

Nevada Board Attempts to Apply "Informed Consent" to Dating

Editorial Staff

In an unprecedented move, the Chiropractic Physicians' Board of Nevada has attempted to apply the legal concept of "informed consent" to doctor/patient dating.

All health care procedures cannot be performed without obtaining patient consent in advance. Informed consent adds an additional layer of protection to patients by requiring that if consent is not informed, the patient will be deemed not to have given any consent at all. This exposes doctors to claims of assault and battery for illegal touching of patients if no informed consent is obtained.

The adequacy of the informed consent is judged by the degree to which all potential risks are disclosed. For example, the foreseeable side-effects of taking a prescription drug must be disclosed or the consent will be deemed not informed.

The Chiropractic Physicians' Board of Nevada is now attempting to apply this concept to dating between doctors and patients. The board's informed consent form states:

A licensee must obtain the informed consent of a patient with whom the licensee is having a dating relationship each time before the licensee performs chiropractic services on the patient. The consent must be in substantially the following form:

I am having a dating relationship with _____ (name of chiropractor) and I consent to receiving chiropractic services on _____ (date) from this chiropractor. _____ (date) _____ (signature of patient)
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"This form is completely meaningless as an informed consent form because it does not disclose any potential risks of a doctor/patient dating relationship," said Michael Schroeder, vice president, National Association of Chiropractic Attorneys, who has handled numerous malpractice cases over the last 20 years. Indeed, it is hard to imagine how an informed consent form could cover a dating relationship.

"Inherent in the malpractice claims that have been made against doctors for dating their patients is the notion that there is such an imbalance of power between the doctor and the patient that the patient is not capable of saying 'No' to a dating relationship or to sexual activity initiated by the doctor," said Schroeder. "Signing this form would not change that."

What, then, would need to be included in such a form for it to have any meaningful legal effect? Drafting such a form could become farcical.

Foreseeable risks of a doctor/patient dating relationship could include disclosure of past relationships or other information, such as that the doctor has commitment problems, bad breath, or is cheap.

In addition, the doctor would need to inform the patient of the estimated likelihood of these "side-effects". Consider that the doctor would need to supply the patient with something similar to the following to even begin to meet the requirements of informed consent:

The patient should be aware that the following side-effects may occur should he or she choose to date the doctor. While the associated likelihoods are provided, they have not been subject to any level of scientific evaluation and can therefore not be relied upon. These are estimates only:

Side-Effect	Likelihood
Marriage	2%
Eventual breakup	98%
Emotional distress due to breakup	80%
Other simultaneous competing relationships	32%
Additional expenses incurred by patient	93%

Obviously, this would be ridiculous, but inherent in actually trying to use the concept of informed consent in this context.

While one would expect a court to invalidate the informed consent agreement on its face, this is actually not the worst thing that could happen. "A sharp attorney for the patient might pursue legal action based upon the concept that the agreement is valid and binding on both sides," remarked Schroeder. "They might contend that the doctor had failed to supply the necessary information regarding the likely outcome of the relationship. In this case, the doctor would be facing the worst of all worlds. He or she could be sued by a patient for a civil complaint involving failure to provide information in a dating contract. The purported damages for emotional distress, pain and suffering, etc., could prove quite substantial and would not be covered by malpractice or most other types of insurance."

"The bottom line is that if a doctor wants to date his or her patient, that doctor should first release that patient into the care of a different doctor before initiating a personal relationship. Any other course of conduct is simply too risky," said Schroeder.

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