

Full Record Display

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Length of Fulltext	Long
Correction	(From the Calgary Herald, May 4, 1999) On page D-3 of Saturday's Herald and page A-11 of Sunday's Herald, a medical opinion from Dr. Arjan Chopra was published. Dr. Chopra declined to be interviewed by the Herald. His remarks were quoted from a letter he wrote April 22, 1998, addressed ``To whom it may concern." The letter was obtained by the Herald. *****
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Fulltext:

Heavy equipment operator Barry Milne of Calgary braced himself to look judgment squarely in the eye. He then pressed the intercom button at the front door to the heavily secured old 17th Avenue house just west of Stampede Park.

A secretary checked her video monitor and saw a man standing outside, his head tilted awkwardly to the right from a 1995 work injury.

The secretary buzzed Milne inside. Milne walked through a small alcove, opened a second set of doors and found himself inside a cheery, well-appointed reception room. The secretary bade the visitor make himself comfortable in the seating area.

Minutes later, forensic psychiatrist Dr. Paul **Darlington** greeted the 47-year-old referral from the Workers Compensation Board of Alberta.

Darlington showed Milne to his office and, after exchanging pleasantries, asked relentless, probing questions. Had Milne ever smoked pot? Had he ever wet his bed? Had he ever sued anyone? When did he first become sexually intimate?

A WCB medical adviser had sent Milne to the May 22, 1998 appointment with **Darlington** for an "independent medical examination" less than a month after an internal review committee ordered the claims services office to pay him \$1,784 a month in disability benefits.

Independent medical examinations are medicine's "cottage industry" of the 1990s, says one Edmonton physician. IMEs are performed by qualified physicians hired by insurers to document the nature of a medical problem, how long it is likely to last and how likely a claim is without merit.

But a one-month Herald investigation has uncovered a dark side to these examinations.

IMEs are at the centre of many complaints over how WCB and private insurers handle claims. Some claimants allege that insurers are seeking accommodating physicians -- "guns for hire" -- to provide legal ammunition to get rid of difficult claims.

The WCB referred 3,647 injured workers across Alberta to physicians for IMEs in 1998, WCB statistics show. Of these, 84 were psychiatric examinations in Calgary and 124 were psychiatric examinations in Edmonton. The remainder included examinations by bone specialists and neurologists.

"We don't have any hired guns," says WCB president Mary Cameron of Edmonton.

North American Phenomenon

The Herald has found that workers compensation boards and insurance companies across North America refer claimants to psychiatrists like **Darlington** when confronted with cases involving intractable, difficult-to-diagnose pain.

In Milne's case, **Darlington** was attempting to elicit information to help him determine whether the worker truly remained in pain from the accident in which a tree fell on a track hoe he was operating and crushed his neck and chest just days after a contractor hired him.

Darlington also had Milne write two psychological tests.

A few weeks later, Milne obtained a copy of **Darlington's** 34-page report.

Milne was outraged. **Darlington** had labelled him a painkiller-popping substance abuser, a seeker of financial gain, an exaggerater, a probable malingerer and a shirker who wishes to be perceived as disabled.

"In my opinion, literature reveals numerous instances in history of individuals who feign in the pursuit of a larger goal," the report says. "In my opinion, malingering is not a condition which is amenable to medical treatment . . . I recommend that Mr. Milne return to the workforce."

Just months earlier, Calgary neurologist Dr. Roger West had written the WCB that he did not believe Milne was malingering and that he may have suffered some painful damage to a shoulder joint. "The person Dr. **Darlington** talks about in my report doesn't even exist," the worker says.

Darlington refused Herald requests for an interview.

Milne, who is married and has a 12-year-old daughter, says he earned as much as \$3,000 a month in take-home pay.

This month, the WCB replaced Milne's \$1,784 a month in temporary total disability benefits with an earnings loss supplement income of about \$1,650 monthly which will be decreased over time as he is gradually brought back into the work force, the worker says.

Nationally, controversy rages over alleged IME abuses.

An Ontario-based association representing chronic fatigue syndrome and fibromyalgia patients across Canada began circulating a survey among its affiliates and members last fall to compile a list of doctors who are spending most of their time on IMEs.

Lydia Neilson of Nepean, Ont., president of the National ME/FM Action Network, says her group will use the information to lobby for legislation limiting the percentage of a medical practice's revenue that can come from IME business.

"The same doctors are being used over and over again," says Neilson, who has chronic fatigue syndrome. "The doctor becomes the insurance company."

IME activity in Alberta is stirring controversy within the Alberta Medical Association.

Dr. Arnold J. Voth of Edmonton, a specialist in internal medicine, says in the Letters section of the January-February issue of Alberta Doctors Digest that he has read several life insurance IMEs in which the authors -- whom he did not name -- showed ignorance of chronic fatigue syndrome.

CFS is an internal disease in which the patient suffers extreme fatigue and a variety of other ailments including fever, sore throat, confusion, headaches and sleep disturbances. Many physicians find diagnosis difficult because there is no specific lab test, though diagnostic criteria are available.

