

Directions

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Alison Hoens and Aart Van Gorkum at the Physio Forum 2013 where Aart presented Alison with a PABC Award of Excellence

In the last year, we have noticed an increasing number of physiotherapists in BC inquiring about high power lasers, also known as Class 4 lasers. As the use of high power lasers emerges in physiotherapy practice, our members should become familiar with the evidence. To rationalize the cost of the equipment we wanted to know whether Class 4 lasers are an effective modality whose use is supported by evidence, and whether an additional client charge (e.g. as some members do with IMS) might be warranted.

Most of your questions about Class 4 lasers have been directed to the experts on electrophysical agents (EPAs) at UBC: PABC's very own Alison Hoens and Dr.

Class 4 Lasers: What We Know Now

by Aart Van Gorkum NLRP FCAMT; Dr. Joseph Anthony PhD PT; Alison Hoens MSc BScPT

Joseph Anthony. After reviewing the research and attending laser information sessions, we have compiled some information to help you decide whether or not the Class 4 laser is a treatment modality that is suitable for your clinical practice.

Currently, Class 4 lasers are being used by various clinicians with varying levels of training and education. These include: physical therapists, MDs, chiropractors, athletic trainers, kinesiologists and veterinarians. A wide variety of chronic and acute conditions are being treated with Class 4 lasers. These high-powered lasers (about 30 to 50 times more powerful than the currently employed Class 3B lasers) are being used for such conditions as: injuries and dysfunctions of the musculoskeletal system, acute and chronic low back and neck pain, fibromyalgia, tendinopathies, osteoarthritis, rheumatoid arthritis, ulcers, post-surgical scars, wound healing, burns and pain relief.

There are two classification systems for lasers, based on acceptable emission limits (AEL): (1) the old system, based on the US ANSI Laser Safety Standard (ANSI Z136.1), and (2) the revised system based on the EU IEC 60825 standard. In either system, most of the lasers currently used by physical therapists are classified as Class 3B, that is having a (continuous) power output of up to 500 milliwatts (mW). Class 4 lasers include all lasers (even industrial ones) with a (continuous) power output of greater than 500 mW. The Class 4 lasers being marketed in Canada at the moment have power outputs in the 10 – 15 Watt (W) range.

While Class 4 lasers are higher powered than Class 3B, the Class 4 therapeutic lasers use optics in the laser probe to diffuse the light produced, creating an energy "fluence" that is somewhat greater than, but in a similar range to, many Class 3B lasers. With a Class 4 laser, dosages will range from 2 to 12 Joules per cm². The dose of laser delivered to a region of tissue by these new devices is somewhat higher (on a J/cm² basis) than the dosages recommended by the World Association for Laser Therapy (WALT).

There are two differences in application associated with the Class 4 therapeutic devices: (1) a large treatment area can be covered during a short application, due to the large spot size, and (2) there may be some warmth associated with

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The Use of Physical Therapists as Experts in Bodily Injury Litigation

by David J. Wallin, Director at Whitelaw Twining Law Corporation

PABC members have been asking for clarification on the role of their expert advice in court, and how to prepare reports for the court under the new Rules. We asked lawyer David Wallin to offer his insights.

In bodily injury litigation, lawyers representing the parties in the proceedings regularly seek the expert opinions of physical therapists in relation to the issues relevant to the case. The purpose of such an engagement is generally to present cogent evidence in relation to such important matters as:

- the underlying cause of the patient's injuries;
- the nature and extent of the patient's injuries and corresponding functional limitations, deficits or disability;
- any further treatment or rehabilitation initiatives that may need to be undertaken; and
- the prognosis for future recovery or symptom improvement.

Although opinions on such matters may vary from expert to expert, the ultimate purpose is to persuade the court/trier of fact to come to a specific desired conclusion on such matters.

In most bodily injury cases (other than perhaps the threshold issue of legal liability and the underlying cause for the injured party's injuries), the most significant issue that legal counsel will need to address is the nature and extent of the plaintiff's injuries/disability and the injured plaintiff's corresponding right to compensation for such injuries.

Physical therapists can fill an important role as experts in such legal proceedings. This role is to assist the court in understanding the nature and extent of the injured plaintiff's injuries and any further corresponding rehabilitative treatment recommendations that may be beneficial to the injured plaintiff.

The preparation of and reliance on expert reports for the purposes of trial are generally governed by the Supreme Court Civil Rules (the "Rules"). In addition

to other legislative guidelines, there are a number of specific rules which address the use of expert evidence during the course of litigation and ultimately at trial.

As a healthcare professional involved in the treatment of patients who may have been injured by the wrongful conduct of another, there are several key points that you should be aware of.

What is an "expert witness"?

For the purposes of reliance on an expert report at trial, the author of the report must first be qualified as an expert in the field in which expert opinion evidence is being offered.

An expert witness is generally considered to be a person qualified by their special skill, knowledge, education, training, or experience in a particular area. To be useful, and to meet the threshold test of admissibility at trial, the inference, opinion, or conclusion drawn by the expert witness must be squarely within the area of the witness's particular area of expertise. The court or the trier of fact must also require the assistance of the expert to draw the correct inference.

As a physical therapist involved in an injured plaintiff's injury rehabilitation, evaluation of fitness to return to work or perform a functional capacity, or ergonomic assessment, there is a very good possibility that you will be requested to prepare a treatment report for medical/legal purposes in relation to your treatment of an injured plaintiff.

What is required?

