

In *your* CORNER

The Disability Law Adviser

CASE CLOSED: Small Mistakes Cost **BIG** Time

The idiom ‘the devil is in the details’ means that mistakes are usually made in the small details...including mistakes or inaccuracies in your medical records, especially when your disability benefits are at stake. Here’s the rub: you – and not your medical providers – are responsible for all medical record inaccuracies.

For our client Dean Burden that lack of oversight resulted in a denied long-term disability (LTD) claim. Luckily for Dean, he came to our office for help.

a recumbent bike and take up trail riding.” Dean never mentioned buying a recumbent bike or taking up trail riding, but because his doctor documented it in his notes, which was included in each future visit, it *appeared* as a fact that Dean was riding a recumbent bike and trail riding.



(above, left to right) Dianne Blain (retired paralegal to Claudeth), Dean Burden, and Claudeth Henry, Esq.

As a National Account Manager for a major carton company, Dean makes telephone calls, in-person visits and presentations to existing and prospective customers. Dean’s job requires about 20-25 hours of computer time, 5-hours on the phone, 15-hours driving and 5-hours of direct customer care weekly.

“I was always a very active person, personally and professionally. Slowing down was not in my DNA. With retirement approaching, my wife and I were thinking about the ‘next chapter’ in our lives. We planned to buy a large RV, get away from the humid summer months in Florida, and travel out west, where we planned to work summers at National Parks,” said Dean.

However, Dean’s active work and home life activities began suffering as a result of his chronic cervical and lumbar spine disease requiring increasing medical interventions. As his medical condition worsened and his daily pain increased, Dean’s employer couldn’t accommodate his increasing restrictions, and urged him to file a claim for short term disability benefits, which was approved by SunLife.

However, his LTD claim was denied because of an error in his medical records, a mistake that Dean had overlooked, and medical records are the key to proving a disability claim.

Dean didn’t realize that his medical records sent to SunLife showed that he had mentioned to his doctor that he “wanted to get

SunLife seized on this small doctor’s note as their reason to deny Dean’s LTD claim, arguing that these activities were inconsistent with someone suffering a severe spinal disability.

After receiving the denial from SunLife, Dean says he was ready to file an appeal and asked his pain management physician for a disability lawyer he could trust with his case. “Without hesitation, she recommended that I contact Claudeth Henry, as my doctor had nothing but praise for her hard work and knowledge of medical issues like mine.”

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In Your CORNER

by Claudeth Henry, Esq.

Our May issue welcomes spring, celebrating the new colorful life popping up around us in North Central Florida and signaling time to start gardening or entertaining again as I share one of my favorite one-dish diabetes-friendly recipes in ‘*Claudeth’s World.*’

You’ll meet one highly specialized Ocala dentist, Dr. Thomas Harter in our community ‘*Spotlighting*’ column and we feature two examples of how small details can derail your disability benefits in ‘*Case Closed*’ and ‘*Danger Zone.*’

If you, your patients, or clients are applying for or have been denied disability benefits from an employer-sponsored disability insurance program, contact me for a free case evaluation. Why? Because we’re ‘*In Your Corner.*’ ■



Claudeth Henry, Esq.

SPOTLIGHT The Wounded Healer... Healing Others



as recent as the world-famous grandfather of modern psychology, Carl Jung's theories.

The wounded healer is alive and well in Ocala through the highly specialized work of a talented dentist, Dr. Thomas Harter, who healed himself so that he could heal others.

"For 17 years I suffered from TMJ or Temporomandibular Joint Disorder and sleep disordered breathing before I was diagnosed correctly," said Dr. Harter, founder and owner of the TMJ & Sleep Therapy Centre of Ocala. "From that personal experience, I know the pain my patients with TMJ are suffering and that pain is often elusive and hard to manage."

According to Dr. Harter, TMJ symptoms are often misunderstood and may include jaw popping and clicking, waking up in the morning unable to open your mouth or chew without pain. Clenching and grinding your teeth while sleeping may cause this pain and dramatically interfere with the quality of your sleep. Instead of only being recharged 70% rather than 100%, over time this 30% reduction causes your body to break down sooner than it should. This affects your daily recuperation time and functioning throughout the day.

What about children?

