

MERCY CENTER GUIDELINES -- LEGAL IMPLICATIONS

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A number of inaccurate facts and groundless fears are being expressed by some people about the new Mercy Center Guidelines for chiropractic practice, such as:

- they create new legal risk for chiropractors
- this was not foreseen by the consensus group and is a major problem
- the National Association of Chiropractic Attorneys agrees, and is opposed to the Guidelines

As counsel for the Commission that established these Guidelines, let me answer these questions. These Guidelines greatly reduce legal risk -- and third-party payment problems -- and are not opposed by the National Association of Chiropractic Attorneys.

Firstly, the Commission had legal counsel from the inception of its work because it was known that guidelines, unless drafted with due care for legal impact, might present new legal risk. It was also known that properly drafted guidelines would greatly reduce risk. This is the reason why NCMIC, OUM and other malpractice carriers rapidly supported this development of guidelines.

Let's take a concrete example. At the moment, if you adjust a patient with cervical spondylolisthesis and cause harm, you're in deep trouble. Somewhere a 'chiropractic expert' will say the spondylolisthesis was an absolute contraindication. A medical expert will agree. You can call all the expert evidence you want -- you are bound to be writing a large check.

With these Guidelines, the playing field tilts in your favor. Finally there is a national chiropractic consensus on this and many other issues, and any individual chiropractic expert who wants to challenge that is on fragile ground.

The Mercy Center Guidelines expressly indicate that spondylolisthesis is not a contraindication to high velocity thrust procedures, and "may represent a relative contraindication with progressive slippage" (Recommendation 12.1.4). Accordingly, for you to be liable for damages for injury under these guidelines, it must now be shown that, while it was generally appropriate for you to use chiropractic adjustment in this situation, there was some specific factor which amounted to lack of reasonable care and skill (negligence) with this particular patient. If the Guidelines and your actions are supported by a credible chiropractic expert, it will now be difficult for opposing chiropractic and medical experts to make out a case against you.

The National Association of Chiropractic Attorneys, which has not yet met to debate and pass any decision on the Mercy Center Guidelines, has nonetheless played a most helpful role. The NACA formed a Practice Parameters Committee, comprising six attorneys with wide experience of representing chiropractic in different regions of the U.S., who reviewed the first draft of the

Guidelines and came up with a number of constructive suggestions. These, together with other legal input, have been incorporated in the final text during editing and will serve to strengthen the completed document.

Finally, as you may imagine, there is nothing particularly new or controversial about health care guidelines or their legal impact; much has been written. Perhaps the best overall analysis is Legal Implications of Practice Parameters prepared by Johnson, Hirshfeld, and Ile for the Office of the General Counsel, American Medical Association, as part of the AMA's now extensive development of practice guidelines. This confirms that properly developed guidelines have the effect of reducing legal risk.

This document and other relevant materials have been reviewed with care by myself and others on the Mercy Center Commission to ensure that the new guidelines deliver the great benefits of broad-based national guidelines for practice. One benefit is that in chiropractic practice you are no longer 'flying solo,' ready to be attacked by a plaintiff's self-styled chiropractic 'expert.' Your legal exposure is greatly reduced.

Editor's Note: Mr. David Chapman-Smith commenced the practice of law in New Zealand in 1970 and represented the New Zealand Chiropractors' Association before the New Zealand Commission of Inquiry into chiropractic in 1978/79. Since 1982, he has lived in Toronto, Canada, been admitted to the Ontario Bar, and specializes in health care law. He is the Secretary-General of the World Federation of Chiropractic and editor/publisher of the Chiropractic Report.

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