

## Asbestos-Related Pulmonary Disease: A Legal Perspective - How Medical Practitioners can Significantly Affect their Patient's Legal Rights

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Prior to becoming an attorney I worked with the homebound elderly in Philadelphia Pennsylvania as a social worker for several years. I subsequently became an attorney working primarily with seniors suffering from asbestos-related diseases. As an attorney that has been representing people in the United States with asbestos-related diseases for nearly thirteen years I am constantly working to educate people about the different kinds of disease asbestos can cause and continually find that people who are eligible to bring asbestos compensation claims have no idea that they can do so - especially people with lung cancer and nonmalignant asbestos disease or asbestosis. While most people are familiar with mesothelioma thanks to legal advertisements, it has been my experience that many lung cancer patients often are not aware that asbestos may also have contributed to causing their disease, especially if they have a history of smoking. I also regularly represent people with COPD or chronic obstructive pulmonary disease, many of whom end up having to use supplemental oxygen due to the severity of their pulmonary deficiencies. However, despite an occupational history that involves work with asbestos and the presence of pleural plaques, interstitial fibrosis, a restrictive pattern on pulmonary function tests, and at times asbestos fibers found in their lung tissue, these people have not been diagnosed with asbestosis and have no idea that asbestos exposure may have contributed to causing their pulmonary condition. Too often my clients that have been diagnosed with COPD, especially former smokers, do not receive any further diagnostic tests or medical inquiry except for routine monitoring and prescription of bronchodilators and oxygen if needed. Many times if there is mention of pulmonary fibrosis they are diagnosed with "IPF" or idiopathic pulmonary fibrosis - again, despite an occupational history that involves exposure to asbestos. Many kinds of employment are known to be associated with asbestos exposure, these include: Naval and ship exposure, steel manufacturing and heavy industrial work at places like oil refineries, power plants, and chemical plants, construction, mining, paper manufacturing, glass manufacturing, construction trades including plumbing, boiler/furnace workers, electricians, bricklayers, pipe fitters, insulators and roofers, automotive mechanics, machinists, millwrights and others.

Understandably, with lung cancer patients a physician and patient's primary concern is treatment and alleviation of any problematic symptoms a patient is experiencing. The actual cause of the disease is often of little import as far as the treatment plan is concerned and may not be discussed at all unless the patient inquires, or because they have a history that includes smoking, no other potential cause is considered in relation to their disease. In the case of moderate to severe asbestosis, there is very little, if any, treatment available aside from supplemental oxygen or lung transplant.

Why is any of this important? Pulmonary physicians are in the best position to inform their patients regarding the potential cause(s) of their condition, which if there is evidence of asbestos-related disease, triggers legal rights and responsibilities of which their patients should be made aware because these legal rights could result in not only significant economic benefits, but also a better quality of life for your patient and his/her family. Providing patients with the knowledge that they may have an asbestos-related health condition could make a significant difference to the financial welfare of your patient and their family, as well as provide them with hope, which at times is better than any pharmaceutical remedy or treatment, giving them an avenue in which they can focus their efforts which could have a positive impact on treatment efforts, as well as on their mental and emotional well being. I am often told by clients with lung cancer that

they felt powerless over their disease and unable to do anything about it until they discovered that legal compensation was available for what they were going through.

While it is easy to blame smoking for the majority of lung disease, the reality is often multi-factorial in nature. The sad truth is that many seniors that worked with asbestos also have a smoking history as smoking was popular and socially acceptable for this generation during their prime working years in the 1950's, 1960's and 1970's. Although there has been some debate on this issue, it is still generally accepted that the combination of asbestos exposure and smoking has a synergistic effect on the lungs which increases a person's risk of getting asbestos-related lung disease exponentially [1].

