

Indoor Pollution

Volume 5 Number 8

January 1992

TOXIC TREND/By Earon S. Davis and Mary Lamielle

MCS New to Law, Medicine

A better understanding of multiple chemical sensitivity will remedy the limited medical and legal approaches.

This is the conclusion of a two-part article.

As with any disability, it is difficult for the average person to understand the problems faced by those with multiple chemical sensitivity (MCS). Friends and family, as well as physicians and employers may be insensitive to the disability, which although insidious, is not disfiguring (MCS victims may look much better than they feel) to the extent that the problems and needs of sufferers are not recognized.

Such attitudes have given rise to claims of discrimination. Increasingly, people with MCS are having their rights to reasonable accommodation in housing recognized, such as in *Atkinson v. Lincoln Realty, Pennsylvania Human Relations Commission*, No. H-4358, Aug. 28, 1990. They are also succeeding in securing Social Security Disability Insurance on the basis of MCS, as in *Kouril v. Bowen*, 912 F.2d 971, 8th Circuit, 1990. There is also progress in out-of-court Workers' Compensation settlements. Their rights of people with MCS to accommodations in employment and in citizen participation in public government meetings are also gaining some visibility, which can include elimination of harmful pesticide and perfume exposures, provision of improved indoor air quality and greater flexibility over work locations and sick leave.

The Players in Medicine

Since the precise etiology is unknown, and allergists have defined MCS as outside their field, a partial vacuum exists in the health care system. (See Part 1 of this article, December 1991.) The Institute of Medicine of the National Academy of Sciences has recognized the tremendous shortage of physicians trained in the effects of environmental exposures upon human health (*Role of the Primary Care Physician in Occupational and Environmental Medicine*, National Academy Press, 1988). It is no wonder that people with MCS frequently consult with 10 or more physicians before finding anyone familiar with this problem.

The medical gap is beginning to be addressed by physicians who belong to organizations such as the American Academy of Environmental Medicine (AAEM) and, to a lesser extent, the American Academy of Otolaryngic Allergy (AAOA), both of which are competitors of traditional allergists. Growing numbers of occupational and family physicians are also becoming involved as they begin to see chemical sensitivities in their patients.

Environmental physicians and otolaryngic allergists are generally board-certified physicians in one or more recognized specialties, but generally such physicians involved in the emerging field of how the environment affects health lack the strong alliances and political clout, which have so well served the traditional allergists. In addition, neither the AAEM nor the AAOA has taken a formal position on MCS, or claims a full understanding of its etiology.

Not surprisingly, while environmental and otolaryngic allergy physicians generally accept MCS as a valid disorder, the traditional allergist and some occupational physicians often voice strong skepticism or downright hostility toward MCS. However, the progressive element in occupational medicine finds support from the Association of Occupational and Environmental Clinics and the Occupational and Environmental Sections of the American Public Health Association.

Continued...

Working against the general recognition of MCS is the American College of Occupational Medicine (ACOM), the largest mainstream organization in its field. The members of ACOM are commonly seen to be physicians who represent the interests of industry and are influential. An ACOM official testified on Capitol Hill, during the Indoor Air Quality Act hearings, against the regulation of indoor air quality (Hearing Report No. 102-41), Subcommittee on Health and Safety, House Committee on Education and Labor, July 31, 1991, pp. 551-522), and challenged the position of the U.S. Department of Housing and Urban Development that MCS is a disabling condition requiring reasonable accommodation under the Fair Housing Amendments Act and the Federal Rehabilitation Act.

The Legal Stakes

The legal stakes for MCS are high indeed. Both plaintiff and defense attorneys say that personal injury cases involving consumer products, pesticide applications, sick building syndrome and other indoor contaminants have the potential to explode over the next decade. At the same time, workers' compensation claims appear to be increasing as more office workers, as well as industrial workers develop MCS symptoms.

However, beyond the traditional damage awards for product liability and personal injury, the potential devastation of MCS raises questions about new and different measures of damages. For example, while quality of life is recognized as an important factor in disability conditions, people with MCS face a different type of disability from those with fixed physical limitations. MCS victims' disabling symptoms are caused by environmental factors and may wax and wane depending on environmental conditions and the severity of their illnesses. People with environmental disabilities may be capable of traveling, of going to restaurants, movies and public meetings, for example, but they are prevented from enjoying normal lives because of the barriers imposed by chemicals in buildings. Their nemesis is not the absence of handrails in a bathroom, but the presence of pesticides, disinfectants, or perfumes in modern buildings.

The legal system is accustomed to addressing compensation for fixed disabilities. However, it has not dealt with the tremendous isolation and frustration caused by the variable loss of functioning caused by environmental disabilities.

The costs of coping with MCS currently fall primarily upon the individual victims and their families. MCS victims frequently require special allowances for medical care, less contaminated foods and water and safe housing and transportation, each of which pose severe financial burdens. Attempts to use the legal system to shift some or all of those costs to employers, product manufacturers, contractors, social programs, insurers or building owners will continue to meet with resistance. However, the law does appear to be moving gradually towards greater recognition, compensation and protection for those with this controversial illness.

Mr. Davis, an environmental health law consultant in Evanston, Ill., is an attorney with a master's degree in public health. He has been on numerous MCS review committees. Ms. Lamielle is president of the National Center for Environmental Health Strategies, a national non-profit organization based in Voorhees, N.J. She is the editor of The Delicate Balance, a newsletter chronicling chemical sensitivities and other environmental health issues. Her phone number is (609) 429-5358.