

## Liability and Malpractice

### TRANSIENT PATIENTS PRESENT SPECIAL CHALLENGES.

Dennis Semlow, DC

#### Facts:

Jim Crossfield did a lot of traveling for his consultant business, and he stayed in a variety of hotels. While on a business trip, the 33-year-old man came to Dr. Burgess complaining of a stiff and painful neck.

"Hotel pillows are murder on your neck sometimes," he told the doctor. "Have you had neck problems before?" Dr. Burgess asked. "Oh, yeah, but but I've gone to a chiropractor a few times and it has cleared right up."

The doctor then suggested x-rays, but Crossfield objected, saying, "No, I don't have that much cash on me, and besides, I'm only going to be in town today. I've got a meeting upstate tomorrow that I can't miss."

Dr. Burgess then gave the patient an orthopedic exam and found tightness and muscle spasms, with restricted neck motion to the right.

As treatment, the doctor used soft tissue massage and ultra sound on the lower cervical and upper trapezius muscles. He also performed manipulation of the cervical spine and mid-thoracics.

After the treatments, he noted in the patients record "Improved range of motion, patient says he feels more relaxed." He also prescribed ice packs every two to three hours, telling the patient that his neck would probably feel a bit sore for a few days.

#### Outcome:

After the visit, Crossfield drove to the town upstate, but by the time he arrived, he could hardly move and was experiencing severe pain. He called an ambulance and was taken to a local hospital emergency room. The emergency room physician took x-rays and referred the patient to a neurosurgeon. After two computerized axial tomography (CT) scans and a myelogram, the neurosurgeon told the patient that the chiropractic adjustment had prolapsed a disc, and that surgery was indicated.

Approximately 95 percent of the disc was surgically removed. The patient recovered after a month and returned to work. About two months later, Crossfield brought suit, contending that Dr. Burgess' treatment had ruptured the disc, and that now he suffered constant headaches, and his stiff neck made sleeping difficult.

Allegations include general negligence, failure to take adequate history and x-rays, and failure to conform to the standard of care. The demand was for \$100,000.

Investigation revealed that Crossfield had been in an auto accident two years earlier and had sustained head injuries. However, this was not noted in the patient's record. Crossfield denied

refusing the x-rays, saying that he wondered why Dr. Burgess hadn't taken any in the first place.

The plaintiff's expert witness (a chiropractor) believed that without Dr. Burgess' treatment, the disc would not have prolapsed, and perhaps the problem would have resolved itself. The expert was critical of the lack of proper medical history and the lack of x-rays before treatment.

The witness for the defense (also a chiropractor) supported Dr. Burgess' treatment, but had serious reservations about the doctor's record-keeping. He also believed that Dr. Burgess should have taken x-rays and should have performed other diagnostic tests before any treatment.

Two other experts for the defense agreed that although Dr. Burgess probably did not cause the prolapsed disc, it was difficult to determine because of the lack of good records.

Considering the facts, an out-of-court settlement was reached for \$25,000.

Prevention:

Transient chiropractic patients present a risk, since you may see them only one or two times. However, you should never skimp on your procedures. Always take a thorough case history and examination. If your examination suggests that x-rays or other diagnostic tests are warranted, take them, even if the patient protests. If the patient has had recent X-rays, call his doctor of chiropractic for any abnormalities and any contraindications to a particular chiropractic procedure. If diagnostic procedures are warranted and the other chiropractor does not seem to have good records or findings, you may want to deny the patient care.

(Please note: All case studies are based on actual incidents. Circumstances and names have been changed to protect the parties involved).

AUGUST 1990