

Chirolegal Relations, Part I

One cannot be involved in the practice of chiropractic and avoid contact with insurance companies, attorneys or other health care providers, especially if one cares for those injured while at work and/or in automobile accidents. It doesn't take many years in practice to recognize that insurance companies utilize the services of claims adjusters, independent medical/chiropractic examiners and defense attorneys who are skilled at finding loopholes to deny claims made by patients and/or treating physicians. Claims adjusters are trained to scrutinize physician records and find fault or areas that lack substantive and credible information concerning a patient's health history, history of the alleged accident, diagnostic tests performed, diagnosis, treatment plan and prognosis. They are trained to use the rules and regulations set down by boards of examiners against the doctor and the patient.

From what we hear, most chiropractors feel that insurance companies scrutinize chiropractors' records more extensively than those of medical doctors. Because of the increasingly adversarial attitude of most insurance companies and chiropractors who act as employees and consultants for insurance companies, the day will soon be upon us when more enterprising plaintiffs' attorneys and chiropractors will bring forth lawsuits proving that contention.

Vulcanize Yourself

The key to keep in mind is that proper record keeping is essential to vulcanizing you and your patient against the profit-enhancing activities of insurance companies and the defense attorneys who represent them. We have never met an insurance claims adjuster, independent medical/chiropractic examiner or defense attorney working for an insurance company who liked chiropractors or medical doctors unless they produced opinions that were derogatory toward the patient and/or the treating physician. If that's universally true, then it's foolhardy to think that anyone employed by an insurance company will treat your patients fairly or be your friend unless they can use you as their mark.

Denial of Human Rights

Anyone who has been involved in chiropractic knows that the drug industry, medical community and health insurance industry are prejudiced against chiropractors. Our profession continues to exist for three primary reasons: the grace of God; the results that chiropractic care achieves; and the unbending persistence of our predecessors. For years, the profession has done little or nothing to legally (or through public relations) counterattack medicine's negative propaganda, but times are changing. As good as the success of the Wilk lawsuit was, it should have been followed up by many other lawsuits against organized medicine and the health insurance industry.

As stated earlier, the day is fast approaching when groups of doctors of chiropractic and enterprising trial lawyers will file hundreds of lawsuits against the drug industry, medical community and the insurance industry. Some of you who know us may wonder why we advocate legally and publicly attacking the drug industry, medicine and the health insurance industry. It's the right time, and it's appropriate.

The following message delivered by then-President Jimmy Carter to the U.S. Supreme Court on "Law Day" illustrates our responsibilities to do so:

"The highest goal of government or societal structure can be to achieve justice. It's an end in itself; it's a means to an end; and it's a pursuit that is never completely realized. There are always challenges to be brought about by the fallibility of human beings, the intense pressure of competition in a free society, the constraint of liberty where freedom does not exist. It's a responsibility on us, as it is on the leaders of every nation on earth.

"The deprivation of justice is a serious matter. Those of us who don't suffer much from it can observe it if we are sensitive. Quite often, we benefit from an injustice because those with power, wealth or social prominence are very likely to profit when advantage is meted out to our peers who, in gaining some advantages for themselves, cause those same benefits to accrue to us.

"And if we stand silent and reap the benefits of injustice, then we ourselves are equally culpable with those who initiated the injustice."

The Call to Future "Ralph Naders" in Chiropractic

It might seem easy to sit on the sidelines while injustices are continually perpetrated on doctors of chiropractic, and the community as a whole, by the drug industry, medicine and the health insurance industry. Not only do we suffer, but worse yet, we deprive millions upon millions of human beings from taking advantage of chiropractic, which was given by God to be a major system of healing.

Trying to be accepted by medicine through increasing the educational requirements of our chiropractic college students, national associations forming HMOs, PPOs, etc., and making alliances with them or "cow towing" to their self-perpetuating arrogance, isn't going to stop their desire to totally control health care. Attempting to pass laws that favor equal access is a waste of time. The only way to save chiropractic is to sue all opponents with vigor.

Attempts to be nice to medicine so you can get on a few meaningless boards does little to help the profession and leaves no alternative but for fearless DCs to join hands with human rights attorneys and organizations that know how to make life miserable for drug companies, medicine and the insurance industry.

Every attorney and legislator we've spoken with has questioned why chiropractic doesn't stand up to medicine and the health insurance industry through the courts. Lobbying Congress and state legislators might seem like a good idea, but it's basically time and money flushed down the toilet. The only respect we'll ever gain is by suing the hell out of the drug industry, medicine and the health insurance industry. There has never been a better time to take our case to the courts than now.

The Importance of Credibility

A well-known and successful plaintiff's attorney once told us that there are three primary factors involved in winning settlements in negotiations, arbitrations and cases that go to trial: credibility, credibility and credibility. He went on to say that the better and more comprehensive a physician's records, the higher the degree of credibility and the greater the likelihood of winning the legal combat that goes on between plaintiff's attorneys and insurance companies.

