

# NEW MEXICO INJURY ATTORNEY BLOG

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ATTORNEYS AT LAW

## Preexisting Conditions & Eggshell Plaintiff in New Mexico Personal Injury Claim

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Many people that suffer personal injuries in an accident come with some baggage. Among the most common are preexisting medical conditions or injuries. Many injured plaintiffs are reluctant to share the preexisting conditions with their lawyers for fear that they will hurt their case.

There are several problems with the failure to disclose preexisting conditions to your lawyer. The problems associated with disclosure are far easier to deal with than problems caused by a failure to disclose. In fact, the preexisting conditions may not hurt your case at all while a failure to disclose them is often very difficult to overcome.

Typically, preexisting injuries that are similar in nature to the injuries suffered in the accident will be examined with a high level of scrutiny. The insurance company will want to know that the injuries were caused by the accident. However, just because they were similar in nature does not mean that they will not be compensated. Likewise, preexisting conditions that make you susceptible to injuries of the kind suffered in the accident, even if completely unexpected, should not be used to devalue your claim.

The age old rule that addresses these situations is the "egg-shell plaintiff" rule. The rule basically states that you take the plaintiff as you find him, no matter how frail or susceptible to injury, even when as delicate as an eggshell. In other words, the defendant and his or her insurance company cannot argue that an average person would not have been hurt or injured in the accident. Neither can they argue that the injuries were too unpredictable due to the plaintiff's susceptibility to injury to merit recovery.

New Mexico, and most states, actually has a jury instruction addressing the "egg-shell" plaintiff. New Mexico Uniform Jury Instruction 13-802 addresses the tension between non-compensable preexisting conditions and those conditions that are worsened or aggravated by the plaintiff's susceptibility to injury as a result of preexisting conditions. UJI 13-1802 states in part:

"...If you find that, before any injury in this case, plaintiff was already impaired by a physical or emotional condition, plaintiff is entitled to compensation for the aggravation or worsening of the condition, but not for elements of damages to the extent they were already being suffered.] [However, damages are to be measured without regard to the fact plaintiff may have been unusually susceptible to injury or likely to be harmed. The defendant is said to "take the plaintiff as he finds [him] [her]," meaning that the defendant, if liable, is responsible for all elements of damages caused by the defendant's conduct even if some of the plaintiff's injury arose because the plaintiff was unusually susceptible to being injured.]"

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The cases in New Mexico have consistently found and it is well settled principle of tort law that a defendant is fully liable for all damages caused by his or her conduct even where the injuries are far more severe for the plaintiff than they would have been for an average person.

If you have suffered injuries in an accident and you do have preexisting medical conditions, it is important to address these head-on with an experienced personal injury attorney.

A plaintiff's apprehension about preexisting conditions is understandable. However, failure to disclose these conditions will put your attorney and your case at a severe disadvantage.

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