

Dynamic Chiropractic –

Five Signs Your Practice May Have Legal Troubles

By Larry J. Laurent, PC

In today's climate of insurance omnipresence, the chiropractic profession is struggling to maintain its standing as a relevant part of mainstream medical care. The forces of evil, in the form of restricted access to managed health care programs, discriminatory payment practices and unitization-review reductions by managed care and liability insurance carriers, reduced participation under Medicare and state Medicaid programs, increased regulatory oversight by state and federal agencies, and the overall decline in the number of cash patients due to deteriorating economic conditions, are coming together as a "perfect storm" to impose obstacles and hardships on chiropractic practitioners.

Almost 40 percent of all chiropractic practices fail within the first five years of practice. Why? Because while chiropractors receive excellent training in the clinical side of practicing chiropractic during their chiropractic education, they receive virtually no practical training in the legal and business elements required to successfully operate a chiropractic practice.

Bad Habits and Shortcuts

As a result of this lack of preparation, many doctors eventually fall into the type of bad habits that can ruin a successful chiropractic practice. It is imperative that doctors avoid the pitfalls and problem areas that can reduce a thriving practice to one that struggles on a daily basis to make ends meet. Here are five potential signs your practice may be in legal jeopardy and how to avoid them.

1. You Aren't Getting Paid for Your Services

I'm talking about liability insurance carriers who repeatedly reduce your bills through peer reviews on the grounds that your services are not medically necessary; or managed care companies that routinely deny payment of the services you provide.

Repeated reductions or denials of payment are a sure sign that, in the eyes of the insurer, you are (1) over-treating; (2) improperly coding your services (E&M up-coding, incorrect use of therapy codes, etc.); (3) not adequately documenting the services you provide; or (4) any combination thereof.

Any of the above indicators should be taken seriously enough for you to do a thorough evaluation and audit of your business practices and, preferably, implement a compliance program designed to identify and correct these problems immediately.

2. Insurers Are Making Postpayment Reimbursement Claims

The economy is affecting more than just you and your practice. The insurance industry is feeling the effects as well. As a result, insurers have initiated an aggressive campaign to recoup payments made to doctors when they (the insurance company) deems the doctor to have engaged in one or more of the above-identified areas of (mis)conduct.

Moreover, each of the above acts could be deemed to constitute fraudulent misconduct on the part of the doctor - which could result in a referral for criminal prosecution or at a minimum, lead to civil litigation or termination of your managed care relationships.

Postpayment reimbursement claims by insurers can potentially reach the hundreds of thousands of dollars range. Liabilities of this type will almost assuredly damage a successful practice beyond repair, and any referral for criminal prosecution can and likely will result in a serious licensure sanction by the doctor's state licensing board.

3. Your Bills Are Routinely Denied, Requiring Patients to Pursue Legal Action to Recover Their Claims

In this day and age, most judges and jurors are biased against litigants asserting personal-injury claims based upon soft-tissue injuries. It's unfortunate, but it's true and it's not good news for you. Accordingly, liability insurance carriers are repeatedly refusing to pay for the bulk of services you have provided and your patients are required to resort to the courts as a means of settling their claims. In short, you are not likely going to get paid for the services you provided.

If this is occurring on a regular basis, something is obviously wrong with the internal way you are conducting your practice. Your "problem(s)" is/are most likely tied to one of the three problem areas

identified in #1 above [see page 15]. Immediate corrective action, in the form of a compliance audit of your coding and documentation practices, or a legal audit of the type of marketing and referral relationships you utilize, is in order.

One quick way to self-audit yourself is to randomly pull five old patient files and try to code or bill the services based upon the documentation found in your patient file. Even money says you won't be able to do it!

4. Liability Insurance Carriers Are Taking Pre-Litigation Depositions of Your Patients and/or You

If this is occurring, you can bet that the liability insurance industry has you targeted as a fraudulent provider. The "type" of fraud it deem to exist may take many different shapes.

Likely your referral relationships with other providers or attorneys, or your marketing practices, are considered to violate your state's anti-kickback laws. Perhaps the manner in which you are billing for another provider's services is being questioned, or the insurance industry is investigating whether you are billings for services not rendered (e.g., billing multiple units of physical therapy without appropriate timed documentation, up-coding, unbundling of services or just plain billing for services that are not provided).

I once represented a doctor who was employed to treat the driver of a UPS truck who was injured in an accident. Another UPS employee was riding with the driver but was not injured. The doctor treating the injured driver "dummied up" a \$2,000+ bill purporting to reflect services provided to the passenger over the same span of time as he provided services to the injured driver, and submitted it for payment. A quick check with the passenger revealed the fraud in that transaction.

If you are encountering this type of oversight by the insurance industry, a thorough self-audit of your practice's marketing programs and business relationships, as well as a little self-evaluation, is definitely in order.

5. You Are the Target of Multiple Complaints Filed With Your Chiropractic Licensing Board

Obviously patients lie in order to avoid paying their bills and for other dastardly reasons. However, when a doctor finds them-selves responding to multiple complaints filed with the state licensing board, something is obviously amiss in the doctor's practice.

Often the complaints involve allegations that the doctor has failed to respond to a patient's request for their medical documentation or bill; or the manner in which the doctor has advertised the services they provide; or the degree of supervision provided by the doctor to the doctor's clinic personnel.

All of these potential problem areas can lead to serious sanctions by a doctor's state licensing agency. However, all of these problem areas can be avoided if the doctor simply takes the time and makes the effort to learn and comply with the laws of their state.

Know Your State's Rules and Laws

Because of the current difficult economic times, many doctors seem to be trying to expand the marketing of their services beyond the traditional chiropractic areas, such as co-managing diabetes, audiology, operating diet clinics and diagnostic testing. Each of these are potential serious problem areas for doctors of chiropractic in that they all potentially infringe on the domain of the medical profession and are therefore outside the scope of practice of chiropractic.

A thorough reading and understanding of your state chiropractic act and state board rules of practice should enable you to better understand what your legal obligations are and what areas of practice you should not venture into.

It is hoped that this "check-list" will help you do an little internal investigation of your practice habits and take the appropriate corrective action to eliminate any problems that are identified before they pop up and create legal problems for you and your practice.

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