

# Questions For Mike Schroeder Regarding Chiropractors Going To Court With PMA

Dynamic Chiropractic Staff

*Dynamic Chiropractic* has received many phone calls and letters from chiropractors, chiropractic students, and their attorneys regarding problems with practice management consultants. All but a few of these phone calls and letters are from clients of PMA.

Some practice management clients are being sued; some are suing their consultant. Others are thinking about suing for rescission of their contract for many reasons. The three most common reasons seem to be:

1. The program required the doctor to perform acts that the doctor believed to be unethical.
2. The doctor experienced severe personal hardship and could not continue with the program.
3. The program just didn't work for the doctor.

In an effort to provide all doctors and students with the information requested, *DC* has interviewed Mr. Michael Schroeder, Esq. Mr. Schroeder is an attorney who has represented five California chiropractors (former clients of PMA) against PMA. He has consented to discuss the issues that are most important to those in the chiropractic profession who are currently PMA clients, or who are contemplating becoming clients of any practice management firm.

Unfortunately, Mr. Schroeder is not allowed to discuss the actual facts of his "California Five" case. One of the outcomes of the case (which was tried in California Courts, not Florida Courts) was that neither Mr. Schroeder nor his clients are at liberty to discuss how the case was settled. So we are left to wonder just why PMA required a "secrecy clause" as part of the settlement.

*DC* Interview With Michael J. Schroeder, Esq.

1. Q. *DC*: Mr. Schroeder, would you please discuss what issues a doctor or student should be concerned with if they have been served with papers that tell them they are being sued by PMA or any other practice management company?

A. MJS: Whenever any person is served with a lawsuit, that person should take the matter very seriously and immediately contact an attorney. In most states if you do not respond to the lawsuit within 30 days of receiving the lawsuit, you can lose by default and have huge damages awarded against you. If you are served, you will want to immediately assess in conjunction with your attorney what defenses you may have available to the action that is being brought against you.

2. Q. *DC*: What sort of defenses might a doctor have available to him or her?

A. MJS: Well, it depends on the state. Many states have state Franchise Acts that require that programs similar to this must first register with the state and then must provide all prospective purchasers with a prospectus that the state has approved before that purchaser is allowed to sign up. If a party offering such a program fails to comply with these requirements, such a party is subject not only to civil and criminal penalties and punitive damages, but can also be required to rescind all of the contracts

and refund all monies collected. It is my opinion that some practice management programs would appear to be subject to the Franchise Act of some states.

Additionally, some states have Seller Assisted Marketing Plan Acts that would appear to me to apply to many practice management programs. Any sales program subject to a Seller Assisted Marketing Plan Act is required to register with the state and provide all prospective purchasers with certain disclosures. Again, failure to comply with these requirements usually makes all such contracts subject to rescission and refund and leaves the selling practice management company subject to civil and criminal penalties.

3. Q. *DC*: What other issues should a doctor consider if he or she believes it is necessary to challenge a contract entered into with a practice management company?

A. *MJS*: If a doctor believes that litigation is inevitable and believes that he or she has valid claims against a practice management company, such a doctor may want to consider filing suit first, before the practice management company does, because if the doctor files first in federal court in the doctor's home state, the doctor may well be able to have the entire lawsuit take place in the doctor's home state.

4. Q. *DC*: Even if the practice management company's contract has a forum selection clause requiring that all disputes be heard in the practice management company's home state?

A. *MJS*: Yes, because a forum selection clause is not always enforceable, and even if it is enforceable it only applies to claims under the contract and not claims under state Franchise Acts or Sellers Assisted Marketing Plan Acts. These forum selection clauses also would not apply to state law claims such as fraud and may not apply to claims brought against persons at the practice management company for fraud or misrepresentation. Thus filing in court first could not only protect a doctor from the great expense of maintaining an out-of-state lawsuit but also can serve to protect a doctor's state law claims.

FEBRUARY 1990