Dr. Harter explained that symptoms of ADHD and sleep disordered breathing in children are almost identical. "In the past doctors have seen the kids, who may have been thought to be a problem child, labeled them with ADHD and given them drugs, but they weren't looking for a *reason*. They were treating the *symptoms* without finding the *cause*. If the child has air flow problems, then we can treat that and avoid drugs, and they can return to normal growth, learning and growing better."

While Dr. Harter still enjoys treating his general dentistry patients, his personal journey through the pain of TMJ and sleep disorders led him to specialize in TMJ, setting him on a new path by joining TMJ Sleep Therapy Centres International. Only 65 other professional dental practices belong to the organization dedicated to developing more effective treatment protocols for TMJ and sleep disturbances.

This busy dentist with an inquisitive mind is always on the lookout for the latest dental procedures and information that improve the quality of his patients' lives.

When he's not healing his patients, Dr. Harter is a physically active guy, golfing every chance he gets and pumping iron as he begins his new passion as a body builder. "I'm in training now and if I continue to improve, I may even compete."

While Dr. Harter gave no promises on signing up for his first competition, you can be sure if this wounded healer can heal himself and others by increasing his knowledge and skills, he'll probably take home a few trophies.

Since healing his patients remains his number one priority, Dr. Harter looks for professional referral sources who display the same commitment to their clients and patients as he does.

TMJ & Sleep Therapy Centres of Ocala, 2609 SW 33rd Street, Suite 104, Ocala, Florida 34471, 352/203-4493, tmjsleepflorida.com ■



(Dr. Thomas Harter taking some time for a golf game)

(continued from cover)

CASE CLOSED:

When Dean came to us, we reviewed his medical records, discovered the discrepancy, and worked with his doctor to correct the physician's note. On appeal we were able to flip the script by showing that owning a recumbent bike was not inconsistent with being disabled.

Armed with our research and supporting corrected medical records from his doctor, SunLife approved Dean's LTD claim.

"I found Claudeth to be compassionate and caring, reviewing my case often with an open door should I have questions and I'm sure pleased with the outcome," says Dean. **CASE CLOSED.** ■



DR. MARY GETS RESCUED

Sometimes those receiving disability benefits, like Dr. Mary MacNaughton, fall into the *Danger Zone* when their benefits are abruptly cut-off by big insurance companies that don't follow the rules. Luckily, Dr. Mary was rescued by her attorney who knew how to win back her benefits.

Her story is a good example to follow for anyone who has received a denial from an employer-provided disability insurance plan:

In *MacNaughton v. Paul Revere Life Ins. Co., No. 4:19-40016-TSH, 2022 WL 780724 (D. Mass. Mar 7, 2022)*, Dr. Mary MacNaughton worked as a diagnostic radiologist, a profession that requires excellent visual acuity so she can accurately examine and interpret x-rays. When she was pregnant with twins, Dr. Mary went into early labor experiencing pre-eclampsia, a serious complication that can even lead to death. In Dr. Mary's case, the condition resulted in severe visual impairment. Unable to perform her job, **Paul Revere Life Insurance Company and Unum Group** approved and paid Dr. Mary's claim for long-term disability benefits for the next 10 years.

However, when Dr. Mary's treating ophthalmologist retired, PAUL REVERE changed her status, deciding she could return to work, and ending her long-term disability payments. Dr. Mary's attorney requested her entire claim file including any doctor review reports and filed an appeal.

After PAUL REVERE received Dr. Mary's appeal and again decided she could work, her attorney wisely requested an updated claim file from PAUL REVERE.

This time, Dr. Mary's sharp-eyed attorney found the review reports which were not previously shared with Dr. Mary so she could receive a 'full and fair' review of her claim.

PROBLEM FOR PAUL REVERE & GOOD NEWS FOR DR. MARY

Whenever an ERISA (Employee Retirement Income Security Act of 1974) claim is denied – and Dr. Mary's employer-provided disability insurance program is an ERISA plan – any claimant, like Dr. Mary, has a right to receive *any and all* documents used to make the claim decision.

Although Dr. Mary's attorney had requested *all* reports, PAUL REVERE sandbagged her and didn't send them until after they had already made a decision, depriving her of the opportunity to refute their evidence.

