

The MD/DC Business Model: An Interview with Attorney Richard Jaffe, Esq.

Editorial Staff

The MD/DC business model has received unwanted attention lately in the form of lawsuits and indictments. One of the people at the forefront of defending this business model is attorney Richard Jaffe, who is representing Ron Halstead, DC, in a federal case in West Virginia. *Dynamic Chiropractic* sat down with Mr. Jaffe to get his perspective on the problems and dangers these businesses face.

DC: What is going on in the MD/DC legal arena now?

RJ: Well, there are a few things around the country, aside from the case in which Dr. Halstead was dragged into. Your magazine has covered a civil action in New Jersey by a large insurance company against Daniel Dahan, DC, and the attorney who set up the MD/DC structure. I think the news will continue to be bad on that case, based in part on the judge's preliminary rulings. However, that case will probably drag on for a few years in the appeals process. In addition, an operator of MD/DC clinics recently pleaded guilty in New York federal court. I have also received word about pending investigations of other operators and promoters of MD/DC clinics. I think it is fair to say that there is quite a bit of activity around the country focusing on this model.

DC: What is causing all these investigations?

RJ: I think there are several factors: First, the passage of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) created funding for increased federal presence in health care. HIPAA specifically targeted health care fraud and made it a priority with the federal government. Also, HIPAA federalized many of the crimes, which were viewed before as state crimes, and only sporadically prosecuted by state governments. In short, there is now increased attention and money to prosecute healthcare fraud beyond the traditional targets of Medicare and federal pay programs like CHAMPUS.

DC: Does that mean that the average practitioner involved in a MD/DC practice has something to worry about?

RJ: Well, he does if he is committing insurance fraud.

DC: What does the government think is fraudulent about MD/DC clinics?

RJ: The biggest problem, generally, is that in many of these clinics, the MD is nothing more than a rubber stamp. The MD is just the vehicle by which chiropractic treatment is provided to patients in a way that circumvents the rather drastic limitations of benefits under most third-party pay plans.

DC: What does that mean practically, that is, how can you tell if the MD/DC arrangement is just a sham?

RJ: Well, that's obviously the big question. A complete answer cannot be given in an interview such

as this, but there are several indications that point to the underlying structure as a sham. One indication is how soon and how often the medical doctor sees patients. If it looks like the medical doctor is not in control of the patient's care, because, for example, the doctor does not see the patient initially, and has only minimal contact with the patient, then there will be problems when the feds come in.

DC: What if the medical doctor or somebody else creates a "standing order" for the medical doctor?

RJ: I am not a big believer in standing orders, especially at the initiation of the treatment, where the standing order is used as a substitute for an initial examination by the physician. I know that there are consultants who think there is nothing wrong with standing orders. Theoretically and in general, standing orders are perfectly appropriate ways to manage some parts of patient care. However, if the clinic is managed by a chiropractor or a management company, and some of the doctors have a limited role in the operations, and if there are relatively infrequent appearances by the medical doctor, this leads to the conclusion that what is being provided is not medical care, but chiropractic care under the MD's license. That is what the federal government calls fraud.

DC: Does that mean doctors of chiropractic cannot employ and work with MDs?

RJ: No, it does not. Look, Dr. Halstead, for example, makes a nice conceptual distinction between the medical component and a mechanical component to a patient's condition. Only patients with a documented medical component to their condition should be treated, supervised and billed under the MD's provider number. Patients with only mechanical conditions should receive treatment from the DC, and be billed under the DC's provider number. A patient's care will be subject to whatever limitations are in the patient's insurance plan. The problem comes when some chiropractors who operate an MD/DC model try to run all their patients through the medical doctor when the MD is not actively involved in the patient's care. This practice is just asking for trouble.

DC: What else did you see from the cases and investigations?

RJ: Investigations typically start with a disgruntled employee complaining to the government, or patients complaining to their insurance companies. I have yet to see a case involving an MD/DC where there wasn't an allegation of classic insurance fraud. That could be upcoding, unbundling, and/or the consistent, improper use of higher level E/M codes than is justified by the service rendered.

DC: What about overutilization of testing?

RJ: That's an important issue. It's an allegation I've seen in many cases. Obviously, there is nothing wrong with testing, as long as it is medically necessary. There are some basic points here. It is not medically necessary to do a test if a prior test is negative. The testing has to be supported or justified by the diagnosis and subsequent response. While there are some gray areas, it is usually evident if a patient has been over-tested. Excessive testing in today's climate means insurance fraud.

DC: Any other issues or insights?

RJ: I have to say that I think there is a great deal of misinformation on the legality of the MD/DC model, and in particular what practices and structures are legal. Most MD/DC promoters feel that what they are doing is completely legitimate and that every other promoter is dishonest and providing incorrect advice. From what I can tell, they are half right.

The irony is that Dr. Halstead has been dragged into this federal case in West Virginia. From what

I see from his materials, he strongly advocates that the physician manage and direct the care of the clinic's patients, which is the only way this model can be properly and legally run. The problem is that many chiropractors just go too far. Regardless of how many times someone like Dr. Halstead tells his people that the physician has to directly manage the patient, some chiropractors will not spend the money or do what it takes to have the MD on the premises often enough to properly manage the patients. Eventually, many of these people will be caught and prosecuted. Those that do it right and don't engage in insurance fraud will be left alone.

DC: Thank you for your insights. Please keep us up-to-date on these cases.

JULY 2002