

Chiropractic's Standard of Care

In his classic masterpiece *A Tale of Two Cities*, Charles Dickens opens with, "It was the best of times, it was the worst of times." When isolated, this quote seems to represent a rather antithetical statement. However, closer analysis reveals this statement simply encompasses the gamut of differing viewpoints during the significant era in which the story occurs: the French Revolution.

Chiropractic is going through a revolution, or rather, an evolution of its own. Chiropractic's increased acceptance has led to greater utilization. With greater utilization has come improved visibility. Improved visibility has led to increased scrutiny, which fosters greater accountability. Accountability in professional arenas frequently is assessed by measuring against a standard of care.

A review of the literature reveals that countless standard of care articles appear in numerous non-chiropractic professional journals, citing the standard of care for many health care procedures. Conversely, chiropractic suffers from a deficiency of published information relative to its professional standard of care.

Defining the Standard of Care

The term "standard of care" does not represent guidelines; nor does it represent a "paint by numbers" or "cookbook" methodology. Similarly, the standard of care does not represent scope-of-care laws. Scope-of-care laws, which vary from state to state, represent the legal dictates defining what therapeutic procedures a chiropractor may or may not utilize and on what bodily regions.

The legal definition of the chiropractic standard of care may vary slightly from state to state, but the essential concept is: "What a (licensed) prudent, competent doctor of chiropractic in the same region would do in the same or similar circumstances." The chiropractic standard of care represents conduct that has been established with scientific, empirical, and/or clinical evidence. Consensus opinions including such factors as how widely used the form of treatment is, where it is taught, and how appropriate it is for the condition(s) upon which it is utilized are considered. Case law can be applied to help legally define specific aspects of the standard of care.

Ideally, the standard of care represents the safest and most efficacious realm within which a chiropractor should conduct himself or herself professionally. If you conduct your professional affairs within the chiropractic standard of care, it is considered less likely that your patients will suffer an adverse event from your treatment. Likewise, if your conduct is within the chiropractic standard of care, you will be more defensible should a legal suit be brought against you for said conduct. Venturing outside of this realm opens up the possibility, although not necessarily the probability, of a negative consequence being attributed to your actions. Whether you like it or not, if your professional actions are ever called into question, you will be judged against the applicable standard of care.

Staying Abreast of the Standard of Care

Doctors of chiropractic who work with other chiropractors will have some direct exposure into what their professional peers are doing. If utilizing these chiropractors' professional conduct as a baseline to determine the standard of care, however, it should first be assured that they are indeed conducting themselves within said standard. Chiropractors in solo practice will need to interact with other DCs professionally to stay current with the chiropractic standard of care.

Professional seminars, while sometimes seeming to epitomize some form of required professional purgatory, actually represent more than just an opportunity to advance clinical knowledge and technical acumen; they also represent a tremendous opportunity to compare and assess professional competence and proficiency. Similarly, professional meetings and even braintrust groups with colleagues can help chiropractors stay abreast of the standard of care, as well as help solo practitioners feel less isolated in their profession. Professional literature and current texts provide additional information to assist the clinician.

If this all sounds like a lot of effort, remember: A little well-placed effort now might spare you from a much less desirable expenditure of energy later - defending yourself from a legal claim. You have nothing to lose, and you might gain some valuable practice and/or procedural insights that will benefit you and your patients.

Components of the Standard of Care

Broken down into its basic fundamentals, the chiropractic standard of care requires that an appropriate evaluation be performed, which should include a pertinent history along with an evaluation/assessment. Even subluxation-based chiropractors are under the same mandate as are all chiropractors - to ascertain the safety and efficacy of any proposed course of treatment. As noted by NCMIC, "Avoid performing only a few tests without understanding the complete picture."¹ In other words, it is incumbent upon the chiropractor to properly evaluate the patient in a thorough enough manner to establish a viable working diagnosis, along with ruling in/out other possible diagnoses and their potential complications. It is also incumbent upon the doctor of chiropractic to know how to properly perform evaluative procedures and likewise, to understand the findings for each evaluative procedure performed. Simply making evaluation notes on a chart without understanding their significance is equivalent to not performing the evaluation at all. The textbooks of Souza,² Huff, et al.,³ and many others provide excellent protocols for patient evaluation.

While not a required part of the standard of care in every case, imaging studies should be performed when necessary to augment the clinical picture. Plain-film radiographs are the most commonly utilized form of imaging, due to their lower cost and greater availability. As with all components of the evaluation/assessment process, imaging studies must be performed properly to assure quality. Rowe and Yochum⁴ emphasize that "it is the quality of the image upon which the accuracy of the interpretations is largely based. To produce radiographs of inadequate technical quality is to handicap the interpretation, which ultimately compromises patient care."

When plain-film images offer no further clarification to the clinical picture, or in fact, foster greater uncertainty, more advanced imaging studies may be required. In the past two decades, the developments in advanced imaging have been astounding. Chiropractors who avail themselves of these diagnostic tests, when indicated, help assure the greatest diagnostic accuracy, leading to the safest and most appropriate care.

