

Professional Responsibility/Conduct

Unprofessional Conduct - Practice of chiropractic (medicine, law, etc.) strictly regulated by each state. Violations of ethical rules can lead to suspension or even termination of license. ● misuse of drugs and alcohol ● relations with patients ● patient privacy ● discriminatory practices (limiting treatment based on religion, nationality, race, sexual orientation) ● disparaging chiropractic profession or other DC ↓ **Contracts** ↓

<b>Independent Contractor</b> By contract. Need own malpractice coverage. Pay quarterly taxes. Generally- patients are yours. Non-competes	<b>Associate - employee</b> At-will (no contract) or by contract. Malpractice coverage should be provided by employer. Employer contributes/pays taxes & provides mandatory insurances. Patients remain employers; sometimes have non-competes
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Key terms: Term (length), Pay, Marketing, Patients, Venue for disputes - where & who hears (court or arbitration) ● Non competes - law supports contract terms that protect trade secrets and customer contacts: must be reasonable as to time and place. Missouri courts have upheld contract terms of 50 mi/1 yr; 50 mi/5 yrs : 10 mi/2 yrs : 75 mi/2 yrs

Equipment Leases (direct from seller or indirect from 3rd party)

Key terms: Lessor = manufacturer or finance company, Lessee = entity (or DC), Any warranty made, Use of equipment, Term (length), What is owned/owned at end of lease, Pay, What happens if a loss, Default Ownership (title) of equipment during lease and UCC registration (notice to public of property rights) Governing law, Venue for disputes - where & who hears (court or arbitration)

Malpractice Key contract terms: ● Policy type (malpractice - claims made or occurrence) ● Insured and/or entity ● Coverage period (beginning and end - stated on "declaration page") ● Premium (amount and timing of payment) ● Limits on liability of the insurer (not insured) to pay claim (\$X) and defense (\$Y) ● Covered occurrences ● Excluded occurrences ● Endorsements (additional, specialized coverage) ● How claims arise & notify carrier of claim ● How counsel is selected ● Settlement terms (if insured must consent)

2 types of malpractice insurance for DCs: Defined by when a claim will be covered.

Claims made - the reporting of the claim must occur during the policy period or within 60 days after end of policy period. Claim means "written demand for \$ or services arising out of an alleged injury."

Occurrence - the act(s) giving rise to a claim must occur during the policy period

Key is to always be covered and remain covered even for a period after you stop practicing (b/c a patient can bring a claim anytime allowed by the law, not your insurance policy)

Business Law -- Corporate Veil = If you operate under a legal entity such as a corporation or LLP then

"Judgment" is entered against the entity. Plaintiff can only collect against the entity not you personally.

A Plaintiff can pierce a Corporate Veil if they can prove that the veil was used for the purposes of committing fraud, intentionally violating law, avoiding a duty, or used for a dishonest act.

<b>Franchisee</b> i.e., lease name, pay from receivables (not profits) Contract w/ Franchisor: employer liability Corporate Veil	<b>Group partner w/ other DCs or other licensed prof:</b> share liability and profits Partner contract: employer and general liability	<b>Solo (can be an office share)</b> ** work through an entity you control/ set-up Employer and general liability	<b>Independent Contractor</b> Retained by an entity - you still maintain control of what, when, how you practice Contract w/ entity	<b>Associate/Employee</b> Employed by an entity that controls what, when, how you practice Employer Should provide Malprac. Coverage
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Employment laws

Federal: Every Employer: Equal Pay for Equal Work and Minimum Wage

State - Missouri: Every employer: Vicarious Liability for wrongful acts of employees

Liens: A lien is a claim to property (including \$) created by contract or law; can be created and

possession/taking can occur even without litigation:

● patient agrees that DC will recover fees when patient recovers. DC then takes a first position (paid before patient). ● insurance/benefit plan can give a first lien to a insured's recovery (Medicare, ERISA plans) ● under lease agreement, in a default situation lessor can take immediate, peaceful possession ● IRS and state claims for failure to pay taxes

