Difficulty Receiving Referrals from Attorneys?

Technologize and Mesmerize

By David Marcarian, MA and Nancy Miggins, DC

As many chiropractors recognize, personal injury (PI) practice can be very lucrative; however, it has one serious challenge; namely, developing mutually beneficial referral relationships with PI Attorneys. Having worked in the world of PI for over 20 years, it occurred to me that our promotional programs have all tended to focus on marketing from the perspective of the chiropractor, and that perhaps it would be more helpful to investigate the needs of attorneys instead. With this in mind, I began interviewing attorneys with the intention of finding out what would make them feel more comfortable when referring to chiropractors. As a self-proclaimed Technogeek, my goal was to find an efficient, high-tech solution to the problem. The fact that my subjects were not being interviewed by a chiropractor was a distinct advantage because they could speak freely without fear of offending me.

The last attorney I interviewed said the following: “With the chiropractor as primary, I never know, until the end, whether I have a good case or bad one. It almost always ends up as the professional opinion of the DC versus that of the MD. And, although I mean no disrespect, the public has a natural tendency to take the word of the MD.”

My response was to open up the AMA’s Practical Guide to Range of Motion Assessment at page forty-five and show him the chiropractic device which combines dynamic surface EMG (sEMG) and range of motion (ROM). I explained the invention in simple terms: “When we can see range of motion simultaneously with dynamic, or motion surface EMG, we are not only testing for limited range of motion, we are also determining the level of muscle guarding; a crucial piece of clinical information.” He said, “Muscle guarding? … As presented in the AMA guidelines? This would definitely convince me that I had a good case. It would be a killer!” I went on to explain that the most impressive thing about it was its ability to weed out the symptom magnifiers from the truly injured. Frustrated, he asked, “Why don’t any of the DC’s I work with use this device? It would make my job so much easier.”

In the past dynamic sEMG and range of motion were measured separately. Expert witnesses would argue that range of motion results lacked validity because it was impossible to tell whether the patient was putting in full effort, regardless of the three test requirement. It was also effectively argued that with dynamic sEMG you could not tell if the patient was bending into full flexion or into other ranges of motion; again, invalidating the results. These arguments are bound to put doubts into the minds of both judges and juries and therefore weaken your case.

In 2005, researchers at the University of Michigan noticed a very interesting phenomenon: In their meta-analysis of all studies in which either dynamic sEMG and/or ROM had been used, it emerged that if the measures of both were combined, sensitivity and specificity improved dramatically; thus making this combined tool much more effective at establishing soft tissue injury. Referring to the value of dynamic sEMG in the combined test, John Gerhardt, MD (author of The Practical Guide to Range of Motion Assessment) stated that: “It significantly augments ROM data by providing objective assessment of effort.”

In the two cases presented below, both patients were seeking damages for soft tissue injury caused by automobile accidents. In the graphs on the following page, the top half of the graph in Figure 1 shows Dynamic sEMG (muscle activity). The blue line represents the left lumbar and the red line the right. The bottom half of the graph displays the “real time” range of motion measured dynamically (the red line). In a normal individual at full flexion, muscles enter a state of relaxation as ligaments support the spine. This is known as the “flexion-relaxation response”, and is a reflex. When there is soft tissue injury, muscles fire in a protective response to pain, injury or spinal instability. This is referred to as “muscle guarding”.

As you can see from the graphs in Figure 2, Patient 1 is most likely a symptom magnifier while Patient 2 (Figure 3) is genuinely injured. One of the factors that make this combined test so powerful is the tool’s entirely objective evaluation of both patients; without the need for any verbal response or personal input from the patient. It is this fact that makes the test truly objective. Of course, this means that some of your patients’ injury claims will not be upheld. Although most doctors are
initially fearful of this, they are quick to realize that the added credibility received when identifying this minority of symptom magnifiers will bolsters an attorney’s opinion of them as true expert witnesses.

This objective, indisputable evidence provides perhaps one of the best ways to garner an attorney’s respect, resulting in a solid source of referrals. Your use of this high tech tool, with its ability to generate impressive visual images, will not only save your attorney’s time and money, it will also maximize the settlement potential of the case.

How do you reeducate attorneys who have bought into the “old” notion that surface EMG lacks validity?

Literally every one of the attorneys interviewed, who stated that they would never consider using surface EMG for PI cases, were under the false impression that “surface EMG” referred specifically to static sEMG; the commonly used test with the back graphic and bar graphs that shows muscle activity about the spine. The only thing these two tests have in common is the term “sEMG”. Unlike static sEMG, which is performed in the neutral posture, the combined dynamic sEMG and ROM test is performed while the subject is in motion, making it a functional test that has proven itself indisputable in research studies as well as in the courtroom.

Four key points establish its credibility.

