Dynamic Chiropractic

Are You a Victim of a Multidisciplinary Scheme?

As reimbursement for chiropractic services declines, the number of doctors of chiropractic that enter into speculative ventures with managed care and practice consultants increases. For some doctors of chiropractic there has always been a natural pull to enter into a multidisciplinary practice, however, others were lured in by promises of increased reimbursement for their services. As a result, many chiropractors have been induced by consultants to enter into questionable arrangements. Many, if not all multi-disciplinary consultants have promoted the concept that the chiropractic practice is instantly transformed into a multidisciplinary center. Several consultants have even offered a money back guarantee that if they did not increase profits sufficiently to cover the cost of the consulting agreement, the consultant would rebate the chiropractor the difference. They have also promised chiropractors that they would be able to control the direction of the new multidisciplinary practice, including patient care, legally. However, nothing could be further from the truth. State corporate laws and scope of practice regulations control how multidisciplinary practices must be formed and operated. These requirements vary dramatically from state to state. It should be noted that only a licensed health care attorney in the state in which the multidisciplinary practice is to provide services, may properly structure and represent such a unique entity. The empty promises of the "doc in the box" consultants offer no legal protection for those practices that were not properly formed. This represents a substantial problem since multidisciplinary practices are coming under increased scrutiny by third-party payors and governmental agencies. They know who the owner docs are and they continue to check state corporate records to see which practices are suspect.

One of the most prevalent schemes pushed upon trusting chiropractors is the "owner doctor" "worker doctor" scheme. Under this scenario, the chiropractor, usually through the consultant, hires either a medical doctor or an osteopathic physician to be his or her "owner doc." This doctor appears on all corporate documents as the owner of the multidisciplinary clinic despite the fact that:

1. This owner doctor usually never sees the clinic.

2. Usually never meets the chiropractor.

3. In most cases the only communication the owner doctor has with the chiropractor, whose business he now owns, is to request his monthly or yearly fee.

4. And the chiropractor must indemnify the owner doc. The indemnity requires the chiropractor to pay any and all debts and liability the practice incurs even though the chiropractor has no ownership interest in the practice.

These payments vary from a once a year payment to a monthly payment. Owner docs are paid from $1,500 per year to $5,000 per year: pretty cheap wages for the new CEO of your multidisciplinary practice. Oh, I forgot, you no longer own your practice. You not only gave it away, you paid your consultant $25,000 plus to take it off your hands. In this scenario the chiropractor is told "be happy, don't worry" because the owner doc signed an assignment of his stock in the multidisciplinary practice as well as delivering his signed and undated resignation at the time the

corporation is formed. This provides the chiropractor with the illusion of security and control and it is truly an illusion. At the very least, you would think that the consultant would find an "owner doc" that is licensed to perform medical services in the state the practice is going to render services. However, this is not the case. Most practices that I have reviewed that follow the "owner doc" "worker doc" scheme are owned by doctors that are not licensed in the state in which the practice is providing services. This means that all services being submitted in the name of the owner doc are services provided by unlicensed providers. But, the chiropractors are told again not to worry because if they want to change owner docs all he or she has to do is date and file the pre-signed documents.

The multidisciplinary practice is also controlled through a contract the practice enters into with a management company that is totally owned by the chiropractor. The intent of this agreement is to tie up the practice with debt and contractual obligations so that even if the practice wanted to, they could not terminate the relationship with the management company. In most cases the practice is also prevented from closing without at least six months notice to the management company. The practice is also required to enter into leases for office space and equipment that are owned by the management company or the chiropractor, usually at far above fair market value. This is another way the consultant instructs the chiropractor, individually and through the management company, to siphon off funds from the practice.

The "worker doc" is a medical doctor or osteopathic physician that actually works for the multidisciplinary practice, or is the designated phantom doc who appears in spirit only, but has no ownership interest in the practice. The chiropractor is told that the "worker doc" works for him or her and the worker doctor believes he is actually working for the chiropractor. The chiropractor believes that he can legally control the type of treatment that is to be rendered to patients of the practice, at least that is what the consultant told him or her. Again, nothing could be further from the truth. The required medical director of a multi-disciplinary practice must be the health care provider with the unlimited license. Yes, the medical doctor.

In a recent New Jersey court decision, *Allstate Insurance Company v. Northfield Medical Center, Practice Perfect, Daniel H. Dahan and Robert Borsody, et als.,* Superior Court of New Jersey, Law Division, Morris County, Docket No. MRS-L-3228-99, decided April 27, 2001, the court found the "owner doc" "worker doc" scheme "to be suspicious and indicative of a sham ownership." The court also found the sham ownership by the "owner doc" and the consultant's complicity in the arrangement were further demonstrated by the fact that during the two years of 'consulting' provided by the consultant only the chiropractor received the advice or consulted with the consultant. In fact the consulting contracts are always executed by the chiropractor not by the mulit-disciplinary practice or the owner doc. The court also found that there are at least 770 practices that are organized under this "sham ownership" scenario. I have also personally reviewed the formation documents of many multi-disciplinary practices from other consultants that also followed the owner doc, worker doc scheme.

