Dynamic Chiropractic
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Business Law Pitfalls

By Larry J. Laurent, PC

As a lawyer who, for the past 20 years, has been exclusively handling legal problems for doctors of chiropractic, I have been asked to write an article about the most common business law and related problems doctors encounter, why they face these problems and some ideas on how to best deal with them. For the past eight years, I have taught various law courses at the University of Texas McCombs College of Business, as well as a course entitled "business law for doctors" at Texas Chiropractic College in Houston. For most of these past 20 years, I have also conducted seminars on chiropractic law. Dealing with doctors on a daily basis has helped me understand the basic business law problems they encounter. In this article I am going to lay out five of the most common legal problems, in no particular order, and explain what I believe the doctor can do to avoid and correct the problem(s). Bear in mind that these are simply my opinions on the subject.

Doctors don't fully understand, the legal effect of a contract. Too many doctors sign contracts without understanding the legal implication of what they have done. Specifically, I have seen doctors enter into a contract with a consultant or vendor to buy their goods or service(s), and when the goods or service(s) are not delivered as promised, the doctor assumes that they have no further obligation owed under their contract. The other guy breached it, so the doctor decides not to pay or perform anymore.

Unfortunately, that is not how the law of contracts works. A contract is a binding agreement between two parties. Under the contract each party is obligated to perform a task (provide services, pay money for services, etc.). When a party fails to provide what they contracted, as a general rule, a breach of the contract has occurred. However that breach most often does not excuse the non-breaching party from their legal obligations. While it does afford the non-breaching party a claim for damages against the other party, they may find themselves being sued for breach by failing to perform their legal obligations. Contracts require compliance, but generally provide a valid cause of action for damages for non-compliance. If you become the victim of a breach, get a lawyer as soon as possible and put the breaching party on notice. This may

afford you the legal remedy known as "anticipatory repudiation" and allow you to avoid further obligations. File a lawsuit early to get the judge on your side. The judge may order the other side to perform or excuse your continued performance because of the other party's misconduct. Either way, you want to get the breaching party into the legal system as soon as possible.

Doctors don't sufficiently check out what a vendor or consultant is selling. Along with the problems addressed previously, a corollary problem involves DCs' unwillingness, inability or sufficient lack of interest to verify the specifics of what the consultant or vendor is actually promising to do. Many consultants or vendors are prepared to say anything they know the doctor wants to hear in order to get them to buy their goods/services. Once a doctor has signed on the dotted line they becomes legally obliged to pay, often, very significant, sums of money, to that consultant/vendor.

Unfortunately, many of these "deals" turn sour and the doctor finds themselves owing a lot of money without getting what was promised in return. One twist is the relatively recent preference use of a financing/leasing company as a middle man. This approach is often used by disreputable consultants/vendors to effectuate a scam on unsuspecting buyers. Under the lease-finance transaction, the doctor usually finds themselves owing a lot of money to a finance company, despite the fact that the consultant/vendor has failed to deliver the promised goods or services. The doctor generally remains legally obligated to continue paying on the finance lease, despite the vendor's apparent breach, which may have rendered the goods or services useless. If the doctor quits paying, they face the risk of being sued by the leasing company. There are very few legal defenses available in a claim by the leasing company for non-payment. Suing vendors/consultants for non-performance is a costly process and they know it. Accordingly, they often further insulate themselves by inserting a provision in the sales agreement that requires the doctor to sue the consultant/vendor in the vendor's home state.

The best protection against this type of unscrupulous activity is for doctors to be acutely aware that any consulting or marketing "deal" that sounds too good to be true likely isn't. Doctors should always require consultants/vendors to detail in writing the specific claims/representations being made. Ask for references, ask those references for the names of other doctors who bought into the program, then ask them the same hard questions. Don't allow yourselves to get swept up in the excitement of a new money-making opportunity. Proceed with caution as if every dollar you spend is your last dollar. It often is.

