

OUM Insurance Group Adopts Policy On Research/Recruitment Programs

PRESIDENT KENNETH E. DAVIS DISCUSSES PATIENT SOLICITATION UNDER THE GUISE OF SCIENTIFIC RESEARCH.

Editorial Staff

Recently, the use of research as a means of patient solicitation has become very controversial (please see "Alabama Outlaws VSRI" in August 1, 1990 issue). This problem is not only being addressed by state boards and state attorney generals (please see "VSRI Under Investigation By California Attorney General" on page XXX in this issue), but it is also being examined by malpractice insurance carriers serving the chiropractic profession (please see "NCC Chiropractic Malpractice Program Takes Stand In Research Subject Debate" in the June 6, 1990 issue).

While the program has and is being addressed regionally, OUM is the first national malpractice company to address the research/patient recruitment problem in terms of malpractice coverage. President Kenneth Davis talks about the reasons why OUM is concerned:

"The OUM Group Chiropractor Program is committed to providing its policyholders with the best risk management advice possible. We must educate ourselves and recognize the very real exposure to loss price tag associated with misleading or false advertising: increased frequency and severity of claims."

The use of research patient recruitment programs apparently creates a potential "snow ball" effect that can be devastating. Says Mr. Davis: "Allegations of inappropriate advertising or unfair patient solicitation raise the specter of unnecessary and perhaps illegal treatment. Unnecessary treatment is difficult, if not impossible, to defend and control in court."

Obviously, if this type of activity is found to be illegal, as it already has in Alabama, it would fall into an exclusion that almost every malpractice policy contains: practicing outside the scope of practice, if illegal, is not covered.

According to Mr. Davis, the bottom line is this: "While we maintain that only the doctor of chiropractic may exercise his or her own best professional judgement in choosing his or her own individual practice style, the program must compare the exposure to loss of each doctor to the current premium charged for professional liability insurance. In our opinion, the exposure to loss created by a patient solicitation marketing plan operated under the guise of scientific research, is materially greater than contemplated by the program's rate level.

"Where exposure to loss is materially greater than the program's rate level, declination or non-renewal of coverage will result. In this manner, the OUM Group Chiropractor Program protects its policyholders from the adverse financial impact created by those doctors who should be paying much higher rates."

OUM's Position Statement has been included for your review. Some will ask if this applies to the VSRI program. When asked this question, Mr. Davis stated that it would. While OUM is the first national carrier to take this action, the chiropractic profession has to be wondering if the National

Chiropractic Mutual Insurance company (NCMIC) will follow suit. This remains to be seen.

OUM Group's Positions

I. Exposure to Loss

Any research program which converts its research subjects to chiropractic patients is creating an increase in the doctor's exposure to loss.

We feel that the exposure to loss created by a marketing research/recruitment process is materially greater than contemplated by our rate level.

There is a material increase in hazard (greater likelihood of incidents, claims, and suits). (See Exposure to Loss Statement.)

There is a material increase in risk of loss (likelihood of higher claim costs). (See Exposure to Loss Statement.)

While this is not a coverage issue for our program, it is a serious underwriting issue and may result in the doctor's removal from the OUM Group Chiropractor Program.

II. Scientific Research

Research/recruitment undermines the credibility of scientific research efforts at a time when chiropractic needs it most.

Unimpeachable scientific research is necessary to defend chiropractic from attacks by plaintiff's counsel, as well as economic and professional adversaries of chiropractic.

III. Commitment to Chiropractic

Anyone committed to chiropractic for the long-term would view this as a major PR setback for the profession.

This appears to be entrepreneurial short-term marketing, unworthy of the chiropractic profession.

No long-term insurer would condone or support this activity.

Exposure to Loss

Research Subject to Patient Conversion -- A Marketing/Advertising Process

I. A material increase in hazard (likelihood of incidents, claims, and suits) is present, in our opinion, as a result of:

A. Practice style:

- inappropriate advertising
- lack of informed consent
- unnecessary treatment

B. Judgement:

-- failure to utilize applicable national and community standards of care

C. Risk management (prevention):

-- lack of adequate preventive standards and practices

II. A material increase in risk of loss (likelihood of higher claims costs) is present, in our opinion, as a result of:

A. Inability to defend:

- inappropriate advertising
- lack of informed consent
- lack of expert support

B. Risk management (damage control):

-- failure to apply applicable standards of care

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