CPTBC's Advisory Statement No. 6 states the following in relation to "Opinion Evidence" in the context of preparing a report for use in litigation:

"It is the responsibility of the physical therapist to determine whether or not she has the expertise to provide the opinions that are requested."

and:

"The report should contain no opinions outside the scope of the specific areas of expertise previously identified."

The College's Advisory Statement No. 6 states that an opinion report ought to include the following five elements:

- The qualifications of the expert
- The specific areas of expertise of the expert
- A statement that reflects the specific opinions that have been sought
- A statement of the opinion or opinions
- Reference to the specific facts which form the basis for the opinion or opinions

The above requirements are generally in accord with the formal requirements under the Supreme Court Civil Rules. However, with the recent amendments to the Supreme Court Civil Rules in 2010, a number of additional elements have been introduced:

- a certification requirement in the body of the report that the expert is aware of his or her duty to assist the court and not be an advocate for any party (see Rule 11-2 of the Supreme Court Civil Rules)
- the instructions provided to the expert in relation to the proceeding (i.e. the list of questions on which the party engaging the expert has sought expert opinion)
- the "reasons for the opinion", including:
 - the factual assumptions on which the opinion is based;
 - a description of any research that you conducted that led you to form your opinions (if applicable); and
 - a list of every document relied on in forming the opinion.

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Physical therapists have considerable expertise in a number of matters that courts must decide upon every day in British Columbia. Physical therapists have a unique skill set that can fulfill a critical role in the litigation process. Physical therapists should be encouraged to embrace such a role to the benefit of all parties involved, including the administration of justice and the judicial system as a whole. ✨

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On Receiving a Lawyer's Request for Records

by Scott Marcinkow, LLB, BA

In the course of providing legal advice to physiotherapists and other healthcare professionals, I regularly get asked about the disclosure of medical records/charts, particularly in response to requests made by lawyers. PABC invited me to write an article outlining some questions for you to ask when receiving those requests.

First, has the lawyer enclosed a court order stamped as entered in the Court Registry? If there is a court order, you are generally required by law to produce the records that are specified in the order. You should read the terms of the order carefully to determine which of your records you are required to produce, and where you are required to send the records.

Second, if there is no court order, does the request clearly indicate that you have your client's written/signed authorization to disclose some or all of your records? Review the letter carefully to identify whether the lawyer is representing your client.

If the lawyer is representing your client, they are generally acting as an agent for your client and have the same access to the records as your client does. As a best practice, you should look for some confirmation of their representation of your client. A sufficient confirmation often takes one of two forms:

- Ideally, the lawyer will enclose an authorization recently signed by your client, and specifying the records that you are authorized to disclose to their lawyer.
- If there is no recently signed authorization, you should at least obtain some form of communication (ideally in writing) from your client indicating that they are represented by the requesting lawyer and that you are

authorized to disclose their records to their lawyer.

If the lawyer is not representing your client (e.g. they are representing an insurance company or the opposing party in a legal action), you should be very careful in disclosing your records, even if the lawyer has enclosed an authorization signed by your client. Consider the following questions:

- Have you been provided an authorization recently signed by your client? If not, you are not entitled to disclose your records.
- Does the authorization specify which records you are authorized to disclose, and to whom you are authorized to disclose them? If it does not, you should seek clarification from your client about the scope of their authorization.
- Does the authorization seem to authorize you to disclose records that contain sensitive information irrelevant to the focus of the request? If so, you should seek clarification from your client about the scope of their authorization.

Ultimately, if you have not received a court order, and you have any doubt about whether you are authorized to disclose some or all of your records, you should contact your client to determine the scope of their authorization as it is their authorization that you are relying on.

Scott Marcinkow is a lawyer at Harper Grey LLP. His practice involves providing advice to health professionals (including physical therapists) about complaints made to their regulatory bodies. Scott can be contacted at 604-895-2846 or by email at smarcinkow@harpergrey.com. ✨

Little Physios

Lieon Kit, Marpole Physio, welcomed his son Noelan into the family on December 24th.

Kathryn Fairweather had her second child, Reid Axsel, on Feb 15th.

Laura Patrick, Kids Physio Group, became a first-time Mom on April 22nd when Nolan arrived.

Patrick Jadan, South Cowichan Physio, is a first-time Dad. Owen was born on April 28th, weighing 6 lbs 4 oz.

Laura Werner, Dayan Physio, birthed her 3rd child on May 2nd. Grace Anne weighed in at 7 lbs (4+ lbs less than her brothers).

Do You Treat WAD?

If so, you'll want to know more about "Managing Injuries of the Neck Trial (MINT): a randomized controlled trial of treatments for whiplash injuries" published in 2012. There have been very few published large RCTs regarding whiplash-associated disorders (WAD) and physiotherapy management, so Marj Belot offered to review this 158 page report and highlight the bottom line for members. Surprisingly, physiotherapy did not make enough of a difference on Neck Disability Index (NDI) scores or quality of life measures to recommend that it be routinely covered, particularly beyond one visit. From a clinical standpoint, however, the most interesting and reassuring part of the study was the qualitative portion, as participants felt physiotherapy was valuable to them and some wished they'd had earlier referral to physiotherapy. Read Marj's review, with a link to the RCT article, in the Clinical Library of the member site.

PABC recently updated its Fee Guidelines including CLINICAL CHART COPIES FOR LEGAL PURPOSES: \$110 + \$1/page.

Full guidelines at www.bcphysio.org/content/recommended-fees-guideline-2013