

FREQUENTLY ASKED QUESTIONS:

PRE-EXISTING INJURIES/CONDITIONS AND THEIR EFFECT ON YOUR PERSONAL INJURY CLAIM

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1. WHY SHOULD I HAVE TO DISCLOSE A PRE-EXISTING INJURY? WON'T IT MAKE IT HARDER TO GET THE COMPENSATION I DESERVE?

The presence of a pre-existing injury or condition is not a bar to recovery, but your attorney needs a full understanding of your medical history to make the strongest possible case in your favor.

Some plaintiffs think that a pre-existing injury or condition will decrease the amount of damages they can ultimately collect, however, awards decisions in personal injury cases are so fact-specific that this is not necessarily the case. In any case, withholding this information is not advisable; if it is revealed later that you were actively trying to hide this information, your credibility may be damaged or even lost.

Your attorney's goal will be to present your case clearly showing:

- The defendant's liability for your injury
- The nature and extent of your injury
- The damages you deserve to be awarded in compensation for your injury

In many cases, personal injury attorneys can negotiate a fair settlement so that you can avoid going to trial. If the case does progress to trial, the final determination rests with the jury as to how your pre-existing injury or condition affects your case, so it is important to discuss in as much detail as possible previous injuries or conditions. This will help avoid any surprises to your attorney during trial and will also help your attorney create the trial strategy that will give you the best possible outcome for your case.

2. WHAT KINDS OF QUESTIONS SHOULD I EXPECT REGARDING MY PRE-EXISTING INJURY AND MEDICAL HISTORY IN GENERAL?

Personal injury suits, whether they appear straightforward, as in the case of a driver hitting a pedestrian, or complex, such as a workplace injury and possible recovery under worker's compensation, all inevitably involve intense factual investigation into the nature of the injury sustained and the circumstances that lead to the injury. This is done through a process called "discovery," a process that happens before a trial and is an attempt by both sides to find out information regarding the case. This is done by questioning parties and witnesses, and reviewing documents relevant to a claim.

As a result, you should be prepared to be asked and to answer detailed questions about your health and medical history; it is common for attorneys and insurance companies to ask for disclosure of medical records dating back several years as part of the discovery process. It is crucial when discussing your claim with a personal injury attorney to disclose any pre-existing conditions that might affect your case, especially if the new injury is at the site of the pre-existing injury, as this could affect how your attorney will argue your case. For example, you previously injured your back exercising and you claim that a recent car collision is the cause of new back pain; or you suffer a continuing medical condition—such as asthma—and you claim that chemical exposure has damaged your lungs, making it difficult to breathe.

Any medical occurrence or condition you experienced before the accident may be important to your case, and an experienced attorney can help you understand their possible effects on your claim. Failure to discuss a previous injury or medical condition with your attorney could result in a more difficult trial or a lower settlement, so it is important to be as open as possible.

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3. IF I DO HAVE A PRE-EXISTING INJURY OR MEDICAL CONDITION, WILL THAT REDUCE THE AMOUNT OF DAMAGES I CAN COLLECT ON MY CLAIM?

It depends. Every personal injury case relies heavily on factual circumstances underlying the claim. No two cases are identical, so, while an attorney can give you a rough idea of the kind of compensation to seek based on your experience, there is no set standard award level for a given injury.

The common rule is that more severe injuries tend to yield higher awards.

If your attorney has built a strong case for liability—with solid evidence that the defendant was clearly responsible for the harm caused to you—you are likely to receive a better settlement offer or a higher award than if there is an argument that can be made that could reduce the defendant's liability, such as contributory negligence—an allegation that you were partially at fault for the accident in which you were injured—which would, consequently, reduce your damages award. This may be the case if you have pre-existing injury or medical condition.

In the case of a pre-existing injury or medical condition, your attorney will need to show that the injury you sustained was in fact caused by the defendant's negligence. This is based on the principle that the defendant "takes the victim as he finds him." What this means is your previous injury does not necessarily reduce the damage award you could receive or excuse

the injury the defendant caused to you, because the defendant should be held responsible for the damage he or she causes by his or her actions. It could mean, however, that it will be harder to prove the element known as “causation”, which directly links the defendant’s actions with the injury you suffered during the accident at issue.

It could also have the effect of making the case even more difficult as the insurance companies could argue that it is your responsibility to show what portion of your injury is due to your pre-existing injury and which is due to the accident at issue.

Simply put, a pre-existing injury does not prevent you from ultimately receiving an award, however, it does make disclosing as much information as possible regarding your medical condition to your attorney all the more important. Often, you may prove that your injury was caused by the accident if you were no longer being treated for your pre-existing injury.