### **Asbestos Litigation is Not Limited to America**

Great Britain was the first government to regulate the use of asbestos in 1931 after which the burden to protect workers from asbestos exposure fell largely on the employer. Post WWII reconstruction fueled high levels of asbestos usage and consumption in Europe from the mid-1940's through the 1960's and remained high into the 1980's [2]. Asbestos regulation in America began in the early 1970's with increased legislation and governmental restrictions following closely behind the rise in asbestos litigation. By the late 1970's into the 1980's asbestos litigation in the U.S. was widely publicized. Asbestos claims are now part of what has become a plethora of "mass tort litigation" involving defective, dangerous and often inadequately tested consumer products, pharmaceuticals and medical devices, the victims of which fall upon the medical community to treat as best they can. Many in America would like to attribute the rise of mass tort litigation to the rise of frivolous lawsuits fueled by a litigious, entitlement-seeking portion of the population, however, as a plaintiff's attorney employed in the major urban and industrial east coast city of Philadelphia, Pennsylvania for the last thirteen years representing numerous injured individuals with asbestos-related diseases, I can attest that frivolous asbestos lawsuits are by far the exception and not the norm. As the peak of asbestos use and industry in Europe occurred later than in the U.S., it stands to reason, that the number of asbestos-related diseases in Europe will continue to rise and epidemiologists have predicted that deaths from mesothelioma will not peak until at least 2020 (Peto, supra).

The fact is that people with asbestos-related disease cannot legally file a claim until they are diagnosed with an asbestos-related disease and they often are not aware that they can do so unless their doctor informs them to look into it. I routinely counsel my clients to directly ask their medical doctors to provide them an opinion as to whether asbestos-related lung disease may be contributing to their breathing problems. Yet, even when directly asked by their patients, I have had clients tell me "my doctor doesn't want to get involved with asbestos litigation." While I understand why many in the medical field do not care for dealing with lawyers, please keep in mind that you could be unknowingly depriving your patients of significant legal rights in the form of compensation which could greatly benefit them and their families. I am submitting this article in the hopes of dispelling some misconceptions regarding asbestos litigation in general, as well as to encourage those of you treating patients with lung cancer, interstitial fibrosis and COPD not to overlook or fail to document and discuss asbestos as a potential cause of lung disease and breathing problems with your patients when it is warranted. Depending on what kind of asbestos disease the patient has and what stage it is in, there may not be a lot of medical treatment available to the patient, however, they may have legal options available to them.

In the U.S. while attorneys welcome the assistance of a client's treating physician to support a legal claim, it is often not necessary, especially in the case of asbestos-related disease claims. What is most beneficial is that the medical records document that the patient has an asbestos-related disease, such as asbestosis or asbestos-related pleural plaques or interstitial fibrosis in addition to COPD, lung cancer, etc . . . While it is true that in America an attorney can subpoena a treating physician to testify in a case, this is rarely done in practice. Personally, I never subpoena a witness that doesn't want to assist me with my client's case as it is highly unlikely they will end up providing testimony that will be useful for my case. Most attorneys that have been in practice for any length of time aren't looking to force treating physicians into testifying or becoming expert witnesses, so please do not let the fear of legal involvement dissuade you from advising patients that they may have legal remedies available to them.

**Some Basic Facts Regarding Asbestos Use, Products and Regulation**

Asbestos is a fibrous, silicate-based mineral that is mined from the ground and then processed so that it can be used in various kinds of products. The properties of heat resistance and virtual indestructibility combined with its wide availability and relatively low cost made asbestos very desirable for use in numerous kinds of insulation and building materials including: pipecovering, blankets, firebrick for use in boilers and furnaces, friction products such as brakes and clutches, gaskets, packing, roofing shingles, cements, sealants, siding, electrical insulation, joint compound, floor and ceiling tile, welding rods, etc. Asbestos was widely used in ship construction through the 1980's and also used heavily in industrial construction and insulation in refineries, chemical plants, utility companies, steel mills, foundries, paper making and glass making industries, as well as many others.

