

The State of Chiropractic: A Legal View

Editorial Staff

NEW ORLEANS -- The National Association of Chiropractic Attorneys (NACA) held one of its most well attended annual meetings October 28-30 in this picturesque southern seaport. Thirty-eight lawyers representing state associations and chiropractic colleges from around the country, the ACA and the ICA, met to discuss state association spawned PPOs, health care reform, restrictions on chiropractic payment under workers' compensation, and a plethora of topics that impact chiropractic. The lawyer worked hard and played hard: Bourbon Street, we understand, is still intact.

State Farm

Several lawyers reported that State Farm continues to resist paying many chiropractic claims by submitting them to claims review and requesting medical records repeatedly. This is particularly disappointing since NACA representatives have met with State Farm representatives and State Farm had agreed to devote one of its newsletters to adjustors on the subject of chiropractic. The adjustors' attitude apparently has not changed about chiropractic and the lawyers reported that DCs in various states are still having problems. Attorney Mark Carroll reported that State Farm in Florida routinely submits chiropractic claims for peer review and has a special claims unit for termination of chiropractic claims. "It is unknown whether State Farm uses the same procedures for other health care providers, but I doubt it," Mr. Carroll said. Jake Ladenheim (Florida) reported that the State Farm newsletter article on chiropractic was reprinted in the Chiropractic Legal Update (August-September 1993 issue), and should be sent to State Farm adjustors who have negative attitudes about chiropractic. "They need to be reminded of what they were previously told," Mr. Ladenheim asserted.

Workers' Compensation

The lawyers reported on the continuing trend by state legislatures to restrict chiropractic treatment under the workers' compensation laws. In Pennsylvania the fees are tied to the Medicare fee schedule; Texas requires pre-authorization; Oregon is restricted to 12 visits without MD referral; Florida is restricted to 18 visits without further approval. Lori Silveria, representing the Chiropractic Society of Rhode Island, reported that visits were attempted to be restricted to 12, but that the association successfully had the effort tabled and adopted a diagnostic protocol for chiropractic instead.

Physical Therapy by CAs

State Farm has objected to payment for physical therapy performed by chiropractic assistants because they are not licensed. David Morrison reported that the issue is in litigation in Arizona. Judy Pope reported that payment for treatment by doctors working under direct supervision awaiting licensure is in question in Kansas. Joel Kruh stated that the problem was solved in Maryland through regulations passed by the state licensing board authorizing licensure of chiropractic assistants. Kathy Kay reported that the issue was successfully litigated in their favor in California, but it took seven years.

Out-of-Pocket

Rob Sherman reported that the Ohio legislature passed a no out-of-pocket expenses prohibition applying to every type of health care provider. Most states now have such legislation.

Willing Provider Laws

Minnesota, Kentucky, and Virginia now have any willing provider laws on the books. William Shields reported that Virginia's statute, the first to pass, is under attack by the managed care industry. "The fight is really just beginning," said Mr. Shields.

Recordkeeping

Lawyers continue to report that poor quality record keeping is the nemesis of chiropractors and other physicians. "Chiropractors get criticized more than other doctors when their records aren't perfect," said Joel Kruch of Maryland. Phil Stowers (West Virginia) pointed to good recordkeeping as a means to make insurance claims denials more difficult. Paul Lambert (Florida), president of the NACA, said the NACA has an ongoing project to raise recordkeeping standards by urging colleges to stress better recordkeeping, urging state licensing boards to adopt strict recordkeeping regulations, and raising the issue at seminars around the country.

MUAs

Manipulation under anesthesia (MUA) is gaining wider acceptance throughout the country, but is being challenge in Texas, reported Des Taylor.

Hospital Privileges

Lawyers continue to report that hospitals are quietly approaching chiropractors about staff privileges. "It's been happening in Florida for some years," reported attorney Lambert.

"It's beginning to happen in Maryland," added Joel Kruh.

"This will continue to be a probable trend," predicted Al Wax, attorney for the Kentucky Chiropractic Society.

Malpractice Insurance Mandate?

Connecticut, Florida, and Pennsylvania are now mandating that chiropractors carry medical negligence insurance as a requisite for licensure. This may be a trend. "Most states require allopaths and osteopaths to maintain malpractice coverage," observed John Vos, representing the Michigan Chiropractic Council.

ERISA

Mark Carroll (Florida) reported on limited successes in suing ERISA plans administered by third-party payers denying chiropractic claims, particularly when a plan's language is ambiguous about covering chiropractic treatment.

Self-Referral Prohibitions

Lawyers from 15 states reported adoption of state laws prohibiting referrals by physicians to diagnostic or therapy clinics or center owned by the referring doctors. "This seems to be a growing trend throughout the country," observed Brian Niederhauser, representing the ICA.

Centennial Celebration

Mike Schroeder (California) is NACA's representative on the Centennial Celebration Foundation. NACA is an institutional members and will participate in the programs scheduled for Washington, D.C., and Davenport, Iowa. NACA members will participate in mock trials during the celebrations in both locations.

Mr. Schroeder reported on the positive attention to chiropractic that the Rose Bowl Parade float (expected to be an award winner) should garner.

NACA Bulletin Board

At the suggestion of Rob Sherman (Ohio) and Shawn Steel (California), a committee and chairman (Mike Kelly, South Carolina) were appointed to create a national computer bulletin board system restricted to NACA members. "This will really put the NACA on that information superhighway we all make fun of," said Aubrey Villines, attorney for the Georgia Chiropractic Association.

"We could have the bulletin board on line as early as January," said Mr. Steel.

NACA Newsletter

David Morrison (Arizona) was charged with the task of forming and editing a NACA newsletter. "I envision a quarterly newsletter that will have short reports from our members around the country alerting the other lawyers as to important judicial decision, legislative actions, or other events to keep NACA members on the cutting edge of information," said Mr. Morrison.

"NACA members could use the computer bulletin board to download the cases reported in the newsletter or get the text of new legislation or decisions," observed Scott Meyer, lawyer for the Minnesota Chiropractic Association.

The NACA will hold its mid-year meeting June 10, 1995 in Vancouver, British Columbia. The next annual meeting of NACA will be held in late October or early November 1995 in Scottsdale, Arizona. All state associations are urged to send their lawyers to participate in the mid-year and annual meetings.

"The more lawyers that attend, the more information that is shared and the more we learn from each other," emphasized Jim Hogan, attorney for the New York Chiropractic Council.

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