

Avoidable Imaging Wave II

Malpractice – A Driver of Over-Ordering

Presenters



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American College of
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Avoidable Imaging Wave II- Webinar



J. Ric Gass
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What we think
Is a medical “fact”
Is only a “legal fact”
If the jury believes it to be

Trial is an interplay between the truth and believability.

	Believable	Not Believable	
True	We're Golden!	Doesn't Help	True
Not True	It's a trap I'll be killed I'll be arrested	Absolutely Can't Be Here!!	Not True
	Believable	Not Believable	



NeuroimagerY and the Jury

The effect Of images beyond proving a physical point

- Is there a “seductive” power of neuroimages on jurors?
 - Is there a persuasive influence of brain images on the perceived credibility of neuroscience data?
 - Articles with a brain image judged more credible than same article with just a bar graph but identical verbiage.
 - Mere presence of neuroscientific information along with psy explanations has an undue influential effect on the evaluation of the explanation finding it more “satisfying” even when the neuroscience info was totally irrelevant to the actual explanation itself

- Use it to enhance your evidence

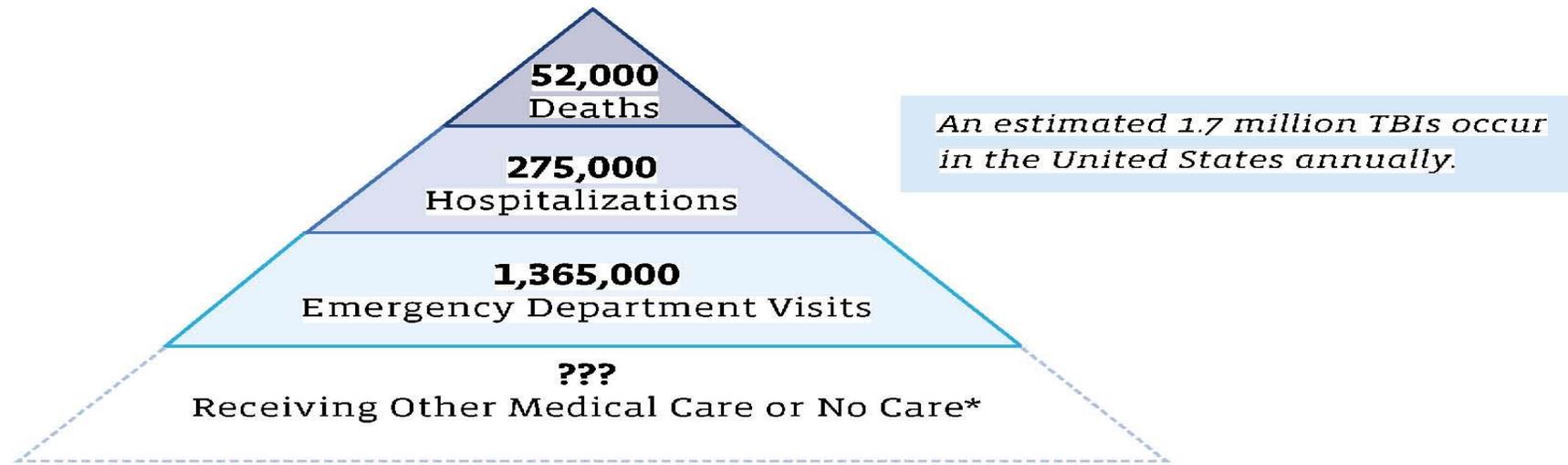
- www.thejuryexpert.com/2014/08/neuroimagerY-and-the-jury/ Aug 20, 2014 - Ware, Jones, and Schweitzer



Plf's Lawyers Call TBI The "Silent Epidemic"

ANNUAL NUMBER OF TBIs

FIGURE 1: Estimated Average Annual Number of Traumatic Brain Injury-Related Emergency Department Visits, Hospitalizations, and Deaths, United States, 2002–2006



Of the 1.7 million TBIs occurring each year in the United States, 80.7% were emergency department visits, 16.3% were hospitalizations, and 3.0% were deaths.

* Data for this category are not included in this report. See "Limitations" in Appendix B for more information.

General public/potential juror beliefs about head injury

Courtesy of
Atty Michael V. Kaplan NYC

From Harris poll for Brain Injury Association of America

**2/3's ARE FAMILIAR WITH THE TERM
"BRAIN INJURY"**

**THAT'S THE PROBLEM
THEY THINK THEY
UNDERSTAND IT**

Plf
viewpt

- **70% BELIEVE THAT IT IS POSSIBLE TO RECOVER FROM A BRAIN INJURY**
- **20% THINK THAT IT IS PERMANENT**

WHEN ASKED TO IDENTIFY SOMEONE WITH A BRAIN INJURY THEY IDENTIFY INDIVIDUALS WITH PHYSICAL DEFECTS

• ONE THIRD OF THE PUBLIC THINKS THAT THEY CAN DETECT A PERSON WITH A BRAIN INJURY MERELY BY OBSERVATION

34%: When people are knocked unconscious, most wake up shortly with no lasting effects

RECOVERY IN ADULTS:

48.5%: How quickly a person recovers depends mostly on how hard he or she works at recovering

RECOVERY IN CHILDREN:

89.4%: Children are likely to recover more fully from a brain injury than adults due to the greater plasticity of the young brain

The problem with juries and TBI

The concussive effects in football and soccer and parents keeping kids away from those sports
– If you can get a TBI from "heading" a soccer ball aren't the claims in this accident legitimate

The likely lay person reaction
(read juror)
to whether or not to have
an imaging study?

