

Whither Goes Alternative Care?

Editorial Staff

Interview with Michael Cohen, author of *Complementary and Alternative Medicine: Legal Boundaries and Regulatory Perspectives*

About the author: Michael H. Cohen, JD, MBA, MFA, specializes in writing about health law, bioethics, and legal and regulatory affairs governing integrating medicine. His book, *Complementary and Alternative Medicine: Legal Boundaries and Regulatory Perspectives*, was published last year by Johns Hopkins University Press.

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DC: What topics in *Complementary and Alternative Medicine: Legal Boundaries and Regulatory Perspectives* do you feel would be most relevant for doctors of chiropractic?

Mr. Cohen: There's a chapter that specifically focuses on chiropractic as a case study on the scope of practice issue. The idea is that medical doctors have unlimited authority, but nonmedical providers are limited to a legislatively authorized scope of practice. MDs can diagnose and treat disease, but other providers have certain limited authority. That chapter explores this issue and focuses on chiropractors specifically.

DC: In the May 24, 1999 issue of *Medical Economics*, you argued that "It's time for the law to expand beyond the narrow focus of biomedicine and embrace the more inclusive holistic model of healing." The article also states that you'd "like to see a duty to refer run both ways between medical physicians and alternative care providers." Could you expand on this?

Mr. Cohen: The health care system that we know today evolved out of a specific historical, social, political and economic context. As you are probably aware, at the end of the 19th century, we had rival groups of health care providers competing for authority and preeminence. We did not have the widespread licensure of chiropractors, acupuncturists, massage therapists, naturopaths and others that we have today. We had a health care system in which one particular branch of health care, scientific medicine -- for which I have a great deal of respect, and which obviously is very useful and engaging -- came to dominate the system.

My argument is that as we move into the next century, we're going to start seeing a greater parity between different providers as points of entry into the health care system. If someone has a health issue, it's not going to be seen primarily or exclusively as something to be treated on a surgical or pharmaceutical level. It could be seen as the result of many different factors, some of which might be physiological, emotional, mental or spiritual, and we're going to see different kinds of interventions coming to the fore. What we've previously called "alternative" will be seen as having

greater utility. My prediction is based not only on the increased scientific evidence, but also consumer interest, regulatory interest, and just the way the culture as a whole is moving.

DC: How realistic do you think it is that there will be a duty to refer that would go between, say, a medical physician and an alternative care provider?

Mr. Cohen: I think that's really looking far into the future -- 20-30 years. It really depends on the extent to which the culture grants more equal respect to nonmedical providers.

One has to put a disclaimer on these forward-thinking proposals, because MDs do have a particular domain. Obviously, when you need surgery, you need surgery; you don't need an acupuncturist when you have to go to the emergency room. What this is really getting at is the idea of greater parity between different providers, and a greater mutual respect and appreciation for what each one can and cannot do. If someone will benefit from manipulation for low back pain rather than surgery, there should be a duty to refer the patient for that kind of treatment.

DC: Some people have suggested that in the near future there may be a malpractice case against a medical physician who failed to refer to an alternative care provider. Have you heard of any cases like this?

Mr. Cohen: I have not yet seen such cases.

DC: Do you see this as a possibility?

Mr. Cohen: It's a remote possibility. What is and what should be are two different things. I say remote because the legal system grants a great deal of deference to medical doctors, in large part because of the history that I alluded to before, so we're unlikely to see medical physicians getting sued for failure to turn a patient over to a nonmedical provider. As we move into a system where there is greater parity, greater equity and greater respect, it's possible.

DC: We see the changing trend in the U.S. We see the scope of practice, the way that medical physicians and alternative care providers care and their approaches to patients. We see more situations in which they're working together in some capacity. What kinds of changes do you see impacting these relationships? Do you see a general trend?

Mr. Cohen: I see a trend toward greater respect, greater tolerance and mutual cooperation. I see a team approach with referrals back and forth, but not a duty to refer that is a fear-based model of coercion based on adverse legal consequences. What I would like to see is a model based on appreciation, respect, knowledge, wisdom and caring for the patient; where there's greater team involvement in patient care; where each kind of practitioner understands the breadth of the others' knowledge and the limitations of their own discipline; and where they need to reach out and have a common enterprise.

The opposing trend, which is also a possibility for humanity and the health care system, is the trend that has dominated health care since its inception in the U.S. That trend is turf battles, waging war, trying to narrow the scope of authority of others, monopolization -- that's what we have seen so far. Which path the professions want to take is up to the leaders in the field, but both are possibilities, and they may go on simultaneously.

DC: Do you have any final thoughts on the subject?

Mr. Cohen: Going back to your initial question, the battle that chiropractors face really exists in the larger context of what kind of health care system we are going to choose in this country: whether

we're going to have truly integrative medicine and health care, or a system in which providers and the law carve the patient into a series of different parts.

That's the way it works now, and that's the way a lot of people think about patient care. The massage therapists get the muscles; the psychologists get the emotions; the chiropractors get the spine; the dermatologists get the skin; and so on and so forth, and this approach really does not lead to the cure for the whole being, which is my sense of the holistic enterprise. Whether it's chiropractic or medicine, isn't the goal really the same? Isn't it really about helping people?

DC: Thank you, Mr. Cohen.

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