Many Chiropractors recognize how lucrative the PI practice can be, yet one serious challenge is developing mutually beneficial referral relationships with PI Attorneys. Having worked in the world of PI for over 20 years, it occurred to me that all of our promotional programs have been focused on marketing from the Chiropractor’s perspective. Perhaps the solution would come by researching the needs of Attorneys instead. I began interviewing attorneys to determine what they needed to feel comfortable referring to DC’s. As a Technogeek, my goal was to find an efficient, high-tech solution to the problem. Not being a Chiropractor, I had a distinct advantage as they spoke freely without concern for offending me.

The last attorney I interviewed said the following: “With the Chiropractor as primary, I don’t know if I have a good or bad case until the end, and it almost always ends up as the professional opinion of the DC vs. the MD. Although I mean no disrespect, there is a natural bias for the public to see the word of the MD as more credible.”

My response was to open up the AMA’s Medical Text *The Practical Guide to Range of Motion Assessment* and show him the Chiropractic device which combines Dynamic Surface EMG and Range of Motion (ROM) on page 45. I explained the invention in simple terms: When we can see Range of Motion simultaneously with dynamic or motion sEMG, we not only test for limited range of motion, but also determine the level of muscle guarding, a crucial piece of clinical information. He said “Muscle guarding...as presented in the AMA Guidelines? This would definitely let me know if I have a good case up front. That is killer.” I explained what is most impressive is the ability to separate out symptom magnifiers from those who are truly injured. Frustrated he asked, “Why don’t any DC’s I’m working with use this device? It would make my job so much easier.”

In 2005, researchers at University of Michigan noticed a very interesting and valuable pattern: In their meta-analysis of all studies where either Dynamic sEMG and/or ROM were used, it became clear that if both measures were combined, sensitivity and specificity improved dramatically, making this combined tool much more effective at establishing soft tissue injury. 1 John Gerhardt, MD, author of *The Practical Guide to Range of Motion Assessment* stated with regards to the value of dynamic sEMG in the combined test: “It significantly augments ROM data by providing objective assessment of effort.”

Below you can see an example of two cases: Both patients were seeking damages for soft tissue injury in automobile accidents.

In the graphs below, the top half of the graph shows Dynamic sEMG (muscle activity). The blue line represents the left lumbar, red line the right lumbar. The bottom half of the graph displays “real time” range of motion measured dynamically (the red line). In a normal individual at full flexion, muscles enter a state of relaxation as ligaments support the spine. This is known as the “flexion-relaxation response” and is a reflex. When there is soft tissue injury, muscles fire in a defensive manner, “guarding” in response to pain, injury or spinal instability.

As you can see clearly from the graphs in Figure 2, Patient 1 is most likely a symptom magnifier while Patient 2 (Figure 3) is clearly injured. One factor which makes this combined test is so powerful, is that the tool objectively evaluates both patients without any subjective component: No verbal response or input from the patient is necessary, by definition making the test truly objective. Of course this means that some of your patients’ claims of injury will not be supported. At first most doctors fear this, yet the added credibility received when identifying these few symptom magnifiers further bolsters the attorney’s viewpoint of you as a true expert witness.
This objective, indisputable evidence is perhaps the best way to garner the respect of attorneys, resulting in a solid source of referrals. Your use of this high tech tool which generates impressive visual images saves them time, money and maximizes the settlement potential.

How do you educate attorneys who have bought into the “old” notion that Surface EMG lacks validity?

Literally 100% of the attorneys interviewed who stated that they would never consider using Surface EMG for PI cases were under the false impression “Surface EMG” referred specifically to Static sEMG, the commonly used test with the back graphic and bar graphs showing muscle activity about the spine. The only thing these two tests have in common is the term “sEMG”. Unlike Static sEMG performed in the neutral posture, the combined Dynamic sEMG and ROM test is performed in motion making it a functional test and has proven itself both in research studies and in the courtroom as indisputable.

There are four key points which establish credibility.

