Dynamic Chiropractic

Popular Release Form Invalidated

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Editor's note: Attorneys Ladenheim and Sherman, along with Louis Sportelli, DC, are the editors of The Chiropractic Legal Update. They and Judge Louis Campbell have co-authored numerous articles and books on chiropractic legal matters including: The Chiropractic Form and Sample Letter Book; Risk Management in Chiropractic; and A Synopsis of the Mercy Guidelines.

Doctors are often eager to adopt a strategy which appears to offer them immunity from malpractice attack. One such ploy is the use of a general release which is signed before the doctor will release patient x-rays. One such release form, popular with chiropractors provides:

GENERAL RELEASE

Date (City and State)

KNOW ALL MEN BY THESE PRESENTS: That I, ________ have requested the release of x-rays which are a part of the office records of ___________, relating to my case, and I hereby acknowledge receipt of these x-ray films. In consideration of the foregoing, I hereby release and forever discharge the aforesaid ___________, from any and all responsibility or liability of any kind, nature or character whatsoever from the beginning of the world to this day. This transaction is consummated at my specific request.

_______ _______
Witness Patient

References

Witness

Some chiropractors refuse to release x-rays to disgruntled patients unless they sign the form. They view the request for x-rays as a sure sign of an impending malpractice suit, and use of the form as a sure defense against it. Attorneys who defend those doctors and hope to use this "release" in their defense should be aware of its doubtful utility and high potential for inviting even more problems for the client.

Unenforceable

At the outset, counsel, and doctor alike must recognize that the likelihood of a court enforcing such a release is remote. The intermediate appellate court of Pennsylvania, for example, considered the enforceability of that release and concluded that it "violated public policy," and was "not the result of a freely bargained for exchange." Soxman, et al., v. Goodge, et al., 539 A.2d 826 (1988).

The court found that the release "contradicted a specific public policy articulated by our legislature ..." It quoted the Pennsylvania Code which provides that:

Patients or patient designees shall be given access to or a copy of their medical records, or both, in accordance with 013.22(b)(15) ... The patient or the patient's next of kin may be charged for the

cost of reproducing the copies; however, the charges shall be reasonably related to the cost of making the copy.

Forcing patients to sign a release before they may obtain their x-rays violates that section. As the court observed: "The only way appellee ... could obtain her medical records so that she could continue medical treatment with another doctor was to sign the release absolving appellants of all liability: she had no alternative."

Defense Strategy

The Hobson's choice for defense counsel was articulated in the court's note which observes that the contention that the release of the records was not conditioned upon the execution of the release is contradicted by the assertion that the transfer was the consideration for the execution of the release. Counsel seeking to enforce the release thus must advance contradictory arguments: on the one hand that the release is a valid contract supported by consideration, and on the other, that the consideration of signing the release was not absolutely required.

Against that backdrop of probable futility, counsel must also factor in the likelihood of exposing his client to disciplinary action by even raising such a defense. Massachusetts, for example, has articulated a "Board Policy" which provides:

X-RAY RELEASE FORMS

> X-ray release forms cannot contain a condition that holds the chiropractor free from liability in exchange for the release of x-rays to the patient.
>
> Such a form is invalid and contrary to the well-established public policy that medical practitioners should be held accountable for harms resulting from negligent treatment. Furthermore, a review of the relevant Massachusetts statutes and regulation reveals a fairly uniform policy of free access by a patient to copies of his/her entire medical file.

Thus, the doctor seeking to use such a form to shield himself from a malpractice claim may not only lose that fight, but incur possible disciplinary sanctions as a result of the effort. Perhaps the malpractice case will merely leave a professional liability carrier a little poorer. A disciplinary proceeding can leave the doctor with no means of livelihood and is a much graver personal risk.

Counsel must ascertain that in the relevant jurisdiction the use of such a form does not constitute an act of unprofessional conduct either under administrative rule or "board policy." Absent that certainty, the attorney should not incorporate it in his defense and the doctor should discontinue its use.

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