HIPAA (Health Insurance Portability Act) - What is protected? All PHI in which a covered entity holds, uses or discloses information for which there is a reasonable belief it can be used to identify the individual including:

● Common identifiers such as name, address, birth date and social security number and anything else that connects the person to the information such as photos and DNA. ● Individual's past, present, or future physical and mental health condition ● The provision of health care to the individual that identifies the individual (including physician's personal notes) ● The past, present, or future payment for the provision of health care to the individual (billing records)

Disclosure limited to Minimum amount to "get the job done." Policies and practices to make sure the least amount of PHI is shared and identify employees who regularly access PHI along with the types of PHI needed and conditions for access. Can discuss treatment of patient with other health care professions without violating the rule if they take reasonable safeguards to avoid being overheard.

HIPAA official documents 1. Notice - DC gives to all patients on their 1st visit 2. Authorization - Patient

gives a written authorization to DC to release specific PHI to a specific entity/individual (dated, limited)

3. Agreement - implied by Patient's acceptance and agreement with Notice

HIPAA - Notice Requirements ● Patient rights and entities legal duties ● Must be given on the first date of service or ASAP after an emergency ● Must make an effort to get written acknowledgement and receipt of notice from patients and keep copies of all notices and acknowledgements or document reasons why it was not obtained ● Must post facility's privacy practices in print displayed at site of service and, when possible, posted on a website. ● New notices and acknowledgments must be given when facility's practices change.

A HIPAA authorization form is required to have: ● Description of PHI to be used and disclosed ● Who will use or disclose the PHI and for what purpose ● Whether use will result in financial gain to the entity ● Patient's right to revoke authorization ● Signature of patient ● Date of signing ● Expiration date

Disclosures: ● Required disclosures - no patient agreement and authorization required

● Permitted disclosures - no agreement and authorization required, only agreement required, patient agreement & authorization required

Permitted Disclosures - Authorization & Agreement Not Required

- Avert serious threat to health and safety, public health activities (disease prevention or control)
- Report victims of neglect, abuse or domestic violence
- Audits
- Administrative or legal investigations
- Licensure
- Law enforcement purposes or other government functions
- Coroners, medical examiners, funeral directors
- Tissue/organ donation
- Research, public health or healthcare operations as a limited data set

Permitted Disclosures - Only Patient Agreement is Required

An entity is permitted, but not required, to use and disclose PHI without an individual's authorization for the following purposes or situations: Maintain a facility's directory information & Inform family members involved in a patient's care, payment, general condition, location, and death

Permitted Disclosures - Requires both Patient Agreement & Authorization...Everything Else

HIPAA Office Compliance:

- Allow patients to see and copy PHI
  - Develop notice of privacy practices document
  - Develop policies for PHI protection and limit incidental use and disclosure
  - Institute employee training programs
  - Institute a complaints process
  - File and resolve formal complaints
  - Enforce compliance by business associates
  - Designated privacy officer with contact information provided to patients for complaints
- Litigation
- Communications: Different levels of Legal Protections
  - Privilege avoid self incrimination (5th Amendment)
  - Physician-patient communication - in some instances of HIPAA no one has to waive
  - Spousal Communication - spouse can waive
  - Minister-communicant privilege - communicant can waive
  - Peer-review privilege (internal review of patient's treatment - no one can waive)
  - Accountant-client communication - client can waive
  - Social worker/psychologist-client communication - client can waive
  - Attorney-client communication - client can waive; however, facts told to attorney are not protected if cannot get otherwise.
  - Work-product privilege (attorney's mental impressions) - only attorney can waive