Voth writes in the AMA publication that some insurers are resorting to any means - "whether foul or fair" - to deny patients their benefits. "It is . . . abundantly clear that (medical examiners) are being very handsomely rewarded for delivering judgments desired by the insurance company," he says.

"Does not a member of the medical profession at all times have to be held accountable for what use is made of his advice?" Voth writes. "Will it be necessary for the provincial colleges to actually set down clear-cut standards. . .?"

Edmonton physician Dr. Brian Fernandes writes in the current Alberta Doctors' Digest that the 1990s IME "cottage industry" is OK provided the doctor approaches the examination with an open mind and performs his or her work "conscientiously and with integrity."

Fernandes also believes physicians should stick to areas where they have some expertise.

Last year, an Edmonton Court of Queen's Bench judge dismissed the testimony of Calgary forensic psychiatrist Dr. Keith Pearce -- the sole medical witness for Crown Life Insurance Co. -- in a chronic fatigue lawsuit.

"He acknowledged freely that he approached his interview with the plaintiff with a mind-set that CFS simply does not exist," Justice Philip Clarke, who ordered the insurer to pay disability benefits, wrote in his judgment.

"It seems from his publications that Dr. Pearce is in the process of building a career based on the idea that there is no such thing as CFS and that people who claim to have that condition really have psychiatric problems."

Meanwhile, the Canadian Psychiatric Association has decided to research ways to educate its members on how to conduct a proper IME and write a report, says Montreal psychiatrist Dr. Philip Beck, chairman of the CPA's standards committee.

The committee considers IMEs a hot issue and discussed them last month, Beck says, adding that reference material could be in the hands of psychiatrists as early as 2000. "We're very much aware of some of the difficulties that our patients encounter."

Prof. Robert Veatch of Georgetown University in Washington, D.C. -- one of the world's top medical ethicists -- says doctors performing IMEs must do the work "completely and to the best of your ability. That implies unbiased assessments and honest reporting."

Controversial Doctor

Calgary's Dr. **Darlington** has gained notoriety among injured workers and other disability claimants for writing highly unflattering reports. These reports often contain personal information of a painful, intimate nature.

At the same time, he has been known to write reports favourable to a patient's claim.

Darlington disclosed this to a Herald reporter when he said he would consider a request for an interview -- a request he later refused. And Earl Hjelter of the Alberta Teachers Association -- who has been critical of **Darlington's** reports -- says he knows of some which have helped the claimant.

The WCB's Mary Cameron says **Darlington** is one of three Alberta forensic psychiatrists who perform IMEs for her board. The WCB pays these specialists \$300-\$450 per report based on the complexity of the case, she says.

Darlington billed the WCB \$1,581.50 for the Milne report, according to a copy of an invoice the Herald obtained. He also billed the WCB \$287.55 for the time he spent responding to a complaint Milne filed with the College of Physicians and Surgeons of Alberta. Cameron refused to discuss **Darlington**.

The Herald has obtained copies of 16 **Darlington** reports -- all of which give a thumbs-down to the insured person's claim -- from injured workers and from people who have filed disability claims with life insurance companies and the Canada Pension Plan.

The reports suggest the claimants were liars, malingerers, motivated by insurance or victims of mental illnesses like somatoform disorder in which physical ailments originate in the mind.

"It's ridiculous and intolerable," says Calgary physician Dr. Beverly Tompkins who limits her practice to pain and fatigue disorders and who claims her office is filled with patient files in

which **Darlington** states these diseases are not real.

"Something has to be done about it."

Claimants are devastated when they read what **Darlington** thinks about them. "I had a complete nervous breakdown," recalls Debbie Leigh of Calgary, a former Northern Telecom technician who filed a tendonitis claim with Mutual Life of Canada.

A specialist in internal medicine urged in a report months later that she be referred to a psychiatrist for treatment of depression.

Leigh filed her claim in 1993 and physicians diagnosed her later that year as having fibromyalgia and CFS. Mutual Life referred Leigh to **Darlington** in 1996. "His report was just a horrible report," she says. "I thought they were out to help me -- not to try to hurt me."

Claimants often react to the WCB and insurance-sponsored IMEs by obtaining medical reports from their own consultants.

Here Are a Few:

- "Dr. **Darlington** holds a bias towards the illnesses of chronic fatigue syndrome and fibromyalgia and does not consider them to be real or organic illnesses," Tompkins says in a report to a lawyer acting for one of her patients.

"It is obvious that if a physician is biased against a patient or biased against a patient's illness from the outset, that the entire examination cannot be considered valid."

- Edmonton psychotherapist Dr. Cheryl Malmo alleges that **Darlington** -- who performed the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) on social worker Kathy Ewald -- failed to weigh the test results against other information.

Darlington's recommendation that Ewald -- a former Edmonton city hall employee health co-ordinator who went on leave in 1995 as the result of workplace stress -- be considered for shock therapy seems "very extreme," Malmo wrote Sun Life, Ewald's insurer.