Doctors don't generally understand the regulatory guidelines imposed on them by their own state chiropractic board. It's a real shame that most chiropractic colleges don't adequately teach doctors the laws and regulations governing the conduct of their profession. I used to ask my students if they had read the chiropractic act of the state in which they intended to practice. Virtually no hands went up. I ask the same question to practicing doctors who attend my chiropractic law seminars. I usually get the same response. Most doctors seem to think they are bullet-proof when it comes to regulatory compliance. This may be true until the doctor gets a letter that they is being investigated for non-compliance.

Rules established by state agencies and chiropractic boards are the equivalent of law and they constitute legal guidelines under which doctors are permitted to practice chiropractic. If a doctor strays from, fudges or outright ignores their board's rules of practice, sooner or later they will find themselves subjected to sanctions for non-compliance. These sanctions are often enough to deny a doctor credentialing within managed care networks or impose substantial monetary penalties. I always advise doctors to read their state's chiropractic act and their board's rules of practice, go to a seminar where these rules are addressed and explained, or to get a qualified lawyer to explain them in sufficient detail.

Doctors don't understand proper coding protocols and don't adequately document their services. I'm guessing that at least half of all of legal problems encountered by doctors are, in some way, attributable to failure to properly code and/or document services. It's a crime that chiro colleges don't place more emphasis on teaching proper CPT coding protocols and documentation. Failing to do either is an automatic disqualification from getting paid for services provided.

The chiropractic profession is experiencing a rash of post-payment audits by managed care companies in which the carriers are seeking refunds of hundreds of thousands of dollars due to improperly coded services and/or failure to adequately document services billed. There is little in the way of legal defense to these transgressions. Proper understanding of CPT and ICD-9 coding is essential in the current environment of insurance oversight.

More importantly, proper documentation of services is essential if the doctor wants to get paid or simply keep the money they has been paid. Improper or inadequate documentation is also a growing concern to state chiropractic regulatory boards. Such inadequate documentation can result in a post-payment audit claim for reimbursement, a lawsuit alleging fraud and potential criminal charges if there is an on-going pattern of such improper conduct. Improper coding, whether it be in the form of up-coding or un-bundling

for a higher reimbursement rate, is an open invitation to civil or criminal sanctions.

There are any number of qualified experts teaching coding and documentation. However, there are a number of consultants who make money by teaching doctors how to work the system by abusing coding and documentation protocols. Learn which programs are legitimate and stay away from the scam artists.

Doctors are generally not aware of the legal distinctions between salaried-employee and independent-contractor status. Most doctors believe they can hire a new doctor or licensed provider, and simply treat the relationship as that of an independent contractor in order to avoid paying employment taxes. Be very careful in this regard, as the determination of the status of your new hiree is not necessarily your call. If the IRS chooses to audit the employment relationship, it has the authority to make its own determination of whether the hiree is a salaried employee or independent contractor. An incorrect choice by the doctor can result in the IRS requiring them to pay back income taxes, penalties and interest.

There are a number of basic rules that govern the determination of whether a new hiree is to be treated as a salaried employee or independent contractor. Generally the primary criteria considered by the IRS are: how much control does the employer have over the hiree's work; is the hiree paid through an hourly, weekly or monthly salary, or by a single payment upon completion of the job; is the hiree free to perform other jobs while working for the employer; and does the employer provide the hiree the office and tools to provide the services, or does the hiree provide their own tools. These are a few of the considerations that go into the equation in determining whether you have to treat your hiree as a salaried employee and pay his/her taxes (as well as provide whatever benefits are available to other employees) or treat the hiree as an independent contractor. Be aware of, and acknowledge, these facts when you make this call.

These are five of the most common legal problems faced by doctors of chiropractic. Good luck.

Larry Laurent represents doctors of chiropractic. He is a member of the National Association of Chiropractic Attorneys and conducts seminars on chiropractic law issues. He is the founder of the Chiropractic Law Group, a consulting firm specializing in providing counseling services on chiropractic laws and regulations, business protocols, and practice organization and marketing strategies. He can be reached at larry@ larrylaurent.com or (512) 996-8844.