Upon reviewing Dr. Mary's ensuing lawsuit, the court agreed with Dr. Mary's attorney and sent her claim back to the claims' administrator, which gave Dr. Mary a chance to refute PAUL REVERE's review doctor's reports with her own medical experts.

When it comes to protecting your disability benefits, choose an attorney well-versed in all the ERISA rules and regulations – like me – because sometimes, often, the devil is in the details.

If your patients or clients are denied disability benefits, refer them to me for a free case review. Why? Because I will be in their corner and work hard to keep them out of the *Danger Zone*. ■

PICKLING CATCHES FIRE



Pickleball is not only one of the fastest growing sports in America. It is also one of the most popular new sports in Marion County that boasts over 13 pickleball courts, including 8 public courts at Coehadjoe Park. Pickling is the latest obsession by those of all ages. Played on a 20 ft. wide by 44 ft. long court with a ping pong-like wooden paddle, picklers use an underhand stroke hitting a perforate ball. Sound like fun? Want to learn more? Check out their FaceBook page: Ocala Pickleball Club, LLC or the USA Pickleball Association where you can find courts all over this country...and even, beyond. ■

Havin' a LAUGH!!



"Is it true you were offered a bone to testify?"



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Claudeth's WORLD

A PERFECT MOTHER'S DAY RECIPE

Florida's spring is bursting with purple coneflowers, yellow beach sunflowers, and multi-colored azaleas and that signals a time to start entertaining again, especially on Mother's Day when we will be hosting a very special lady, my mom, Esmelin Clarke, and serving up my favorite one-dish recipe.

This *Baked Garlic Salmon & Veggies* recipe is easy to rustle up, delicious and diabetic-friendly. Like most American families, our family includes those with medical conditions like diabetes. Nearly 1 in 10 Americans have diabetes. About 2.4 million in Florida struggle with diabetes and the only way to avoid diabetes is to eat healthy.

Our best wishes for a happy AND healthy Mother's Day. ■



(above) Spring is in the air with coneflowers, beach sunflowers and multi-colored azaleas in bloom.

RECIPE

Claudeth's Favorite Mother's Day Baked Garlic Salmon & Veggies (recipe for 4)

- 1 lb. fingerling potatoes, halved (or Yukon golds or white/red baby potatoes)
- 2 TBS olive oil
- 1 ½ tsp salt, divided
- ½ tsp cracked black pepper, divided
- 4 (6 oz.) skinless salmon filets
- 2 ½ TBS minced garlic, divided
- 2 TBS fresh chopped parsley
- 1/3 cup freshly squeezed lemon juice
- Your choice of either ½ cup melted unsalted butter or ½ cup of extra virgin olive oil for a healthier option
- 3 bunches asparagus (18 spears, woody stems removed)
- 2 TBS dry white wine (or ¼ cup low-sodium chicken broth)
- 1 lemon, sliced to garnish

1. Heat oven to 400°F. On large baking sheet, toss potatoes with oil, ½ TBS of garlic, 1/2 tsp salt, and 1/4 tsp pepper. Spread in an even layer and roast for 15 minutes until starting to soften and brown.
2. Push potatoes to one side and arrange salmon down the center after rubbing salmon evenly with 1 ½ TBS of the minced garlic and 2 TBS of parsley. Add the asparagus to the other side of baking sheet.
3. Combine 1/4 cup of lemon juice and 1/4 cup of the melted butter (or olive oil) together and pour the mixture over the salmon and asparagus. Season with remaining salt and pepper.
4. Return to oven and continue baking until the potatoes are golden and fork-tender and the salmon is opaque throughout, (about 10 minutes). Optional: broil in the last 2 minutes for charred edges.
5. Meanwhile in small bowl, combine remaining butter (or olive oil), garlic and lemon juice with the wine (or chicken broth) and serve over salmon with veggies and lemon slices...and enjoy!

Let me know if you have a favorite healthy recipe you would like to share and for more information on diabetes and healthy diabetic recipes you can contact: Diabetes (marionhealth.org) Diabetes | Florida Department of Health in Marion (floridahealth.gov) <https://www.allrecipes.com/recipes/739/healthy-recipes/diabetic/>