1. Rule Challenge in Florida: Richard W. Merritt vs. Florida Dept. of Health et al (Case No.04-1149RX)

In 2003, the State of Florida attempted to remove dynamic surface EMG, along with a number of other diagnostic testing devices, from the list of approved tools for evaluating soft tissue injury in PI cases. Dr. Richard Merritt and I decided to sue the State of Florida. The case became one of the most important “test cases” in chiropractic history. The State of Florida was joined by over 300 insurers, turning the outcome of the case into a landmark decision. The Administrative Law Judge (ALJ) ruled that surface EMG was definitively valuable in evaluating soft tissue cases. Although this was appealed against by the insurers, we prevailed in the Superior Court. There is now a statute in Florida requiring reimbursement for dynamic surface EMG (Florida Statute 627.730-627.7405). Despite the enormous efforts of the insurers and the State of Florida to invalidate this tool, they failed. The case laid the groundwork for admissibility in any state in the country. The decision was 47 pages long and definitively validated surface EMG as medically necessary in evaluating soft tissue injury cases. The lead attorney in this case wrote a summary which provides attorneys using dynamic sEMG with advice on how this case can be used to establish admissibility.

2. The AMA’s CPT code:

The code for billing Dynamic sEMG (96002 & 96004), establishes the validity of the tool. As the judge stated in the above case, “In order to be assigned a five-digit CPT Code, the procedure must be consistent with contemporary medical practice and be performed by many practitioners in clinical practice in multiple locations”.

3. Medical Text: A Practical Guide to Range of Motion Assessment establishes a precedent for the court that a medical text recommends the utilization of the combined dynamic sEMG and ROM test. It is shown as the tool of choice in examples of proper test technique.

4. EMG does not refer exclusively to Needle EMG: This is a common misconception presented by many reviewers for insurance companies. A simple review of the literature using Pubmed, clearly shows over 7,500 studies on surface EMG. This fact alone is enough to put this erroneous argument to rest.

With over 4 years since its appearance in the courts, this combined test is now getting the recognition it deserves. According to Brandon Casey, partner at Casey Law Offices, “Attorneys like evidence, and by that I mean actual evidence-based treatment, not opinion.” He goes on to say, “sEMG studies are the best proof of soft tissue injuries. In this day and age of skepticism, they are essential in a litigation case.” In his letter, Mr. Casey points out that in cases where the combined Dynamic sEMG and ROM exam were used, settlements averaged ten times what was typically offered by the insurer.
Attorneys are now being pushed into an “evidence-based” model that applies in law in the same that it does in chiropractic. Insurers, not immune to the economic slowdown, are not “settling” cases with the same frequency and ease as in the past. This is creating a demand for solid, objective data; affording the chiropractor willing to integrate new technology an opportunity to fill this “evidence gap” with the objective physiological data that attorneys now need.

The last attorney I interviewed said: “This new combined dynamic sEMG and ROM testing definitively goes beyond leveling the playing field – it makes the DC’s assessment more impressive than the MD’s.” By using objective data, the Chiropractor now has greater credibility than the IME because objective data will convince people 99 percent of the time.

Along with instant credibility with attorneys, there is another significant benefit to having solid objective data collected on your patients. Objective data protects you in an audit. We have even seen static sEMG, established as valid in a Superior Court Decision in California, which have protected doctors’ clinical decisions in an audit. Objective data can prove the need to treat, thus making it difficult for auditors to question your decision to do so. With more and more audits on the horizon, doctors who use technology to evaluate their patients can rest easy in the knowledge that they will be well-protected in the event of an audit.

Technology can be your best friend or your worst enemy. By finding the best product and support for your needs, you will have a great partner in building your practice. By following a few simple guidelines you will enjoy all the advantages of technology and none of the stress.

References:

Dr. Frank King
• has served the Chiropractic and natural products professions for nearly 40 years.
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Dr. Nancy Miggins has over 25 year’s clinical experience as a chiropractor. She excelled in the areas of procedures, ethical business practices and management. After spearheading the development of a integrative health and fitness center, she spent 6 years as director of this clinic. Although her main focus was in family practice, she also has aided Olympic Athletes and professional cyclists with optimizing sports performance through chiropractic. She is currently the Director of Clinical Applications & Product Development for Precision Biometrics, Inc. Contact at : Info@myovision.com or visit www.myovision.com or call 800-969-6961

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David Marcarian, MA, founder of Precision Biometrics, and inventor of the revolutionary MyoVision 3G Wirefree PhysioMonitoring™ System. A former NASA researcher, Marcarian was awarded a $450,000.00 NIH grant to develop the MyoVision. As an expert witness, Marcarian was credited one of the largest PI awards in US history, and established the validity of sEMG in a major State Superior Court Decision. Recently the AMA selected his 3G Wirefree System as the “tool of choice” as presented in the medical text “The Practical Guid”. Contact at : Info@myovision.com or visit www.myovision.com or call 800-969-6961