The recommendation was based on only one test and Ewald has made good progress in therapy, Malmo says.

- Calgary psychiatrist Dr. Donald MacGougan, writing on behalf of fibromyalgia patient Ann Nickel, asks Mutual Life of Canada what **Darlington's** observations about the former warehousewoman's personality traits have to do with her disease.

MacGougan notes in the 1998 letter that four specialists in internal medicine have diagnosed the 48-year-old Nickel with fibromyalgia.

"I doubt that Dr. **Darlington's** brief physical examination can match the years of medical experience of these physicians," he writes.

- Family physician Dr. Therese Ng Weber of Calgary notes that patient Richard Herdman, a disabled pharmacist who lives in Airdrie, has been diagnosed by four psychiatrists as having bipolar disorder, a manic-behaviour illness that has resulted in him being involuntarily hospitalized.

Bipolar disorder was covered under Paul Revere Life Insurance Company's policy. But the insurer discontinued his benefits after **Darlington** filed a report in 1997 saying the 44-year-old Herdman should be prescribed Ritalin for possible attention deficit disorder, a malady not covered under his policy.

- Dr. Arjan Chopra of Calgary says WCB claimant Alan Sieb, 44, suffers from chronic, permanent pain from a 1993 industrial accident and uses his medications responsibly. "There is no evidence in my charts over a 25-year span that this patient has . . . had any dependencies of any kind," he says.

In a 1998 report to the WCB, **Darlington** labels Sieb an abuser of painkillers, pot and booze.

Computerized Psych Tests

The ATA's Hjelter -- who assists teachers with disability claims -- says the insurer that handles 90 per cent of the ATA's business does not deal with **Darlington**; yet Hjelter spends much of his time dealing with emotional fallout from **Darlington's** reports.

"The perception of people that I've dealt with is that they've been put in a hopper," he says.

Red Deer psychiatrist Dr. Norman Costigan says **Darlington** relies too heavily on computerized psychological test results. "To use an MMPI-2 with somebody with an organic disorder is totally inappropriate," says Costigan, David Thompson Health Region's chief of psychiatry.

Costigan says the MMPI-2 will make patients with serious physical disorders look like pain-focused mental cases. "It doesn't say that you have fibromyalgia because the program is set for understanding psychiatric issues," he explains.

Calgary psychologist Dr. Robin Wetherley says the MMPI-2 has a legitimate place in forensic assessments of people with physical illnesses provided that the health professional looks at information from other sources as well.

But **Darlington** has failed to do this on a number of occasions, Wetherley says. "It's horrifying to a vast majority of people in this field."

Several claimants have filed complaints about **Darlington's** assessments to the College of Physicians and Surgeons and Kathy Ewald has filed a lawsuit.

On Jan. 7, 1999, Trevor Theman, the College's Assistant Registrar, wrote Barry Milne that **Darlington** performed a legitimate role as a physician reporting to a third party -- the WCB -- and that such work is prone to conflict. "I cannot find that Dr. **Darlington** acted improperly or in a negligent fashion," he concluded.

On Feb. 25, Registrar Larry Ohlhauser wrote a Calgary patient that the College hired two IME experts to review **Darlington's** assessment of her. The College reviewed their reports, then concluded there was insufficient cause to hold a hearing, he wrote.

Last June 30, Ohlhauser wrote work-stress patient Kathy Ewald, "I am satisfied that he has taken seriously the issues that he and I spoke of, including his commitment to continuing medical education in the areas of chronic fatigue syndrome, fibromyalgia and independent medical examinations.

"He is also committed to ensuring the accuracy and completeness of his medical reports," Ohlhauser continued. "To ensure high quality care, he volunteered to have a mentor advise him regarding independent medical examinations and practice."

Darlington later pleaded in Ewald's lawsuit that he "conducted the independent medical examination in a fair and reasonable fashion and in accordance with the standard expected of a psychiatrist providing independent medical assessments in . . . the province of Alberta."

Tompkins says the College -- which regulates doctors -- is shirking its duty. It is "profoundly inappropriate" for a psychiatrist to dispute physical diagnoses, she says.

But Edmonton lawyer Mark Feehan, who handles disability insurance and car accident cases, says everyone is entitled to his or her opinion.

Feehan says workers compensation boards and insurance companies "are interested in getting out of paying -- or minimizing how much

they have to pay. You can't say that because they've hired a particular expert that they're not playing fair or the expert is not playing fair. He legitimately has this opinion."

WCB Avenues of Appeal for Workers

- Claims Services Review Committee: reviews case manager's decision.
- Appeals Commission: an independent quasi-judicial tribunal and the final level of appeal.
- Reconsideration: The commission can take a second look if new evidence comes to light.
- Judicial review: The Court of Queen's Bench can tell the Appeals Commission to reconsider a decision.
- Ombudsman: The provincial Ombudsman can recommend the WCB or Appeals Commission reconsider a decision.

Source: WCB website

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