Having good records is so vital that the rules and regulations set forth by boards of examiners regarding recordkeeping are good for patients as well as doctors. Because poor record keeping has always been an issue in chiropractic, those rules and regulations are used by insurance companies and IMEs against the doctor who does not meet the requirements of their board of examiners. Poor records and one-sided, adversarial IMEs are the major reasons insurance companies are able to deny payment for legitimate care and for the patient's attorney losing arbitrations or cases that go to court.

Claim adjusters, IMEs and defense attorneys are always citing inadequate recordkeeping as a major reason for preventing the patient's attorney from prevailing in the lawsuit. As good as your care is, if your records do not live up to the standards set by your board of examiners, you are not only in violation of the rules and regulations that govern you, you are negligent in your duties and responsibilities to your patient or any other person they bring into the legal matter at hand.

We always ask the plaintiff's attorneys what the biggest problem is they encounter with chiropractors. Their answer is always poor recordkeeping. Poor records increase your risk management barometer and predispose you to unnecessary problems, while opening you and your patient to problems with insurance companies and boards of examiners, and a lack of respect and utilization of your services by plaintiff's attorneys.

Devils Incarnate

While attending a postgraduate trial lawyer's seminar some years ago, we heard some plaintiff's attorneys refer to insurance claims adjusters as devils incarnate. We recognize that very good plaintiff's attorneys are tough negotiators and have winner's mentalities. Their job is to win.

Being a plaintiff's or defense attorney is not a job for the weak or faint-hearted. Legal confrontation can cause some pretty heated arguments with claims adjusters and other attorneys, predisposing relationships to become strained. The same potential holds true for practitioners and their staffs. That possibility behooves all patients to have attorneys who will aggressively protect them as well as the doctor's interests. If a problem occurs with an insurance company, a good plaintiff's attorney will step in and handle matters rather than the patient, doctor or her/his staff getting involved. It is our experience that even though claims adjusters don't like doctors or plaintiff's attorneys, good, aggressive, no-holds-barred plaintiff's attorneys carry much more respect and influence with insurance claims adjusters than any patient or their treating doctor. In working with insurance companies, we always knew who the best plaintiff's attorneys were based on who they said they hated to negotiate with.

Insurance Claims Adjusters Are Not Your Friends

Unfortunately, many injured patients and their treating doctors soon find that insurance companies, claims adjusters, medical review personnel, attorneys and independent medical/chiropractic examiners are not their friends. We pay inflated premiums for health insurance, but when it comes to covering expenses relative to injuries or general health care claims, insurance companies will do anything they can to deny payment. That's the way it is.

We live in an increasingly litigious and greedy society. Unless you spend the majority of your time studying and working in the medical/chiro/legal realm, you are decidedly disadvantaged when it comes to being on a level playing field with claims adjusters, IMEs and defense attorneys. Most chiropractors feel that the health insurance industry has discriminated (and continues to discriminate) against chiropractic. Inherent to the problems that chiropractic continues to encounter with the insurance industry is that by and large, the leadership within chiropractic has

tried to be friends with the insurance industry and sit on their hands in the courts and legislative arenas. The only way we're ever going to get their attention is to sue them at every opportunity possible. Only a fool tries to be friends with adversaries.

The Age of Specialty

Even though chiropractic, medical and legal licensing boards treat all practitioners as equals, we know that some practitioners gain additional postgraduate education and experience in special areas of practice, the purpose being that they can offer more expertise to patients/clients that utilize their services. With regard to dealing with insurance companies, we believe that injured patients should seek the counsel of attorneys whose sole practice endeavor is that of representing injured workers or persons injured in automobile accidents.

As good and as qualified as attorneys are, like medical doctors, surgeons, dentists, and yes, chiropractors, the legal arena is so complicated and specialized that we believe the man or woman who specializes in one area has a decided advantage over a general practitioner. You may be the best chiropractor, and you may have considerable experience in taking care of injured workers or victims of automobile accidents, but you are not licensed to practice law or go into hand-to-hand (or mouth-to-mouth) combat with insurance claims adjusters, IME or defense attorneys who represent insurance companies.

Know Their Track Record

The key to keep in mind with plaintiff's attorneys who specialize solely in workers' compensation or automobile accidents is to evaluate them based on their track record. Most plaintiff's attorneys who specialize in workers' comp and/or automobile accident injuries want referrals, but this does not mean they are all equal in terms of service to their clients, the degree to which they utilize your expertise, or how they handle indigenous concerns you have in your relationship to the patient. Only time will answer those questions, and it may take some investigation on your part to find the cream of the crop in that area of law.

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