1. **Rule Challenge in Florida:** Richard w. Merritt vs. Florida Dept. of Health et al  (Case No.04-1149RX)

   In 2003, the State of Florida attempted to remove Dynamic Surface EMG along with a number of other diagnostic testing devices from the list of approved tools for evaluating soft tissue injury in PI cases. Dr. Richard Merritt and myself decided to sue the State of Florida. The case became one of the most important “test cases” in Chiropractic history. The State of Florida was joined by over 300 insurers, turning this case into a landmark decision. The Administrative Law Judge (ALJ) ruled that Surface EMG was definitively valuable in evaluating soft tissue cases. This was appealed by the insurers, and we prevailed in Superior Court. There is now a statute in Florida requiring reimbursement for Dynamic Surface EMG (Florida Statute 627.730-627.7405).

   Due to the magnitude of effort on the part of the insurers and the State of Florida to invalidate this tool, the result has been the opposite. This case laid the groundwork for admissibility in any state in the country. The decision was 47 pages long and definitively validated Surface EMG as medically necessary in evaluating soft tissue injury cases. A summary written by the lead attorney in this case was written to provide attorneys using Dynamic sEMG how admissibility is established using this case.

2. **The AMA’s CPT code:** The code for billing Dynamic sEMG (96002 & 96004) establishes the validity of the tool. As the judge states in the above case, “In order to be assigned a five-digit CPT Code, the procedure must be “consistent with contemporary medical practice and be performed by many practitioners in clinical practice in multiple locations”.

3. **Medical Text:** *A Practical Guide to Range of Motion Assessment* establishes for the court that a medical text recommends the utilization of the combined Dynamic sEMG and ROM test. It is shown in the examples of proper test technique as the tool of choice.

4. **Claims that EMG refers to only Needle EMG:** This is a common misconception presented by many reviewers for insurance companies. A simple review of the literature using Pubmed shows clearly over 7500 studies on Surface EMG. This fact swiftly puts this common argument to rest.

   With over 4 years of experience in the courts, this combined test is now getting the recognition it deserves. According to Brandon Casey, partner at Casey Law Offices, “Attorneys like evidence, and by that I mean actual evidence-based treatment, not opinion.” He goes on to say “sEMG studies are the best proof of soft tissue injuries. In this day and age of skepticism, they are essential in a litigation case.” In his letter Mr. Casey points out that in cases where the combined Dynamic sEMG and ROM exam were used, settlements averaged ten times what was typically offered by the insurer.
Attorneys are now being pushed into an “Evidence-based” model which applies to law in the same manner as in Chiropractic. Insurers, not immune to the economic slowdown, are not “settling” cases with the same frequency and ease as in the past. This is creating a demand for solid, objective data, affording the Chiropractor willing to integrate new technology an opportunity to fill this “evidence gap” with the objective physiologic data attorneys now need.

The last attorney I interviewed said: “This new combined Dynamic sEMG and ROM testing definitively goes beyond leveling the playing field, making the DC’s assessment more impressive than the MD’s.” By using objective data, the Chiropractor now has greater credibility than the IME, as objective data wins over opinion 99% of the time.

Along with instant credibility with attorneys, there is another significant benefit of having solid objective data collected on your patients. Objective data protects you in an audit. We have even seen Static sEMG, established as valid in a Superior Court Decision in CA, protect doctors clinical decisions in an audit. Objective data can prove the need for care, thus make difficult the auditors questioning of your decision to treat. With more and more audits on the horizon, the doctor utilizing technology for evaluating his or her patients can sleep well knowing he or she is well protected in an audit.

Technology can be your best friend or worst enemy. By finding the best product and support for your needs, you will have a great partner in building your practice. Follow some simple guidelines, and you will enjoy all the advantages of technology without the stress.

References:

Dr. Frank King
• has served the Chiropractic and natural products professions for nearly 40 years.
• understands the needs of a professional practice.
• understands the needs of your patients.
• has created a special program to help you create EASY, PASSIVE INCOME.