The patient evaluation should continue until a viable working diagnosis, with or without differentials, is discerned. Wyatt⁵ provides pertinent differential diagnoses for a number of neuromusculoskeletal conditions. If appropriately elicited, diagnosis should delineate which forms of treatment are appropriate (i.e., safe and efficacious). It is important to ascertain not only when and where to adjust, but also when not to adjust.

Informed consent is now considered the standard of care for chiropractors (as well as for many health care providers) in every state. NCMIC⁶ contends that from experience, "When doctors get sued for malpractice, often an independent cause of action is made based on the lack of informed consent given to the patient." Depending upon the state, informed consent may be required to be in writing;

however, a written record is much easier to defend. Ross⁷ provides an excellent history and critique of the standards relative to informed consent, including its elements: "The diagnosis, nature and purpose of the treatment for which the consent is sought, all material risks and consequences of the procedures/treatments, assessment of the likelihood that the procedure will accomplish the desired objective, any reasonable alternative treatments, and prognosis of not getting treatment."

The aforementioned tenet assumes that the chiropractic doctor is versed fluently in the possible risks associated with each procedure planned to be employed in the treatment for the diagnosis(es) rendered. If a negative consequence results from such treatment, and the chiropractor is called to task on it, he or she is likely to be quizzed on their familiarity with the possible negative side-effects of the treatment employed. Furthermore, if what might be considered less common forms of treatment are utilized, it is even more important that patient disclosures be more forthcoming, and that a valid informed consent be obtained.

Strictly subluxation-based chiropractors may still be held to the same standards of care as their mixed brethren unless a full patient disclosure regarding their specifically focused care is provided. Without such a disclosure, it could be argued that any morbidity the patient suffers congruent with the care represents a failure on the chiropractor's part to conduct themselves within the standard of care, as represented by all chiropractors.

Documenting patient encounters is another mandate of the chiropractic standard of care. According to Pena,⁸ "Statutes in every state specify what type of records a doctor must create and maintain. Those who fail to comply may be reprimanded or even lose their license." Said board actions would be separate from any potential civil suits. Even chiropractors who operate a cash practice are expected to maintain competent patient records. If you are not familiar with your state board's record-keeping requirements and the applicable standard of care regarding such, you should make it the very next thing you do today. An important point to remember: If your professional actions are ever called into question, your patient records may provide an excellent tool for your defense.

This brings us to a tangential area of significance. Too often, when doctors of chiropractic are confronted with a legal challenge to their professional conduct, either in the form of a civil suit or board action, they reflexively try to rewrite history. Altering patient records after they have been (or likely will be) requested, will usually only compound the legal woes. Likewise, authoring patient records only after they have been requested, months or years after the actual treatment has been rendered, calls their veracity into question. If your professional conduct was within the chiropractic standard of care, there is a very good chance your case will be dropped, or at least will end in your favor. A review of competent records relating appropriate patient management within the standard of

care is often all that is needed to convince a plaintiff to drop a case, often before it is ever filed.

Re-evaluations are typically a required part of any prolonged course of treatment, or after a prolonged period of a patient's absence from care. NCMIC⁹ states; "It's essential to re-evaluate patients who've had a lapse in between visits or when they present with new or different symptoms. In addition, [a] re-evaluation should be considered anytime the patient fails to respond within a reasonable period of time." A re-evaluation also should be implemented whenever the course of treatment elicits an unexpected or negative response. Re-evaluations assure that the course of treatment is providing the anticipated, desired results. They also represent a method to demonstrate to the patient the progress being made.

"I Did Everything Right, But I Still Have Professional Legal Problems"

Should your professional conduct be questioned, remember your chiropractic oath and stay professional. It has been this author's experience, having reviewed many potential cases for plaintiff attorneys (yes, I review for defense attorneys as well), that attorneys often agree to consider a chiropractic malpractice case simply because they do not understand chiropractic or its standard of care. Many times, once the plaintiff attorney in such a case is schooled in chiropractic and its applicable standard of care, they drop the case.

In one such case, a DC had a patient expire on his table. In his devastation, the chiropractor did not even contest the civil suit brought against him (although I believe he should have). I was subsequently retained to review the case for the chiropractic board. I could discern no area in which the chiropractor in question conducted himself below the standard of care. The chiropractor's records were clear, concise and complete. His patient evaluation was exemplary and his diagnoses appropriate. His treatment was well-established for the rendered diagnoses and had been safely employed with the patient on a multitude of previous, sequential occasions. The adverse event could not have been anticipated or expected, with the patient's demise most likely a result of the simple odds of living, rather than the result of the chiropractor's treatment. The recommendation to the board was that no action be taken against the licensee.

To protect your patients and yourself, know proper patient evaluation techniques. Be familiar with the potential risks associated with the procedures you utilize, and disclose such to your patients. Be sure to ascertain and document that the course of treatment is eliciting the desired result(s).

There are those within the chiropractic profession who consider the application of professional standards of care to represent an abhorrent intrusion into their exclusive province. To them, the evolution and application of professional standards of care represent the worst of times. However, professing and performing according to standards of care actually facilitate the advancement of the entire chiropractic profession.

Chiropractic is evolving. Stay current with the art and science of chiropractic. Be a part of the evolution revolution and enjoy the best of times!

References

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