

The Class-Action Lawsuit: What's Really Going On?

Donald M. Petersen Jr., BS, HCD(hc), FICC(h), Publisher

If you are like many in the chiropractic profession, you have heard something about a lawsuit involving a DC in Iowa and The Masters Circle. Information has been circulated around the chiropractic profession, on numerous news Web sites, in many local newspapers, and through various other news sources, from *Business Week* to Yahoo to the Federal News Radio. Most of the information originated from a Feb. 25 Associated Press article.

If you haven't heard anything about the lawsuit, here are the basics:

- A woman and her son are suing an Iowa doctor of chiropractic, along with The Masters Circle and their respective principals, for what they believe to be unethical practices.
- The woman allegedly brought her son in for chiropractic care. According to the suit, the doctor diagnosed the child with scoliosis, presented a long-term treatment plan and said that he would seek to have the care covered by the family's insurance.
- Allegedly, after several weeks of care, the mother became concerned and took her son to see an orthopedist. The orthopedist apparently disagreed with the DC and encouraged the mother to discontinue care.
- The suit claims that the doctor used high-pressure tactics and deliberately misled the mother into believing that the son's condition was worse than it was, and that these tactics were taught and encouraged by The Masters Circle.
- This lawsuit seeks class-action status and could involve other clients of The Masters Circle and its patients.

Having been sued a number of times, I can tell you that you can't always believe what you read in a lawsuit. (Actually, we have filed more suits than we have defended, but that is another story.) I personally have been accused of theft, libel, violation of constitution rights and even loss of consortium. If you were to judge me by these accusations, your opinion of me wouldn't be too high. The fact that the lawsuits which contained these accusations were dismissed in summary judgment tells you that the judge didn't even think they had enough merit to be brought to trial. The fact that we were awarded sanctions in at least one of these tells you even more.

What a copy of the complaint, an article on the Internet, and the rumor mill won't tell you is the story behind the story. It won't answer the most important question: Why? To find that out, you have to start digging. You have to dedicate the hours it takes to investigate all aspects. Only then can you produce a "report of findings."

As the AP article alludes to, the initial lawsuit was a malpractice suit. It alleged misdiagnosis, fraud, misrepresentation and infliction of emotional distress. It was brought by a partner of a respectable Iowa law firm whose specialty is clearly "medical malpractice" and personal injury, although the firm also has some class-action experience. The lawsuit was filed in December 2003. Because of the nature of the case, the plaintiffs asked the court for "exemplary damages" - a substantially larger money award that would make an example out of this chiropractor. The doctor was reportedly covered by malpractice insurance.

On Feb. 18, 2005, almost 14 months after filing, the plaintiffs dropped their malpractice lawsuit, and then filed their class-action lawsuit four days later.

Why?

As mentioned before, the "why?" is often the most important part of the story. At the end of the day, most lawsuits come down to money. Follow the money and you will usually understand the "why?" Looking at the initial malpractice lawsuit on its face value (assuming the plaintiffs can prove most of what they say), one can clearly see that the regular "damages" amount to the emotional distress of the mother and her son believing that he had scoliosis, and whatever money they paid the DC for care. And while this is not an attempt to minimize this emotional distress, there was apparently no injury, no physical harm, and the care lasted only a few weeks. Certainly not the meatiest malpractice suit I've ever seen.

And while I don't know the attorneys involved, if this suit was taken on contingency, their chances for a big payout, in my opinion as a non-attorney, were not very good. Combined with the report that they would be facing a chiropractic malpractice insurance carrier with more than enough resources, this might have caused the attorneys to decide it was too much fight for too few potential dollars.

But a class-action suit changes all that. First of all, it may not fall under the malpractice insurance policy. This leaves the doctor all alone to defend himself. Second, the payout can be much bigger ... especially for the attorneys.

Consider the CIGNA lawsuit that was reported in our last issue. (See "CIGNA Offers \$11 million to DCs, Others in Class-Action Lawsuit" in the March 26, 2005 issue: www.chiroweb.com/archives/23/07/21.html.) Thousand of health care providers who cared for millions of patients over a four-year period were awarded \$11.55 million to split between them. The attorneys who represented the group got \$7.5 million. As one other attorney admitted, "It's the attorneys who get all the money in class-action suits."

Fortunately, this lawsuit has yet to receive national class-action status. The court will decide that over the next few months, based on discovery. The question the courts must answer is: Can a class-action lawsuit involve the person who cared for the patient, the people who taught the actions in question, and every other student of that organization? Needless to say, this could have significant ramifications for all practice-management firms, as well as for most other postgraduate organizations. And while this and other questions will be left to the court, we need to recognize where we are as a profession.

Fifty years ago (perhaps even less), the world in general didn't consider chiropractic a viable health care profession. If you were a patient, you did, but most people had never been to see a chiropractor. Over time, chiropractic gained greater respect. With greater respect comes greater responsibility and accountability. If we wish to be considered equal members of the health care team, we must accept all of the accountability the other members are under. We must get used to being scrutinized.

This lawsuit may be reflective of the higher level of scrutiny that comes with a higher level of respect. The rest of the world is constantly scrutinizing what we say, what we do and how we conduct ourselves. We are shaping the opinions of people every time we speak, even if we don't realize it.

This is not to suggest that the Iowa doctor or The Masters Circle has done anything wrong. But in

my experience, the filing of a lawsuit against you tells you which of your activities you should review. Even if you never lose a case, you can still learn from the experience and improve what you do.

DMP Jr.

APRIL 2005