

Check Notes! Patient Complaints Ignored

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Editor's Note: This is the first in a series of articles provided for Dynamic Chiropractic by Attorneys Louis Campbell, C. Jacob Ladenheim, Robert Sherman, and Louis Sportelli, D.C., based on material from their book *Risk Management in Chiropractic*, Health Services Publications 1990.

The malpractice case of Robert Bilderback, M.D. holds a number of lessons for the chiropractic physician. Dr. Bilderback, a board certified orthopedic surgeon, was the treating physician for Ortho Priestley, who had suffered a knee injury. The history given to Dr. Bilderback included a detailed report of the knee injury, but apparently no complaint of back problem. Ms. Priestley was placed on a course of physical therapy preparatory for surgery to the knee. The therapy included the use of weights under the supervision of two therapists employed by the doctor.

Records: Friend or Foe

The malpractice claim centered around the allegation that at the time she first commenced treatment with Dr. Bilderback, the patient had a pre-existing condition (spinal stenosis) which the weight therapy aggravated. In a classic example of how not to defend a malpractice case, Dr. Bilderback attempted to absolve himself by stating that if the plaintiff had complained to him that she was experiencing any back pain, he would have examined her back, but that "she never complained of back pain to me." The defendant's employee therapists conceded, however, that the plaintiff did complain to them, and that her complaints were, in fact noted in the patient's records. The court concluded: "Apparently, defendant did not examine notations made by his therapists, or, if he did examine them, he ignored the complaints of pain."

Notice to the Doctor

The court, in a finding which would almost surely be adopted in other jurisdictions faced with a similar question, found that the complaints Ms. Priestley made to the defendant's employee constituted notice to the defendant of the condition. Given such notice, the court found that there was sufficient evidence to support the jury's verdict that the doctor's failure to diagnose the spinal stenosis constituted actionable negligence. *Bilderback vs. Priestley*, 709 S.W. 2d 736 (Tex. App. 1986).

Self-Protection:

Malpractice avoidance or preventive practice requires attention to proper maintenance and use of records. In this case it is clear that the therapists faithfully performed the task of entering notations of the patient's subjective complaints. Complete records and good clinical documentation are, however, not only worthless if not reviewed by the treating physician, but their presence is potentially damaging, as it proved to be in this case.

The lesson to be taken, however, is certainly not to discontinue making written notations, but rather to

insure that the doctor reviews those notations. The routine initialing or other distinctive marking by the physician on each day's progress notes or review of x-rays or other clinical tests, will insure that the physician will later be able to identify his mark, testify that no one else in the office made such a designation, and that it confirms that he reviewed that documentation, test, etc.

Another illustration of poor malpractice avoidance technique is the apparent failure of this physician to insure that his staff keep him properly informed. The negligence alleged in this case involved the increase of weight from 7-1/2 lbs. to 15 lbs., during a time when the patient was complaining persistently of numbness in the legs and back and of extreme pain. For the therapists to continue to make notations without personally bringing to the physician's attention that the increasing weight was contraindicated, suggests either a complete failure to appreciate the clinical indication from the pain -- poor training -- or that the doctor was totally unapproachable.

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