

Two Wrongs Don't Make a Right

Stephen M. Perle, DC, MS

Surely everyone has had someone say to them, "Two wrongs don't make a right." It's an aphorism that most of us have grown up with. But how often do we really live by this?

In the past, our profession has been the victim of many wrongs. The pioneers who went to jail for the right to help patients are symbols of a wrong done to chiropractors and their patients. We were wronged by the isolation of educational institutions and by the exclusion from insurance plans and government programs. Some might still lament the impact of the AMA boycott on chiropractic. However, if there is one wrong we all suffer with to this day, it is the discriminatory restrictions that third-party payors place on reimbursement for chiropractic care. These restrictions affect the rate of reimbursement, duration of care reimbursed for, and even *restricts* the conditions that will be covered within our scope of practice.

These restrictions create what is known as an "ethical distress." An ethical distress is a situation in which the ethical action is known care for our patients, but roadblocks deter implementation of this ethical course of action and place restrictions on reimbursement. When this occurs, one has to choose a course of action that will remove or get around what is blocking the ethical action. How can we deal with this ethical distress of reimbursement restrictions?

We could treat patients to the limits of their care for the reimbursement offered, and then continue to treat them free of charge. But this simple solution ignores the fact that chiropractic is a service business, and it is bad business practice to give away too much in the way of services. The best doctor in town will ultimately go out of business and leave patients no option but to see the second-best doctor, if the best doctor is a bad business person. Also, think about what giving away services means to the third-party payor. They get happy customers who receive the chiropractic care they want, without the insurer having to pay for these services. Thus, making up for what third parties won't pay for by providing pro bono services is probably not viable.

We could try to get these policies changed. This can happen by getting our patients to complain that the coverage offered is not adequate. Lobbying for legislation that mandates chiropractic coverage can change these policies. Litigation can be used to show the illegality of these policies. We can work cooperatively with the insurance industry to help develop reimbursement strategies that are more reasonable. Finally, we can perform research that may show that chiropractic care is more cost-effective or clinically effective, providing evidence that the policies should change.

Or, we could do what is euphemistically called "gaming the system." In other words, lie to the insurance company. I went to an insurance seminar in the early '80s that taught this, although the seminar people did not portray it as such. They told us that this was a method to help us get paid what we deserved. We were told to change diagnoses, play with the procedure codes, and discharge patients, but put them on monthly maintenance, writing reports stating that they had an exacerbation at each maintenance visit. Needless to say, I did not use this information.

If there was a trend in gaming the system in the '90s, it was the MD/DC practice. The idea behind them is to bypass the restrictions on chiropractic reimbursement of the third-party payors. The

chiropractor bills for his or her services by using an MD's name and license, as if the chiropractic care (which is not identified as chiropractic care) were performed by the MD.

One of the most prominent teachers of this practice, Ronald Halstead of Scottsdale, Ariz., was recently found guilty in U.S. District Court in West Virginia of conspiracy to commit health care fraud, mail fraud, and conspiracy to commit money laundering, for teaching his two chiropractor co-defendants how to set up a MD/DC practice. People often say that a leopard can't change its spots. This appears to be true; Halstead sponsored the insurance seminar I mentioned previously - the one that taught ways to game the system.

Halstead is not the only one who has been prosecuted for this type of fraud. In other states, both insurance companies and state regulators have brought charges against chiropractors for the type of practice Halstead taught. The unique feature of the charges and verdict against Halstead is that the U.S. Attorney's office decided to prosecute not only the chiropractors who committed the fraud, but also Halstead, who taught them how to do it.

The message is clear: One cannot correct the wrong inflicted upon chiropractors and our patients from insurance industry punitive restrictions on chiropractic reimbursement by committing a crime. Shortly after I went to the "gaming the system" insurance seminar, I went to one given by Howard J. Ross (who has contributed occasional HIPAA-related articles to *Dynamic Chiropractic*). During his seminar, Mr. Ross said that he did not want the insurance industry to cheat us, but he also didn't want us to cheat them. In other words, two wrongs don't make a right. Help fight the wrongs by supporting the National Chiropractic Legal Action Fund.

Sources

1. Prosecutors say chiropractor case shows fraud won't be tolerated. *Dominion Post* (online), June 9, 2004: www.dominionpost.com/a/news/2004/06/09/ao.
2. Halstead convicted in federal court: faces up to \$1 million in fines and 35 years in prison. *Dynamic Chiropractic*, March 10, 2003: www.chiroweb.com/archives/21/06/05.html.
3. *Crime Awareness Newsletter* March 2002, Volume 02-02: www.desc.dla.mil/DCM/Files/news0202.pdf.

Stephen Perle, DC, MS
Bridgeport, Connecticut

OCTOBER 2004