Litigation MRI: Why lawyers are asking for it and why your patients need it

The key to litigation-driven MRI is not that it is medically necessary, but rather that it is reasonable and necessary for the proper conduct of the proceeding.

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Magnetic resonance imaging (MRI) is presently used relatively rarely as an evaluation or diagnostic tool in personal injury litigation in British Columbia. This is because MRI is a scarce resource in the public health care system that cannot currently fully bear the burden of assessing the seriously ill in our community. In such circumstances, doctors are loath to requisition an MRI except in the clearest of circumstances and lawyers, for fear of intruding on the doctors' sphere of expertise (and be accused of practising medicine), are similarly dissuaded from pressing for a referral.

It does not have to be this way. There are compelling reasons for MRI to be used in practically every personal injury claim in British Columbia in a manner that will be of benefit to the claimant, his or her lawyer and doctor, and will not in any way be a burden on the public health care system.

Why MRI?

As a diagnostic tool, MRI is far superior and safer than X-ray (which measures the absorption of ionizing radiation) and (in many instances) computed tomography (CT) scans. Unlike positron emission tomography (PET), which is a computerized scanning technique using radioactive isotopes, there is no controversy in the British Columbia courts about the admissibility of MRI as evidence.[1] Further, MRI is fully accepted by the insurance industry as objective and reliable.

MRI is universally accepted not only because of its accuracy but also because of the objectivity of its findings. It matters not whether the claimant is sent for the test at the request of the plaintiff or defendant, the resulting report will be the same.

In the United States, where access to MRI is not an issue, sending a personal injury claimant for an MRI is now part of the standard of care (the baseline conduct to which the professional must conform to avoid being negligent) for plaintiff personal injury lawyers. This is so not only because of the usefulness of the findings in the claim but also due to the serious risk of potential liability facing both doctor and lawyer should a latent problem be discovered after the conclusion of the claim that would have been detected had an MRI been conducted.

Due to limitations on access to MRI in British Columbia (both real and perceived), MRI is not yet the standard of care in this jurisdiction. Nevertheless, compelling reasons exist here why MRI should be considered for practically every personal injury claimant.

The current state of access in British Columbia

Access to MRI is limited in British Columbia. While waiting lists for a publicly funded MRI vary, the waiting periods are universally too long, with most people not able to obtain timely access to MRI except in the most serious circumstances.

Though more public funds have been promised for diagnostic imaging, this proposed increase in access is not relevant to most personal injury claimants as they are not currently on, or candidates for, a waiting list. This is because in an effort to control demand, radiology departments in the public hospitals (where all public pay MRI scanners are currently located) typically only accept requisitions from specialists and not from family practitioners. Since (quite rightly) very few of these claimants are referred on by their family practitioner to a spe-

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