

Informed Consent in the Digital Clinic

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It's time we talked about *that* patient. You know the one I'm talking about. You or someone you know has run into him (or her). I'm talking about the one who caught you on a bad day. It was late, or maybe it was a walk-in; whatever the case may be, you breezed through your work-up, got the job done and went home. And then you got the call saying the patient was in the emergency room in major pain. All of a sudden, you started caring more about the finer points of documentation and informed consent than you normally do. You were the last provider to see that patient, and even if your protocol never included enough force to cause the patient's problem or failure to diagnose, you know that you don't necessarily have a lot of advocates in the ER.

Your first reaction probably wasn't a reconsideration of the state of your clinic management. Besides your concern for the patient, your first thought probably included getting counsel from your malpractice carrier. But if you asked your carrier what you needed to do to guarantee the best outcome for situations such as this in the future, their answer would probably be, "Examine your clinic management, make sure your documentation doesn't have any holes, and ask yourself if you did the right thing."

As more and more of your peers turn to digital documentation to fulfill obligations such as informed consent, it's my conviction that our malpractice advisors are going to start suggesting paperless clinic management. And as they do, we are going to start seeing there's more to going digital than preventing difficult situations caused by deficient documentation. It's also about turning those mundane, obligatory doctor-patient interactions into true teachable moments that your patients appreciate. It's about creating patient satisfaction without decreasing your efficiency, and ultimately guaranteeing a quality of care that's nearly unsinkable if *that* patient ever arrives again.

Why Informed Consent?

Reading depositions in cases against chiropractors is like looking at an accident along the road. You don't want to look, but you're still curious. What happened? Could this doctor have done something to prevent this chain of events?

If you talk to the brains behind our profession's major malpractice carriers, they're going to tell you that malpractice suits are joined at the hip of informed consent a majority of the time. Informed consent, or a lack of its proper documentation, is the one stick litigators can beat chiropractors with over and over again, no matter the nature of the claim. Did the doctor warn the patient about the complexities that could be involved in the care? Did that patient actually say, "Yes, I get it, please continue." Was it all recorded in a satisfactory record? No one wants the threat of a lawsuit hanging over the reputation of their practice, but if it does, having that record can mean the difference between a quick resolution of a case and a drawn-out match in who-said-what, which rarely ends in the chiropractor's favor.

Why it Breaks Down

The problem for many chiropractors seems to be a disconnection between who they want to be in practice and what they have to do according to the law. Informed consent is a common area in which this breakdown occurs, and I see this happening for three main reasons.

The first reason is that we somehow convince ourselves a malpractice suit isn't going to happen to us. We know that the side effects of the chiropractic adjustment are extremely minimal. (Plus, having reminder tools in a digital documentation system can help assure a better diagnosis in some cases.) There's also our comfort with getting adjusted, which sometimes desensitizes us to the force we bring to the adjusting table and how others perceive that force. Plus, we occasionally see patients who were told by another provider that the chiropractor isn't going to do anything for them - except hurt them. So, on one hand, we have slander against our profession; and on the other hand, comfort with the risks that some patients take under our care. This results in a combination that enables an attitude where informing patients isn't as thorough and documented as it needs to be. In passive self-defense, we don't fulfill the legalities like we should, almost as proof to ourselves that the risks are overstated. Therefore, we're basically saying, *It isn't going to happen to me.*

The second reason we don't want to fulfill informed consent is that it's a boring exposition of the negatives of chiropractic care. Who wants to bring that into the doctor-patient relationship when it's just beginning? No one enjoys introducing a plan of care with the biomechanical effects of the adjustment and ending with information about rib fractures and disc avulsions. That's just not who we are; it's not how we think about ourselves. And a lot of us can't find a decent way to warn those patients who fall into these more serious categories of informed consent, in a way that satisfies legal demands and ourselves at the same time.

The third and probably the most obvious reason is that our documentation is out of control. It would actually be overwhelming for us to sit down and figure out if everyone knew what they were getting into before they signed off on a consent form. This is especially true if we have more than one provider in our offices. If our clinic management suffers for any reason, then our documentation suffers. It's the perfect enabling situation for our above attitudes to express themselves, or for us to assume that the office manager has it under control.

Change the Paradigm

In my previous column, I challenged the current, paper-driven model for meeting authorization of care forms, and I believe the same can be done with informed consent. Believe it or not, it can even be done in those instances where you have to tell patients that their disc problem could, theoretically, worsen by what you do. Here are the three ways the future practice is already confronting, and will continue to confront, the challenges of informed consent.

1. You can challenge the slander against the dangers of chiropractic with the facts about risks, stats and all, in your informing process. For the most part, these stats are on our side, and we can use digital technology to deliver them. I believe digital video is going to be the norm in informed consent, allowing doctors to customize the nature of their facts by the legal demands of the patient's condition. This is simply not a desirable project with paper, as patients wouldn't read it, and it would be too complex for you to deliver on a day-to-day basis. We can advise patients that every case is unique, but for the most part, they have X percent chance of experiencing a complication with an adjustment, based on their presentation. We could even achieve this while in another adjusting room. The patient watches, we ask if they have any questions, and the whole exchange is recorded in their electronic health record. No bumbling or fumbling to find words, and no asking the patient to read pages of material.

2. Package the truth about the risks with a medium that allows for the most positive delivery; a

combination of audio narration, images, and on-screen titles that emphasize the positive nature of chiropractic while stating the facts. Everything needed for you to effectively acknowledge the possibility of risk and appear confident can be captured in media so that the pressure to perform is off of you. It's the right balance between informing the patient and not making a huge production out of the process. It's not hurried, it's not threatening, and it's not intimidating, because it doesn't depend on you and how you're feeling.

3. This digital form of informed consent can integrate with an electronic health record, such that each and every patient is fully documented on their consent to treatment. The process becomes part of an efficient clinic protocol that won't break down if someone on your staff is having a bad day or if the three providers in your office have a miscommunication.

All three of these aspects - the ability to educate while informing, the positive package, and the digital integration with electronic health records - can help us overcome any breakdown in informed consent. In the end, we can meet our legal requirements in a way that doesn't violate our sense of who we are as chiropractors. We can be who we want to be in practice and still fulfill our legal obligations.

A Patient in the Digital Future

Aside from increasing our efficiency and helping us stay legal, digital informed consent gives us a unique opportunity to impress our patients with the advanced nature of our clinical care. We have to admit there's little that's impressive about informed consent. Informing patients via digital media introduces both an educational and entertainment value to the process, far above a disclaimer tacked onto a report of findings. You inform the patient about some risks of their care, and they're impressed by the sophistication of your system and your dedication to their education. Instead of dwelling on rib fractures, they're placing confidence in you.

If we were willing to allow technology to benefit our practices, we could see there are very simple solutions that could substantially increase our efficiency, as well as prove to our patients the benefits of our care. All it takes is a willingness to see that we're not getting any faster and that the demands placed on us aren't lessening. Of course, even with tools such as digital informed consent, we still might get the phone call from *that* patient in pain, or worse, their attorney. But my conviction is that it won't come from the ER. It'll be your patient saying, "I'm getting that pain that you said might happen and I'm calling like you said I should." That patient would rather continue under your care, from the smart doctor who informed them something like this could happen, rather than take their chances elsewhere. That's the power of the digital clinic of the future.

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