\* Missouri doesn't recognize "reporter shield" privilege

Who Hears the Matter? <u>Court</u> Judge - elected or appointed (always a licensed attorney). Public has access. More formal (more time/costs/fees); procedures apply. Right to jury (depends on claims and amounts). Trial - record created. Court enforces. Right to Appeal to next level of court system	<u>Arbitration</u> - agreed to by contract (leases, etc.) "Judge" (1-3) not necessarily a judge or an attorney Private. Less formal, cheaper. No jury, sometimes a record is created, limited right to appeal to a court (has to reach to level of gross indifference of the law) Must still go to court to receive rights/power to enforce any judgment. "Judge Judy"
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Fact v. Expert Witness: Fact witness testifies from personal knowledge and cannot testify in the form of opinion. Treating physician provides facts. Expert witness has not personal knowledge of the facts (other than told to him by documents or other testimony) and testifies as to his/her opinion within a reasonable degree of medical/scientific certainty. Only expert witnesses can give OPINION testimony. Many Chiro Boards have included the act of giving courtroom expert testimony as part of the official scope of chiropractic practice.

Purpose of Expert Testimony in Physician Malpractice Action: **DUTY, BREACH, INJURY**

- Description of the standard of care (DUTY)
  - Opinion as to whether the standard of care was breached (BREACH)
  - Opinion as to whether breach of standard of care was the cause of the plaintiff's injury (INJURY)
- In other words, experts provide testimony of the elements of a negligence action.

**NBCE (4 elements): Duty, Dereliction, Damages, Direct**

Expert Testimony: Scope of Practice is reasonable and ordinary care, skill, and diligence as a chiropractor in good standing in the same or similar locale, in the same general line of practice would exercise in the same or similar circumstances. Must adhere to the standards of care of any specialty. Medical/scientific certainty requires that a principle or method from which data are derived for use at trial must be generally accepted and within the expert's field to be admissible.

Expert Witness Requirements A witness qualified as an expert may testify in the form of an opinion if: The testimony is based upon sufficient facts or data. The testimony is the product of reliable principles and methods (generally accepted). The witness has applied the principles and methods to the facts of the case  
Expert - Generally Accepted - Four-part test: validity, peer-review, reliability, acceptance

1. Testing/Testability- a process lacks validity if it has not been subject to testing or cannot be tested;
2. Peer Review-publication (or lack thereof) in a peer-reviewed journal is relevant, but not dispositive;
3. Error- known or potential rate of error used by the expert witness helps the court determine reliability;
4. General Acceptance-how widely a method or process has been accepted by the scientific community

Statute of Limitations - defense

Statutes of limitations are deadlines (depending on a party's claim -contract, malpractice, etc.). If the plaintiff doesn't bring the claim within the statute's deadline then the defendant has a valid defense and claim can be dismissed because it is time barred.

The statute of limitation begins to run when the claim arises. In malpractice claims it is when the injury is "discovered" or when the physician/patient relationship ends. Generally, for minors the statute of limitations does not begin to run until they reach age of 18 (or 21).

Negligence Not specific to health care. Plaintiff has burden to prove elements.

Elements: 1)Duty (created by law or "assumed") 2)Breach of Duty & 3)Injury (caused directly by breach of duty)

Negligence action from breach of a duty of Informed Consent

Elements 1. Duty to Disclose - Was disclosure required? Must look to *standard* 2.Causation - risk was not disclosed and was the actual risk causing the injury 3. Injury - serious health condition  
Reasonable person - need to know if a reasonable person would view the risk as material.

Patient-oriented - need to know if the patient would view the risk as material and, if so, would have withheld consent. Professional medical standard - would a reasonable DC inform a patient of such a risk? Missouri

Informed Consent should include:

- Nature of the procedure
- Material risks inherent in treatment
- Probability of those risks occurring
- Availability, nature and risks of other treatment options
- Risks and dangers of no treatment

Failure of Informed Consent can establish 3 different claims - battery, breach of contract and negligence.

Informed consent is not obtained if DC: ● exceeds scope of practice ● fails to receive consent for what is done ● fraudulently (deceit, lies) receives consent ● exceeds consent given ● fails to inform risks/benefits of treatment and non-treatment

Battery - Intended, offensive bodily contact with another person. Contact with the body is offensive, in the battery context, if it offends a reasonable sense of personal dignity. *An action for battery arises when a medical professional makes unauthorized contact with a patient during an examination, treatment, or surgery.*