

NEW MEXICO INJURY ATTORNEY BLOG

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COLLINS & COLLINS, P.C.
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Concealing Preexisting Injuries Can Seriously Harm a New Mexico Personal Injury Claim

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By Collins & Collins

A recent case from the 10th Circuit Court of Appeals illustrates the importance of full disclosure of preexisting medical conditions in a personal injury case. Failure to fully disclose preexisting conditions can result in serious discovery sanctions including dismissal.

The case of *Freddie v. Marten Transport* involved a 2006 auto accident. The plaintiff, Jerry Freddie, claimed injuries to his head, neck, back, shoulders, and extremities. He claimed that all of these injuries along with associated fatigue and sleep problems were associated with the 2006 accident.

The defendant requested discovery from Mr. Freddie. Included in the discovery request, as is the case in every personal injury action, was a request for disclosure of preexisting injuries and prior medical records. Mr. Freddie denied any preexisting conditions and failed to provide the lawfully requested prior medical records.

In fact, Mr. Freddie had been in a relatively recent rollover accident in 2003 in which he suffered similar injuries. In addition, it appeared from the medical records that the defendant was able to obtain that Mr. Freddie had not fully recovered from those injuries.

Despite the discovery of the prior auto accident and preexisting injuries, Mr. Freddie persisted in his refusal to provide medical records or even to acknowledge the prior injuries. The district court judge ordered Mr. Freddie on several occasions to provide the records. Mr. Freddie refused and even invoked his 5th Amendment right against self-incrimination when asked about prior chiropractic treatment. Oddly, Mr. Freddie argued that he did not recall the injuries while arguing at the same time that he did not want to implicate himself in insurance fraud through his testimony on the chiropractic treatment.

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Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958

<http://www.newmexicoinjuryattorneyblog.com/>

The district court finally dismissed the lawsuit for Mr. Freddie's ongoing discovery abuse. The 10th Circuit recognized that dismissal is a rather extraordinary sanction stating that "While discovery-related sanctions are generally permissible to protect the integrity of the judicial process, a sanction of dismissal is reserved for violations 'predicated upon willfulness, bad faith, or some fault of [the party] rather than inability to comply.'"

The Court set forth five factors to be considered by a trial court before imposing a sanction of dismissal: (1) actual prejudice to the defendant; (2) level of interference with judicial processes; (3) the culpability of the party; (4) prior warning of possible dismissal for non-compliance; and (5) the efficacy of other lesser sanctions.

Interestingly, the court said that there is no rigid test more or less leaving it to the discretion of the trial judge. In this case, the court more or less ignored the last two factors. The trial court did not warn of dismissal in advance. Rather, the 10th stated "[o]nce a witness swears to give truthful answers, there is no requirement to warn him not to commit perjury or, conversely to direct him to tell the truth." Citing *Chavez v. City of Albuquerque*, (10th Cir. 2005). Nor did the court set forth any possible alternative sanctions short of dismissal. The court stated instead that dismissal has been affirmed for lessor discovery offenses and that this case fell within the range warranting dismissal.

Preexisting conditions, prior injuries and even prior related accidents can most definitely hurt the value of a personal injury claim. In fact, it should come as no surprise that a defendant should not by virtue of a later accident pay for injuries suffered in a prior accident. It is not uncommon for plaintiffs to hide preexisting conditions from not only the defendant but from their own attorneys. As this case illustrates, concealing preexisting can be disastrous.

As much as you think it might hurt your case, and as much as it might actually hurt your case, concealing preexisting injuries will kill your case. Even if it does not get dismissed outright, juries are not kindly disposed toward dishonest plaintiffs. If you have a personal injury claim and you have preexisting injuries, discuss them with your attorney. An experienced personal injury attorney will address them directly in a way that minimizes the damage to your claims.

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