



## Winning Without Losing is Winning Smart

By **Stuart E. Hoffman, D.C.**

Every practitioner dreads that one incident in which a disgruntled or otherwise dissatisfied patient brings up that unwanted word, "malpractice." Fortunately for most of us, it is a rare occurrence, thanks to the exceptional qualities and expertise of the doctor of chiropractic, but it does happen; that is why *ChiroSecure* is here. More often than not, thankfully, malpractice claims are aggressively and skillfully defended by organizations such as *ChiroSecure*, and awards for such claims are limited.

*ChiroSecure's* success rate in defending our policy holders is impressive and I am proud of the job we do for our doctors. This rate of success, however, should not be interpreted by any DC who does not have adequate malpractice insurance to mean that most claims can be easily defended and that their exposure really isn't so bad. Let us consider, for a brief moment, the cost of this success.

Defending any malpractice claim is a difficult, expensive and extremely time sensitive business, requiring legal

resources, experience and great skill. It is a very expensive business since all of these activities must be paid for by someone. *ChiroSecure* policy holders pay their premiums with the certainty that such costs are part of their coverage and unlike some other coverages, these costs do not decrease the available limits of coverage purchased for settlement. When they win, they win smart. What about you?

The doctor of chiropractic without malpractice coverage, and there are thousands in the US, faces not only the exposure of defending any and all claims and possible damage awards, they will be obliged to front ALL defense costs, whether they win or lose. I have spoken to hundreds of DCs who sign up for *ChiroSecure* coverage out of a sense of obligation to their practice and their patients, and almost without exception, concern over financial exposure is a central issue. These are wise doctors.

According to a May, 2005 Kaiser Foundation Report, defense costs to the malpractice insurer or defendant (legal fees, expert-witness costs, other

handling fees) have been rising as well. In 1991, defense costs were approximately \$15,000 per physician claim. In 2001, those costs averaged approximately \$29,500. Defense costs for paid claims more than doubled from \$21,000 in 1991 to almost \$44,000 in 2001, while defense costs for claims with no payment (61 percent of all claims) nearly doubled from \$12,000 to \$23,500.<sup>1</sup>

The basic data on the costs of defending malpractice claims deals only with the expenses of legal, expert witness and other out-of-pocket expenditures, not the time and energy of the doctor being defended. For the doctor without coverage, add an additional and very significant sum, because the uninsured doctor must coordinate all of these activities on their own time and at their own expense. For the doctor of chiropractic, time is money, not to mention the emotional drain organizing one's own defense adds to the non-economic costs.

Trends in malpractice continue to keep all health professions under serious pressure, and despite state efforts at limiting attorney's fees, caps on damage awards, placing tighter limits on the time frame for filing malpractice claims and other "tort reform" provisions, malpractice exposure is still the doctor of chiropractic's greatest liability risk. This pressure is only going to expand with greater consumer access to health care and legal information through the Internet, growing consumer activism and a hungry legal profession willing to take on any claim, no matter how flimsy.

The chiropractic profession has the advantage of being one of the safest and most effective forms of health care, but we continue to be caught up in the greater malpractice environment in which the medical profession is very much on the defensive. This environment is stimulating a new wave of legal and consumer initiatives, with a "right to safety" becoming a new topic in public policy discussions on health care.<sup>2</sup>

Activist consumer groups and attorneys are seeking to establish "judicial recognition" of a patient's right to safety as a new element in the litigation mix. The aim of these activists is to seek to use this new "right" to stimulate greater caution and more effective injury prevention in hospitals and ultimately

on the part of individual doctors. Because this sounds like a worthy cause, many politicians will likely be mobilized to promote it, and we will certainly hear more about these issues in the coming months.

In the meantime, doctors of chiropractic have options and any DC with *ChiroSecure* coverage knows they are not alone, but supported by a team of experienced defense professionals with a proven record of success. This support team (headed by another chiropractor), combined with the individual doctor's commitment to clinical excellence is a winning combination. They do not ever have to go it alone! Nor should you!

### References

1. *Medical Malpractice Law in the United States*, Peter Budetti and Teresa Waters, Kaiser Family Foundation, May 2005.
2. George J. Annas, "The Patient's Right to Safety — Improving the Quality of Care Through Litigation Against Hospitals," *NEJM*, May 11, 2006.

**Stuart E. Hoffman, D.C.** is the president of *ChiroSecure*, the only malpractice insurance program endorsed and approved by the International Chiropractors Association. Dr. Hoffman is a highly experienced doctor of chiropractic and licensed insurance broker who knows the intricate details of daily practice and who can give you the best advice based on his unique knowledge of both the insurance world and the world of chiropractic. To find out how you can get liability protection at the best rates call Dr. Hoffman at 1-866-802-4476 or visit [www.chirosecure.com](http://www.chirosecure.com).

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