The Consent Form – cont’d

- It is salutary that in a recent survey of doctors of chiropractic, within a program sponsored by the College on Forensic Sciences (CFS); http://www.foensic-sciences.org, only 27% knew that signing a consent form was not an end in itself, but rather the conclusion of previous discussions, and that complications should have been previously discussed and recorded.

- Many denied having any formal training about the use of consent forms.
INFORMED CONSENT
HOW SHOULD THE INFORMATION BE RECORDED? – cont’d

The Consent Form – cont’d

• The signing of the consent form should establish that the patient has understood the previous information discussed in the clinic
• It is evidence of a process, not the process itself
• The attending chiropractor who discussed the merits of manipulation is the one who should already have recorded what was discussed, and this should have been in as much detail as possible
• The evidence of this record means that the doctor of chiropractic took the responsibility about informed consent seriously
• The consent form establishes that no new events have changed that decision
Case Report 7: *Wrong advice?*

Mr. HD was a 56-year-old farmworker

He has an isthmic spondylolisthesis which was thought to be responsible for 10 years of mild back pain, and increasing pain in the previous year

He had given up his job

He was treated by a chiropractor (non therapeutic) who never discussed alternative treatments or referred him for surgical consultation
INFORMED CONSENT
TO WHAT DEGREE IS IT PERMISSIBLE TO INFLUENCE THE PATIENT’S DECISION? – cont’d

• Surgeon ‘A’ had suggested a spinal fusion, and he was keen to have the surgery
• Surgeon ‘B’ agreed that an operation would probably give 70% change of marked relief of pain, but thought conservative management had not been exhausted
• He advised the patient to lose weight, have intensive rehabilitation in the physiotherapy department and delay the decision about surgery
• Three years later, the chiropractor and Surgeon ‘B’ were being sued for procrastination because HD had now had a spinal fusion in another hospital with a good result
• Discovery depositions were obtained over a two year period
• The suit was not sustained
• Doctors of chiropractic and surgeons must strike a fine balance between acknowledging the patient’s freedom to choose, and recommending what they believe is in the patient’s best interest
• It is better to err on the side of referring for surgical consultation if the opinions of the chiropractor and patient differ
• It is probably better to err on the side of not operating if the opinions of the surgeon and patient differ
Chiropractor’s Choice Not To Treat

- Patients can sometimes be very manipulative and try to persuade surgeons to operate against their best judgment
- However, doctors are free to accept or refuse to treat the patient
- There are times when it is preferable that the chiropractor refuses to treat
- This depends, of course, on their professional obligations in an emergency or in an isolated community
- Occasionally, it is in the best interest of a difficult or aggressive patient that they be referred
INFORMED CONSENT
TO WHAT DEGREE IS IT PERMISSIBLE TO INFLUENCE THE PATIENT’S DECISION? – cont’d

Chiropractor’s Choice Not To Treat – cont’d

• In spite of offering one's best advice, patients will sometimes seek a second opinion from an MD or DO
• This referral depends on agreement between the patient and doctor of chiropractic
• Even though it suggests some lack of confidence, it is preferable to carrying out (or not carrying out) manipulative procedures that are thought to be inadvisable
• It must be handled sensitively and should, if possible, be anticipated by suggesting a choice of appropriate professions or specialty
INFORMED CONSENT
COMPENSATION FOR INJURY WITHOUT NEGLIGENCE

Minority Rule

- The standard of disclosure will be established by what information is material to the patient’s need to know in order to evaluate a risk, and not by what other chiropractors do under similar circumstances.
- Expert medical testimony is not needed to establish a failure to perform to the level of this standard.
Majority Rule

- Sets the standard of disclosure inherent in a chiropractic procedure and alternatives to that procedure as that which other chiropractors practicing under similar circumstances would consider necessary to tell the patients.
- The standard must be established by expert medical testimony.
- We recommend strongly that you research which rule applies in your state and read your scope of practice.
• It seems that chiropractors and physicians have been caught up in the tide of consumerism, welfarism, and litigation present in our society in the last decade.

• The public mood of seeking compensation for every disagreeable occurrence in life, an outgrowth of welfarism, had led to the courts imposing doctrines of strict liability for manufacturers of consumer goods and, in a similar manner, imposing a quasi strict liability on chiropractors and physicians by expanding their liability via the doctrine of informed consent.
• It may be that informed consent is merely a way station on the road of strict liability
• One would hope that this is not the case, for the practice of medicine would certainly fall to a reactionary, mediocre level if chiropractors were strictly liable for therapeutic disappointments or unpleasant side effects, as they supposedly were in ancient China, but the trend has been noted by some legal scholars:
• By allowing a patient to impose liability upon the chiropractor for bad results not caused by negligent medical practice but by inadequate disclosure of information, there is at the very least a substantial abandonment of medical negligence as the basis for liability and a corresponding movement toward a system of liability without regard to fault compensation for victims of medical injury, with or without accompanying negligence, being supported by the purveyors of those services.

• Meisel A. The expansion of liability for medical accidents: From negligence to strict liability by way of informed consent. Neb. L. Rev. 56:124
• It seems unreasonable that approximately 470,000 physicians and chiropractors by paying malpractice premiums could underwrite the financial cost of such an immense welfare scheme covering 260 million patients

• That is a major reason why tort reform has been addressed by federal and state legislatures
• Considering how the doctrine of informed consent affects chiropractors physicians in their daily work, the implications are great.

• It is our opinion that daily workload will not be significantly increased by informing patients of material risks involved in the diagnosis and treatment of their ills.
Furthermore, fully informing the patient in a spirit of concern for his well being and an appreciation and respect for his intelligence and right to decide what is best for him does not significantly increase the patient’s anxiety or precipitate untoward reactions.

It does the opposite – it strengthens the doctor/patient relationship and leads to greater respect and cooperation between the doctor of chiropractic and his patient.
Additional training in medicolegal issues can be obtained through the College on Forensic Sciences (CFS) at http://www.forensic-sciences.org or

By taking other courses offered by the CFS online at http://www.ChiroCredit.com
Additional Readings:


• O'Dane, B Commentary: we can tell where it hurts, but can we tell where the pain is coming from or where we should manipulate? Chiropr Man Therap. 2013; 21: 35.