



CHIROPRACTIC (GENERAL)

## **Informed Consent and Chiropractic: An Opportunity in Patient Education**

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Here in California, the [California Board of Chiropractic Examiners](#) adopted informed consent requirements (CCR Section 319.1), which compel chiropractors to obtain patients' consent after fully informing them of any potential risk of harm in relation to treatment. The legislation, passed in October 2011, requires informed consent both orally and in writing prior to the performance of chiropractic clinical care. Let's talk about the issue of informed consent, including what constitutes informed consent, when it is required and the standards of disclosure that can be made.

### Informed Consent

Doctors must fully inform their patients about the risks involved in any proposed medical procedure. This process of providing essential information to the patient and getting the patient's agreement to a certain procedure or treatment, in both medical and legal terminology, is called "informed consent."

In most instances, the informed consent process flows naturally from the "partnership" between the doctor and patient; however, when this does not occur, serious legal and ethical consequences may result. Let's say that hypothetically, a patient becomes injured as the result of a medical procedure; we understand the concept of an informed consent requirement that would likely arise in any malpractice claim for injuries. If a doctor does not get informed consent from a patient and the patient is injured, the patient may have grounds to sue the doctor for medical malpractice.



When IC Is Required

Whether or not a patient gave their informed consent to a treatment is crucial in the law of medical malpractice. If a doctor does not get a patient's informed consent and the patient would not have opted for the treatment if they knew about the risks, the patient may be able to sue the doctor for medical malpractice. The informed consent process has been criticized as concentrating more on avoidance of doctor liability than on truly educating patients so as to make self-determined medical decisions.<sup>1</sup>

Although the specific definition of informed consent may vary from state to state, it means essentially that a doctor must advise a patient of all of the potential benefits, risks and alternatives involved in any medical procedure or other course of treatment, and must obtain the patient's written consent to proceed.

Doctors typically require patients to sign a consent form detailing the risks of any given treatment or procedure. But signing a form alone does not necessarily prove that the patient gave informed consent. The doctor must actually discuss the procedure and risks with the patient. And the patient must understand, to the extent possible, the risks they face.

Since California requires that doctors of chiropractic obtain informed consent both orally and in writing, the process of providing essential information can be obtained with a signed consent and by documenting the oral requirement or what was explained to your patient onto the clinic record. In chiropractic, to satisfy the state requirements it is documented within the Treatment Plan component of the medical record. Such an example of a documented oral discussion might be as follows:

"An opportunity for discussion was assisted by use of anatomical models / charts. Risk of any foreseen complications was discussed, there were no language barriers encountered, and the patient agreed to go ahead with this conservative approach."

The required written informed consent may be obtained in sample outline from state and national associations. Professional bodies have also issued guidelines to help doctors of chiropractic inform their patients, and their teaching clinics and interns have provided informed consent for many years right along with their traditional medical colleagues.

The informed consent form could be signed by your patient on their initial visit or during the report-of-findings session. However, if a chiropractor preforms a different procedure from that revealed in the original signed informed consent, a new informed consent must be obtained before any treatment is pursued relative to the second procedure. Otherwise, the DC could be sued for lack of informed consent. In other words, when treatment plans change, so should the informed consent.

## Disclosure Standards

A doctor doesn't have to tell a patient about every possible thing that might happen as a result of a procedure or treatment; only those risks that are important. But what is considered important? For the most part, states use one of two standards to determine this:

1. *Would other doctors have disclosed the risk?* In states that use this first standard, an injured patient who is suing a doctor must hire a medical expert to testify that other competent doctors would have informed the patient of this risk. The doctor being sued will also hire an expert to testify that a competent doctor would not necessarily have disclosed the risk to the patient. The argument ultimately centers on whether the risk could have been reasonably foreseen.

2. *Would a normal patient have made a different decision if informed of the risk?* In states using this second standard, courts ask whether a normal patient, with the same medical history and conditions as the plaintiff, would have changed their mind about the treatment if the risk were disclosed. Unlike states following the first standard, a doctor must also inform a patient of realistic alternative treatments, even if the doctor only recommends one treatment.

The traditional style of medical decision-making, in which doctors take sole responsibility for treatment decisions, is being challenged. Attempts are being made to promote shared decision-making in which patients are given the opportunity to express their values and preferences, and to participate in decisions about their care.<sup>4</sup> Considering this, the second standard provides a wonderful opportunity for patient education in realistic, conservative chiropractic care with the other medical treatments available. Be the first to educate and hopefully, you will be the last health care provider your patient may ever see.

### *References*

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