Would want the CT

- Either to confirm there is no brain injury
- Or to find out there is an injury

Conclusion

Considering whether or not to image
from a trial standpoint
is an example
of the most important rule in trial:

The Necessity of being able to explain

Why

CT SCANS IN THE ED AVOIDABLE IMAGING STUDIES?



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No One Agrees



Clinical Practice Guidelines

Clinical practice guidelines are developed to improve quality of care, decrease discrepancy in practice, and ensure that best evidence is followed

Establishing the Legal Standard of Care

Q: Periodically, does the American College of Emergency Physicians issue clinical policies to emergency medicine practitioners?

Q: Is it your duty and responsibility, as a member of the American College of Emergency Physicians, to keep abreast of these clinical policies?

Q: Did you ever review its clinical policies for “Neuroimaging in Adult Traumatic Brain Injury, in the Acute Setting”?

Establishing the Legal Standard of Care

Q: Are the clinical policies issued by the American College of Emergency Physicians intended to assist emergency department physicians in clinical decision making, describing generally accepted practices for determining when to order a CT Scan for adult patients in the ED who present with mild traumatic brain injury?

Q: Do you agree that this policy statement sets forth the applicable standard of practice in the year 2017 for determining when to order a CT Scan for adult patients in the ED who present with mild traumatic brain injury?

Choosing Wisely

“Physicians can safely identify patients with minor head injury in whom it is safe to not perform an immediate head CT by PERFORMING A THOUROUGH HISTORY AND PHYSICAL EXAMINATION.”

American College of Emergency Physicians--2013

Importance of Accurate and Complete Medical Records

Electronic Medical Records – cut and paste
Inaccuracies are perpetuated in chart

If the institution and the provider can't prepare an accurate record, how can we trust the care that was administered to the patient?

Documentation is Essential

Hospital ED record must be accurate and complete

Charting by exception

If it wasn't recorded, it wasn't done.

Audit Trail

- ❑ **Altering or changing a record can be determined with accuracy**
- ❑ **When you saw patient can be determined with accuracy**
- ❑ **Where and when you wrote your note can be determined with accuracy**
- ❑ **Pop-up windows and pop-up warnings can be discovered**

What Will It Take To Lose My Case?



Determining Loss of Consciousness

Was there a loss of consciousness?

How is loss of consciousness determined?

Do you ask the patient? How would they know?

How would you phrase the question?

If Loss of Consciousness or Post Traumatic Amnesia:

CT Scan if:

- ❑ Headache---How severe? Where? Time from event?
- ❑ Vomiting – Time from event?
- ❑ >60 years of age
- ❑ Drug or alcohol intoxication – How determined?
- ❑ Deficits in short term memory – How determined?
- ❑ Physical evidence of trauma above clavicle
- ❑ Post traumatic seizure

NO MENTION OF ACCIDENT HISTORY !

If No Loss of Consciousness or Post Traumatic Amnesia

CT Scan if:

- ❑ Focal neurologic deficit
- ❑ Vomiting: Time from event? Extent?
- ❑ >65 years of age
- ❑ Physical signs of basilar skull fracture --battle sign(s)
- ❑ GCS less than 15: Who did the scoring?
- ❑ Dangerous Mechanism of Injury--Importance of History
 - ejection from motor vehicle
 - pedestrian struck
 - fall > 3 feet

ED Is Wrong 56% of the Time!

Emergency room physicians fail to accurately diagnose a mild traumatic brain injury 56% of the time despite the patient having the symptoms that meet definition

Most likely to diagnose when there was a loss of consciousness

*Accuracy of Mild Traumatic Brain Injury Diagnosis
Arch Physical Med Rehabilitation 2008*

What About Headaches?

**A low threshold should be maintained for ordering CT in ED
Patients with headaches:**

Unusual quality

Headache alone or with other symptoms

Improving? Worsening?

Relief by analgesic does not reliably exclude a serious cause

Differential Diagnosis

Q: Does the standard of practice in emergency medicine requires you to perform a differential diagnosis?

Q: Did you make your diagnosis without performing a differential analysis?

Q: When making a differential diagnosis, do you want to weigh the relative risk and dangers of each of the conditions if left untreated?

Q: If it is part of the differential diagnosis and it is life threatening to the patient, then do you want to rule it out?

If only it was so easy

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Dealing with Brain Injuries

By **JEFFREY KLUGER**
Thursday, Mar. 26, 2009

Richardson's fatal injury was an epidural hematoma.

Charles Eshelman / Filmmagic / Getty

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Thank you

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