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PROFESSIONAL LIABILITY

Be Proactive and Consistent on Informed Consent

By Stuart E. Hoffman, D.C., F.I.C.A.

Effective risk management requires every chiropractic practitioner's daily attention. Consistent attention to detail and regular examination and re-evaluation of the basis of risk management are essential to your practice's protection and your peace of mind. It is vital, however, that on key risk management issues and procedures, you never let your guard down and do not let staff members drop the ball or cut corners on record-keeping and confidentiality issues. On the doctor's "MUST DO" list, make sure that informed consent documents and procedures are always in place and consistently applied.

Informed consent has emerged as a cornerstone of risk management procedures because the lack of it in malpractice cases has become a common and effective claim. Clever and aggressive lawyers have hit upon the informed consent issue as a means to strengthen otherwise weak claims of clinical misjudgment or injury, based on a number of landmark court decisions and trends in other professions. In a landmark 2005 Wisconsin case, the state court found:

*"Chiropractors, like medical doctors, are health care professionals involved in the application of procedures and treatments to the human body. We see no reason why the scope of an individual's right to be informed of the risk inherent in bodily intrusions via chiropractic treatment and procedures should be any different from his right to be informed of the risk inherent in bodily intrusions in medical treatment and procedures."*¹

Thus, the fact that chiropractic is non-invasive provides no additional margin on demands for informed consent according to the Wisconsin court, a position reaffirmed by an often cited 1999 New Jersey Supreme Court decision, which similarly held that: "...informed consent applies to both invasive and noninvasive procedures," holding that physicians must inform patients of the possible risks and benefits of all "medically reasonable" treatment options — including those he or she does *not* recommend.² If that is not complicated enough, courts are regularly finding that patients must be updated throughout their course of care in terms of relative risks and alternate care choices, and that not telling a patient about other care pathways and their risks becomes an issue in itself.³

In fact, actions based solely or largely on the lack of formal and written informed consent have emerged as a malpractice growth industry, even though such charges may have nothing to do with whether a chiropractor has actually committed an act or acts of malpractice as it has historically been understood.

The message here is clear: Be consistent and proactive in obtaining both written and verbal informed consent from every patient, in advance of both examination and the active delivery of care. Yes, get informed consent prior to care to cover your examination procedures, as well as in advance of delivering chiropractic adjustive care.

Informed consent starts with a standardized form. Your malpractice carrier is always a good place to obtain a model form, followed by your state or provincial association, with, as is almost always the case, close attention paid to any direction available from your state or provincial regulatory board. On this form, the key information needed will always include the patient's name, address and of extreme importance, the date.

The exact nature of the form's contents should reflect the requirements in your jurisdiction. This is why a visit to the regulatory board's website or information from your local association is so vital. Different jurisdictions have different specifics on informed consent. You will need to comply with state and provincial directions as to the degree of specificity regarding risks inherent in the procedures you are about to apply.

In recent months, as more and more technology and especially mechanical devices are incorporated into chiropractic practice (from mechanical adjusting devices to spinal decompression units) it is becoming important to obtain separate informed consent forms for each new level of intervention applied by your clinic. A form for the adjustment, a form for traction, a form for mechanical spinal decompression, and a form for any procedure that can be argued to be separate and different, and not arguably

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