

A Warning That Bears Repeating

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In talking with doctors and some new vendors, I've discovered that a disturbing trend appears to be re-emerging. While you probably already know about this, it is worth repeating, even if it only serves as a reminder.

Early in the last decade, a Canadian company began selling Web sites with an e-commerce component. The package was very attractive in that a doctor didn't need to do anything to manage the e-commerce portion of their site. The Web site company had already created a relationship with one of the top chiropractic distributors and was going to sell its products to doctors' patients through each doctor's site. The doctor would receive a percentage of every sale simply for giving the Web site company the ability to sell on their site. The commissions from the sales were expected to more than pay for the Web site.

At the time, this appeared to be a great way for DCs to increase their income with almost no additional expense in terms of staff time or inventory. Several prominent leaders in the profession even endorsed the program, apparently ignorant of the federal and state laws prohibiting fee splitting. The issue was ultimately addressed by the National Association of Chiropractic Attorneys (NACA) at its annual meeting. After much discussion, [NACA passed the following resolution](#) (the Web site program was discontinued once the NACA resolution was published):

"The National Association of Chiropractic Attorneys cautions chiropractic doctors to carefully scrutinize e-commerce business relationships that involve marketing or sales to a chiropractic doctor's patients. The National Association of Chiropractic Attorneys notes that federal and state laws relating to fee splitting and patient confidentiality are not suspended simply because a business relationship involves e-commerce."¹

A number of recent conversations with both vendors and doctors have revealed that a similar program is being offered by several companies, most of them relatively new to the chiropractic profession. When I pointed out that this relationship is probably in violation of federal laws, state laws or both, one chiropractor remarked that he knew a number of other doctors who were doing it and that they weren't having any problems.

That may be true, but like the previous situation, doctors can be involved without realizing they are breaking any laws. But as we all know, the issue will eventually surface. It will probably come to light as a result of a complaint or be uncovered in an investigation for a different issue.

In addition to fee-splitting violations, patient confidentiality issues could also arise, exposing the doctor to even greater liability, especially in light of HIPAA regulations. Once patient information is in the hands of a third party, the doctor no longer has any control over what is done with that information or who buys it.

Unfortunately, if the commissions received by the doctor are found to be illegal or patient confidentiality has been violated, there could be criminal as well as civil charges filed. Needless to say, the charges and the legal costs associated with defending them would likely not be covered by

the doctor's malpractice insurance, leaving the doctor in question to fend for themselves.

This is not a scare tactic, but a warning. The warning here is simply this: Consult your state board attorney or your own attorney before you enter into any agreement that stipulates you will receive any payment or consideration for any product or service purchased by your patients from another party. Follow established HIPAA guidelines when working with all vendors. Doing so will help you steer clear of situations that could have disastrous results down the road. It will also keep you out of compromised positions with your patients.

You are their doctor. You are the one to recommend the products and services they need to maintain health and wellness. Don't put that important responsibility in anyone else's hands.

Reference

1. "National Association of Chiropractic Attorneys Warns of E-Commerce Deals." *Dynamic Chiropractic*, Jan. 1, 2001.
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