

NEW MEXICO INJURY ATTORNEY BLOG

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Pre-Existing Injuries Present Challenges in New Mexico Personal Injury Claims

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An important issue that arises in determining the value of a personal injury claim is the existence of a pre-existing condition. This is especially important in claims involving soft tissue such as whiplash or low back strain and sprain.

An injury such as a broken leg can easily be attributed to an acute event, such as an automobile accident or a slip and fall accident. But with a soft tissue injury, it is more difficult to pinpoint the date the problem began. If the injured person has had neck or back issues in the past, the question of causation between the accident and the injury is more tenuous because many of same problems may have existed prior to the accident. Problems with causation will likewise create problems with liability since there can be no liability without causation.

The problem and challenge of pre-existing medical conditions may not be as great when there has not been treatment for the neck or back pain for several years before the accident. However, many people who have experienced a soft-tissue injury in the past, even after the pain complaints end, continue to have some issues with the problem area as the person often has some degenerative changes that make it more likely for the same injury to re-occur.

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In cases of degenerative changes in the neck or back, even though an injured person is not experiencing problems for a pre-existing condition at the time of the accident, the condition is still present and is therefore not "caused" by the accident. Instead, those existing injuries may be aggravated by the accident. This does not mean there is no liability and no recovery for damages. It simply means there will be a reduction in the recovery.

Generally, the injured plaintiff will not receive full compensation for **damages** related to the current claim if there were prior injuries for which the insurance company is not liable. Often, an insurance company will accept liability for the aggravation of the pre-existing condition for a certain period of time, but will not agree that the accident at issue is the sole source of the current complaints.

Rather than accept full responsibility for the current injuries, the insurance company will seek to apportion responsibility for the current injuries in relation to the prior injuries. The term "apportionment" means that the insurance company will only claim a portion of the responsibility for the injuries sustained in the accident. Consequently, if a pre-existing condition is evident, your medical bills and your personal injury claim may only be paid only in the percentage calculated through apportionment.

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