Following the formation of the multidisciplinary practice, the consultant instructs the chiropractor to change the manner in which the practice bills for services. For example, instead of billing for services administered to the same patient at a single visit on one HCFA form, the practice would now submit at least two and often three, separate forms per patient visit, all containing the tax ID number of the practice, but identifying different individual providers. The court found this to be fraudulent billing, making the practice, providers, and consultant subject to criminal and civil penalties for insurance fraud and fraudulent billing.

In short, the court found the "owner doc" "worker doc" scheme was little more than a conspiracy to defraud insurance companies and to submit claims for reimbursement for chiropractic care under

the name of the "owner doc" M.D.

Does this mean that all multi-disciplinary clinics are illegal or a mere conspiracy to defraud? The answer is emphatically NO. Several years ago I wrote to the New Jersey Department of Law and Public Safety and several other states outlining what I believed was the proper way to form and operate a multidisciplinary practice. In response to my question the New Jersey Department of Law and Public Safety responded as follows:

> "As I stated to you telephonically, your analysis of the applicable statutes and regulations is appropriate. As noted. N.J.S.A. (New Jersey statutes annotated) 14A:17-3 states that
>
> > 'one or more persons, each of whom is duly licensed or otherwise legally authorized to render the same or closely allied professional service within this state, may organize and become a shareholder or shareholders of a professional corporation...."
>
> Furthermore, the Board of Medical Examiners rule N.J.A.C. (New Jersey Administrative Code) 13:35-6.16(f) (2) states in relevant part that
>
> > 'practioners may practice in a partnership or professional association, but such entity shall be composed solely of licensed health care professions. The professional services offered by each practitioner, whether a partner or shareholder, shall be the same or in a closely allied medical or professional health care field. For the purpose of this rule closely allied fields, pursuant to the Professional Service Corporation Act, N.J.S.A. 14A: 17-1 et seq., shall be deemed to include the health care professions licensed by the state professional boards under the Division of Consumer Affairs, for example, chiropractic...'
>
> > Therefore, you are correct in your analysis that the two classes of licenses, medical doctors, including osteopathic physicians and chiropractors, are allied health care professionals and may form a professional corporation. However, it is important to note that the licensees must maintain professional discretion of their judgment in rendering of professional services. There is no statutory or regulatory provision requiring that the licensee with the greater scope of practice hold a majority of the stock in the professional corporation."

What this means is that in New Jersey and many other states, chiropractors and medical doctors can both be shareholders of the same professional corporation or limited liability company. The chiropractor can also be the majority shareholder, thus controlling the business, but not the medical decisions of the corporation. With the chiropractor and the medical doctor both holding shares in the professional corporation or LLC, there is no need for a management company that seeks to control the medical corporation.

Xact Medicare, the former Medicare contractor for Pennsylvania, also had some questions regarding multi-disciplinary practices and services a chiropractor performed incident-to the services of a medical doctor. In response to Xact's concerns the Medicare Operations Branch responded as follows:

> "There is nothing in our guidelines that would preclude Xact from issuing provider numbers to these entities. (Entities refers to multidisciplinary practices.) We agree with you that this issue could have a significant impact on Medicare, however, under current guidelines Medicare would pay for the services of a chiropractor under the "incident to" benefit are described in Medicare Carriers Manual (MCM) Section 2050. To be covered as "incident to" the services of a physician, the chiropractors' services must meet all of the requirements of MCM 2050.... When a chiropractor furnishes a service that he or she is licensed to perform by the state and all "incident to" requirements are met, the services furnished by the chiropractor can be covered by Medicare."

What all this means is that chiropractors in properly formed multi-disciplinary practices can render services, that they are licensed to perform "incident to" those of an M.D. that is a member of the multi-disciplinary practice. Therefore, those of you that are involved in a multidisciplinary practice should make sure that the corporate entities that you are using to render serves are properly formed. Those of you that are not properly formed should do so immediately as part of a corporate compliance plan.
The areas that must be reviewed to determine if you are properly formed and in compliance with state and federal regulations include the following:

1. Has the corporate structure of the practice been properly formed?

2. Is the practice following the proper procedures for operating a multi-disciplinary practice?

3. Is the practice properly billing for the services provided?

4. Is the proper level of supervision followed when rendering incident-to services?

5. Are all services properly documented and coded?

As health care providers come under increased scrutiny, it becomes more important than ever that every aspect of your practice complies with state and federal regulations. Your failure to be in compliance means, you will not be allowed to participate in federal or state funded programs, you could loose your license to practice your profession and be subject to civil and criminal penalties including incarceration.

What this article is trying to get across is that you have been sold a bill of goods, which sets you up to incur substantial liability and the loss of all you have worked so hard for. It could easily be the end of your way of life.

Gerald Herrmann,Esquire
Stuart, Florida
Tele: 561- 781-9294
Fax: 561- 463-8325

SEPTEMBER 2001