



## What is an “Age of Injury” report, and How to Effectively Use It to Determine Causation?

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A picture is worth a thousand words. For litigation purposes, diagnostic images have become a vital tool in leveraging the perception of the case. There is currently a scientific method of determining whether an injury was related or unrelated to the date of an accident, better known as an “Age of Injury” (or Causation) report. There are many radiologists that can produce an “Age of Injury” report however it is imperative to choose a radiology expert that utilizes effective methodology.

### What Is An AOI Report?

An “Age of Injury” (AOI) report is produced when a radiologist reviews a diagnostic image (MRI, CT or other) along with the corresponding diagnostic report that had been completed by the first read radiologist, and tries to relate the reported findings (injuries) to a specific time frame. A radiologist is able to make these determinations by identifying any and all objective signs of acute or blunt trauma to the anatomy vs. any signs of degenerative changes to the anatomy that evidence a chronic (over time) condition with no exacerbation at the time of the alleged injury. Utilizing the objective findings evident from the diagnostic films, the radiologist is then able to draw a reasonable conclusion as to whether the findings described are related or unrelated to the accident.

All radiologists are familiar with the signs of an acute injury vs. signs of a chronic change in the anatomy that had to have occurred over time. Among these same radiologists, there will only be a very small intra-observer and inter-observer variability (difference of opinion). An MRI image is an objective piece of information that will be available and unchanged forever. Therefore, radiologists can always go back to the time of the study to take a glimpse into the past to make assessments better than most other specialties.

### Why You Shouldn't Utilize The 1st Read Radiologist To Age An Injury:

While both types of reports will require a doctor to find medically objective signs on the diagnostic image to be able to back up their findings, both reports have a different purpose

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in mind. Plain and simple; the "1st read" radiologist report focuses on just diagnosing the patient and determining what conditions are present that may need surgical intervention or further treatment. An "AOI" report focuses on determining the cause of the objective findings identified on the diagnostics and whether the findings are related or unrelated to the date of the accident. In short, the "AOI" report provides a medical opinion based on objective findings to determine if an injury is more likely than not related or unrelated to the date of the accident.

The 1st read radiologists job when reviewing a diagnostic image is to diagnose the patient. If the first read radiologist comments on the age of the injury, typically they will speak in terms of a "degree of medical certainty". They must be 95%-100% certain about their opinion before giving it, knowing that their opinion will be used to determine what type of treatment or surgery will be needed in the future. Therefore, a 1st read radiologist typically will not comment on causation and focus only on diagnosing the patient for purposes of treatment.

The objective of an expert radiologist (sometimes referred to as an over-read) for the purposes of an age of injury is to determine if an injury is related to the date of an accident. You may be thinking, or might have read somewhere, that it is not possible to age an injury. While yes this is true, a doctor cannot read an MRI and determine the injury happened on September 29th, 1984, however they ARE able to determine if an injury can be included or excluded from the time frame in which the accident occurred. In most jurisdictions, to be deemed a valid expert opinion the 2nd read radiologist is able to use the "preponderance of evidence" which requires only 51% certainty which is all the law requires.

One of the most important differences between an AOI and 1st read report is the issue of discoverability of evidence. When a 1st read radiologists gives their opinion on the patient's condition, it becomes medical record, and then must be turned over to the opposing counsel. Conversely, in most jurisdictions, an AOI report from an independent expert remains undiscoverable until the reviewing doctor is named as the testifying expert. Knowledge is power, and with the majority of cases being settled out of court, you will be armed with information you need to make a favorable settlement.

### **Things to Remember Prior To Hiring a Radiology Expert to Age Injuries:**

One of the most important differentiating factors regarding the opinion given on an age of injury request from the 1st read and 2nd read radiologist is the conflict of interest. Does a doctor have a particular tendency to support their patient's best interest, or even the attorney's best interest? Well, an AOI report, done by an independent expert that is, puts these questions to rest by using a "double-blind" process. Similar to a double-blind taste test where a person will taste two different doughnuts, if you will, while being blindfolded, and then gives their un-biased opinion on which one tastes better, all while not knowing where the donut came from or who it was made by. If the expert radiologist uses a "double-blind" process the Dr.'s are unaware who is ordering the report (plaintiff or defense) and don't have relationship or responsibility to the patient for treatment. As you can see, this process creates an apparent barrier between the doctor and all of the interested parties, ultimately creating a truly non-biased, objective expert opinion. Unfortunately, with a 1st read report the doctor patient relationship exists that brings potential bias into the equation. Not to mention that many of the doctors happen to have an established relationship with the attorney involved in the patient's case. Why not just eliminate the bias perception or the possibility of the opposing counsel even making that argument?

What happens when an unstoppable force meets an immovable object? The generally accepted answer to this problem is that both objects will cease to exist, as each object would essentially cancel the other one out. Meet the "battle of the experts". After polling a number of juries post trial, in regards to which expert was better, research has indicated a reoccurring theme. The study showed that most jurors perceive each of the experts to be equal, essentially cancelling each other out. The study also showed that the jurors

overwhelmingly sensed that the experts (for both plaintiff and defense) were paid and simply testifying in favor of whom paid them. However, partly to blame for lack of credibility, or emphasis placed on the medical experts testimony is the tendency for the average juror to lose focus during the expert testimony involving complex medical jargon. Your average juror simply does not have the experience or education to comprehend intricate medical narratives and will be far more receptive to a simplified argument. An age of injury report from an independent board certified radiologist (using a double blind process) will simplify the argument. Most importantly, a "double-blind" process should be utilized when obtaining your report. This will enable you to deflect any claim of bias and that your expert's opinion was simply paid for. Furthermore, it will give you the opportunity (and leverage) to make the argument that the opposing counsel's expert was biased (granted they didn't utilize a double-blind process). The second being, the nature of an age of injury report is simple for the jury to understand. The expert takes an image (MRI, CT etc.), looks at it (reviews the film), and tells what they gathered from the picture to be able to determine that the injury was or was not related to the time frame in which the accident occurred.

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