As early as the 1920's, 1930's and 1940's, the medical community was becoming aware of the hazards of inhaling airborne asbestos fibers and its ability to cause disease [3]. By 1960 mesothelioma was recognized as a special lung cancer of the pleura related to asbestos exposure [4]. However, it was also discovered that there was a considerable latency period between asbestos exposure and the development of disease. Research showed that although potentially fatal, it could take anywhere from 20 to 30 or even 40 years after exposure before asbestos lung disease could be detected and diagnosed. For this reason, as well as the fact that the widespread use of asbestos in many types of building materials was quite profitable and companies were in no hurry to make changes until legislation and governmental regulation stepped in. While asbestos has been the subject of increasing regulation in the U.S. since the 1970's, to date it has not been completely banned. As of October 2016 the following countries have banned the use of all forms of asbestos: Algeria, Argentina, Australia, Austria, Bahrain, Belgium, Brunei, Bulgaria, Chile, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Gabon, Germany, Gibraltar, Greece, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Jordan, South Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malta, Mauritius, Mozambique, Netherlands, New Caledonia, New Zealand, Norway, Oman, Poland, Portugal, Qatar, Romania, Saudi Arabia, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, and Uruguay [5].

**Patients at Higher Risk of Asbestos-Related Disease**

Due to the very long latency period between exposure to asbestos and the initial appearance of the signs and symptoms of disease, asbestos diseases primarily affect the older population, or people age sixty-five and older, although one can occasionally see people in their late fifties and early sixties with it as well, especially if they began working at an early age and/or if they had second-hand exposure through a parent or spouse that brought asbestos fibers home on their work clothes. An occupational and military history should be requested for all patients in addition to a smoking history which should be referenced when the clinical picture of a patient includes increasing shortness of breath, often over a period of several years, bilateral pleural thickening, bilateral and/or chronic interstitial fibrosis, or a restrictive pattern on pulmonary function tests with reduced diffusion capacity. Although not every case of interstitial fibrosis or UIP will turn out to be asbestosis and it is preferable to have a biopsy showing the presence of asbestos fibers or ferruginous bodies found in the lung parenchyma to make that diagnosis, in the absence of a lung biopsy, one of the first criteria that one must meet in order to diagnose a patient with IPF is exclusion of other known causes of ILD, including environmental exposures [6].

It is also important to note that if one documents asbestos disease in a patient's record but does not counsel their patient to obtain legal advice or assistance there may be a limited amount of time that your patient is eligible to file an asbestos claim. In the U.S. there is a two-year statute of limitations which provides that once a person is aware, or should be aware that they have an asbestos-related disease, they only have two years in which to file a legal claim for that disease otherwise they are forever barred from doing so. This becomes a real issue when we attempt to file a case for someone and find that years prior a doctor documents in the record 'history of asbestos exposure' or 'could be asbestos-related' and the issue then becomes what information was communicated to the patient and whether they had actual knowledge that they had or could have an asbestos-related disease. Defendants in these cases will argue that the person did not file their claim within the prescribed limitations period and therefore their legal claims are barred. It often does not matter whether a patient has ever seen or read their medical records (which I find most patients rarely do) as it will be assumed that any information written in the patient's record was discussed with the patient. This is yet another reason to advise patients to seek legal assistance if there is any chance they could have an asbestos-related disease.

In the U.S. the older population is not one that typically seeks information regarding their legal rights, especially in light of more pressing health issues. The majority of these people are not highly educated as they often worked in the trades or as craftsmen most of their life, many from a very early age. These people rely upon their medical providers to provide not only medical treatment and care, but also rely on them to advise and inform them of any legal remedies that may be available to them. I urge medical providers to keep this in mind when they see patients with pulmonary disease that could be attributed to asbestos exposure to inform their patients and suggest that they contact an attorney or seek legal assistance so that their rights are not forfeited and they can receive compensation to which they may be entitled.

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