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Risk 106 – Part 1

Minimizing the Risk of Chiropractic Malpractice Claims
Minimizing the Risk of Chiropractic Malpractice Claims

Introduction

• Of all the challenges that chiropractors face, perhaps none can be so threatening and draining, on an emotional, personal, and professional level, as being a defendant in a chiropractic malpractice claim.

• This is especially true when the individual initiating the claim is the very patient the defendant chiropractor was earnestly trying to help.
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Introduction – cont’d

• The purpose of this program is to provide the practicing chiropractor with practical information about the genesis and mechanics of malpractice suits

• Application of this knowledge may decrease the likelihood of being named in a malpractice suit or having to endure the ordeal of a jury trial
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The Malpractice Climate

• Record verdicts are now commonplace
• The state of Pennsylvania, for instance, has contributed its share
  – the year 2001 saw a $100 million malpractice award in Philadelphia - the third highest ever in the United States
  – Just one month before that award came two others
    • one for $55 million and
    • another for $49.6 million
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The Malpractice Climate – cont’d

• In 1998, Philadelphia paid out more malpractice case settlement awards and jury verdicts than the entire state of California

• In 1999, there were 33 medical malpractice verdicts in Philadelphia that exceeded $1 million, compared with 19 the previous year
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The Malpractice Climate – cont’d

- Statewide, by the end of 2001, settlements in Pennsylvania had risen 15% to 20%
- The adverse malpractice environment has taken its toll on insurers, and a number of them have gone into bankruptcy
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The Malpractice Climate – cont’d

• St. Paul Companies, for years a mainstay for physicians' professional liability coverage, has announced its intention to drop its medical malpractice business nationwide

• Despite some effort at tort reform on the state level, physicians are leaving Pennsylvania and other states because the practice of medicine has found itself embroiled in a war with patients, the court system, and political lobby interests influenced by trial lawyers who have built powerful law firms by profiting from the system
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Personal Issues for the Defendant Chiropractor

• How chiropractors cope personally with being a defendant in a medical malpractice suit varies, but a number of factors come to bear on the amount of stress that litigation inflicts
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Personal Issues for the Defendant Chiropractor – cont’d

• These factors include the
  – chiropractor's previous exposure to litigation claims
  – degree of familiarity with the legal system and the litigation process, and previous experience testifying in the courtroom or in depositions
  – the size of the claim as measured by the seriousness of the alleged injury and
  – the presence or absence of a claim for punitive damages
    • which, of course, are not insured by professional liability policies

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Personal Issues for the Defendant Chiropractor – cont’d

• Some chiropractors experience a sense of profound isolation when they are first named in a suit, particularly when service of suit papers is accompanied by the standard instruction from their risk management office or legal counsel not to discuss the case with anyone.
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Personal Issues for the Defendant Chiropractor – cont’d

• Allegations of negligence or substandard care, in and of themselves, are bitter pills to swallow, but they are all the more painful when they are accompanied with a claim for punitive damages.

• Such claims, announced in the formal complaint, are then typically followed promptly with a grim letter to the defendant chiropractor from the insurers involved, reminding the chiropractor that there is no coverage for punitive damages awarded.
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Personal Issues for the Defendant Chiropractor – cont’d

• The allegations in the plaintiff's complaint necessary to support a claim for punitive damages are hurtful and sometimes outrageous
  – the chiropractor is accused of willful, reckless, and wanton behavior bordering on intent to injure the plaintiff

• The awards sought in such cases reach far beyond fair compensation for the injured plaintiff
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Personal Issues for the Defendant Chiropractor – cont’d

• Rather, punitive damages are calculated to punish the defendant chiropractor - the perceived wrongdoer - and to serve as public sanctions

• The chiropractor against whom punitive damages are sought then undergoes pretrial discovery, sometimes shortly after suit is filed

• This process involves requests (interrogatories) for detailed accounting of personal assets that might be available to be attached in the event of a judgment in the plaintiff’s favor
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Personal Issues for the Defendant Chiropractor – cont’d

• Whether or not punitive damages are sought, it is difficult for most chiropractors to regard being harpooned by a chiropractic malpractice claim as merely a cost of doing business, and for many, the arduous and seemingly neverending nature of the claim is distracting and potentially debilitating.
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Who Brings Chiropractic Malpractice Claims?

- Despite the self-aggrandizing proclamations of trial lawyer associations, professional negligence has little to do with whether claims are brought for patient injuries.
- Nor has any research established that a higher incidence of medical malpractice litigation has brought about a better quality of chiropractic care delivery.
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Who Brings Chiropractic Malpractice Claims? – cont’d

• Brennan and colleagues have shown that there is no relationship between the occurrence of adverse events and the assertion of claims, nor is there any association between adverse events and negligent or substandard care
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Who Brings Chiropractic Malpractice Claims? – cont’d

• These authors did, however, find a relationship between the degree of disability and the payment of claims

• Only a small fraction of patients who are injured through substandard care or treatment actually bring claims or suits
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Who Brings Chiropractic Malpractice Claims? – cont’d

- Localio and colleagues concluded that although 1% of hospitalized patients suffer a significant injury as a result of negligence, fewer than 2% of these patients initiate a malpractice claim
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Who Brings Chiropractic Malpractice Claims? – cont’d

• Other authors have found that only 2% to 4% of patients injured through negligence file claims, yet five to six times as many patients who suffered injuries that are not legally compensable also file malpractice claims