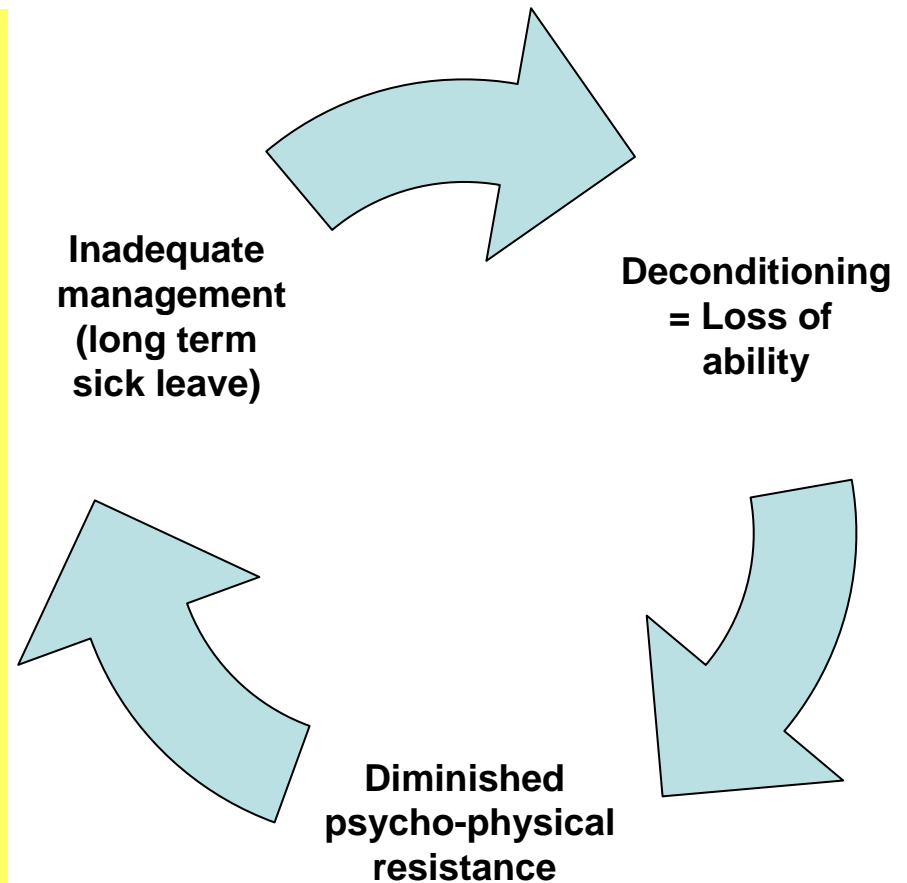
High level of direct and indirect costs  
(4 Billion CHF/year)

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**





# 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

# Insurance Medicine

## QUESTIONS:

Is there any health damage?

Is this damage insured?

Which insurance covers the damage?

( SUVA, UV, IV, MV, private insurances...)

# Insurance Medicine



# 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...“

# Definitions

## 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...“

# Definitions

## 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 ...

Murer E (2008): Die Zumutbarkeit als Schlüsselbegriff des  
Entscheidungsrechts

# 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)
- 
- 15'000,- CHF per year (C)

Loss (C/A): 30%



# Disability pension

**= IV-Pension**

**Based on loss of earnings**

<b>Loss of 20%</b>	<b>:</b>	<b>No pension</b>
<b>Loss of 40%</b>	<b>:</b>	<b>Quarter-pension</b>
<b>Loss of 50%</b>	<b>:</b>	<b>Half-pension</b>
<b>Loss of 60%</b>	<b>:</b>	<b>Threequarter-pension</b>
<b>Loss of 70%</b>	<b>:</b>	<b>Full pension</b>

# Case presentation: Mrs. S. M. ,1957

## Family und 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**
- **Mariage 1977, husband since 1979 in CH (construction worker)**
- **Three children, born 1980, 1983 and 1990**
- **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**

## Case presentation: Mrs. S. M. ,1957

### Rheumatological evaluation :

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

## Case presentation: Mrs. S. M. ,1957

### 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 cardiopulmonal 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**

# Medicolegal evaluation

Mrs S. M. ,1957

**Is the patient's working capacity reduced?**

- in her former occupation?**
- in an adapted occupation?**

**Is the patient suffering from an health damage which entitles her to an invalidity pension?**

# Problem

**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**
- **Persisitent 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)

## Chronic pain syndromes without objective findings

### **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**
- **Unsuccessful rehabilitation**
- **Social isolation**



# Mosimann's Criteria

## **BGE 135 V 352 (2004):**

„ The diagnosis of persistent somatoform pain disorder (or of other chronic pain disorders without any objective findings) ist 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!)

# Medicolegal evaluation

Mrs S. M. ,1957

**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

# Pain and law

„Nobody ist entitled to be free of  
pain“

BGE 20.09.2002