

Standard of care

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Standard of Care applies to all conduct of all persons in all realms of activity. It is concerned with the acceptable activity of a practitioner in providing care for a patient. Failure to adhere to a minimum standard renders the practitioner liable for malpractice and negligence. Standards are affected by two factors, those within the profession via scientific research and development, and those external to it, namely government, administrative organizations, the courts and the doctor-patient "contract". Each of these factors directly impact upon the delivery and/or alterations in the Standards of Care. It is imperative that the doctor realize that a failure to adhere to the Standard may result in action being taken by the above groups. Further, doctors must be aware that Standards are a volatile concept, changing as rapidly as the daily judgements emanating from the courtrooms, as new discoveries are introduced and as recognized by specialized groups. Maintaining current Standards ensure excellence in both professional practices and patient care.

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Introduction

The term "Standard of Care" applies to all conduct of all persons in all realms of activity. It is a concept which permeates all aspects of professional and non-professional activities – consciously or otherwise.

There are both positive and negative repercussions to various aspects of a professional practice, as there are in the case of the issues involved in professional "Standards of Care". The positive aspects of the "standard of care" are concerned with the acceptable activity of a practitioner in providing care for a patient. The ancillary of this issue involves the negative aspects relating to the obligation of a practitioner and the failure to adhere to the minimum "Standard of Care". It is in this instance that reference is then made to the issues of malpractice and negligence.

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Les normes en matière de soins s'appliquent à toutes les conduites de toutes les personnes dans tous les domaines d'activité. Elles traitent de l'activité acceptable d'un médecin fournissant des soins à un malade. Le médecin qui ne respecte pas des normes minimales se rend coupable de faute professionnelle et de négligence. Les normes sont affectées par deux types de facteurs, ceux de l'intérieur de la profession, par le biais de la recherche scientifique et le progrès, et ceux de l'extérieur de la profession, c'est-à-dire le gouvernement, les organisations administratives, les tribunaux et le « contrat » docteur-patient. Chacun de ces facteurs influence directement la prestation et / ou les modifications des Normes en matière de soins. Il est impératif que le docteur réalise que le non-respect des Normes peut entraîner des actions entreprises par les groupes nommés ci-dessus. En outre, les docteurs doivent savoir que les Normes sont un concept volatil, changeant aussi rapidement que les jugements émanant quotidiennement des tribunaux, au fur et à mesure que de nouvelles découvertes sont introduites et reconnues par des groupes spécialisés. Maintenir des Normes actuelles garantit l'excellence tant sur le plan des pratiques professionnelles que des soins aux malades.

(JCCA 1991; 35(4):229-231)

MOT-CLÉS : chiropratique, manipulation, normes.

Negligence has been defined as conduct falling below the standard accepted by the community resulting in the unreasonable risk of foreseeable injury. The focus of such a definition relates to the matter of the standard "which is acceptable to the community". The "standard" is of paramount importance in determining whether an activity or conduct of a practitioner is acceptable. It is also in this regard that the issue of "standards" must be examined in either demands as to positive or negative obligation.

Negligence has also been defined as doing something which a reasonable person would not do, or alternatively, not doing something which a reasonable person would have done. This issue has been discussed in terms of omission or commission with respect to professional activity.

There are a number of instances which have arisen in the past with respect to Standards of Care which have applied to the activity of a chiropractic practitioner. For instance, the failure to diagnose is a breach of a Standard of Care. The failure to appraise a patient of the risks involved in an upper-cervical

adjustment, the failure to maintain proper records, the failure to take an x-ray when reasonably required are all examples of a failure to maintain minimum "Standards of Care".

As in all professions, the profession of chiropractic has evolved as a result of two predominant factors. First, the profession has developed internally as a result of innovations in techniques, scientific and therapeutic equipment, and a continued philosophical debate on the paradigm of chiropractic. However, while there may be bursts of energy in the development of a profession as a result of internal discoveries from research and innovation, the second factor affecting the development of a profession and the Standards of Care to which it must adhere involves external forces.

Chiropractic, as in the case of all professions, is subject to the scrutiny, restrictions and obligations placed upon it by external forces. These outside bodies may include the government, administrative organizations and the court systems.

Legislation

In the case of the government there may be changes in the scope of practice, changes in professional requirements by the addition or deletion of restrictions affecting such things as advertising, patient management or billing procedures, or the imposition of particular practice methods i.e. x-ray regulations, all of which will directly or indirectly affect the method by which a practitioner is to interact with a patient. While the "scope of practice" issue deals almost invariably with legislative entitlements and restrictions, the "Standard of Care" will arise from quality assurance relating to how such practice is carried on.

The legislature is obviously competent to require minimum standards of care in any realm of professional practice. For example, in providing particular care to a chiropractic patient there may be requirements with respect to standardization of record keeping. In addition, within Canada there has been rapid change in the legislation governing chiropractors within the last few years. Provinces such as British Columbia, Alberta and Newfoundland have either changes in legislation or the granting of legislation concerning chiropractic.

In Ontario, there are imminent changes to the profession of chiropractic which are far sweeping and all encompassing. Few legislative changes have affected chiropractic like that which is to result from statutes culminating from the Health Professions Legislative Review. From a perusal of the regulations now governing medicine and dentistry in the Health Discipline's Act which includes some 27 different standards for misconduct, and the fact that such regulations will also govern chiropractic, it should be a clear signal as to the extent by which the Standard of Care of a chiropractor will be altered in Ontario. There is no area of practice in which government intervention might not arise, subject, of course to the invocation of the Charter of Rights and Freedoms in Canada and similar legislation in other jurisdictions.

Administration

The definitions of "Standard of Care" which arise in various jurisdictions generally evolve from the imposition of administrative edicts. Much of how a profession will govern itself and

its members and how rules and regulations are disseminated to the profession arise from administrative matters. In the case of chiropractic this interaction with an administrative body may arise from a discipline hearing involving such matters as professional incompetency arising from a lack of skill, or the gross negligence of the treatment of a patient. In addition, matters arise before such tribunals as a result of improper billings, improper advertising or unprofessional conduct in dealing with record keeping. In any event, the administrative tribunal will define, for the most part, the intricate details of the manner in which a practitioner is to maintain his or her professional practice.

Courts

The courts have had little difficulty in establishing what if any rules, regulations or obligations should be imposed upon a practitioner in so far as it relates to "Standard of Care". The most obvious example of an instance wherein the "Courts" have altered the method by which a chiropractor carries on practice is that of the information given to a patient prior to an upper cervical adjustment being performed on a patient. For a number of years, the issue of the informed consent has been litigated through the courts. The decision of the Supreme Court of Canada¹ had established an obligation upon a medical practitioner to inform a patient of risks involved in a treatment if the risk was such that damage from the procedure could be grave.

While all litigation involving informed consent had involved the medical profession, its implications were obvious. Notwithstanding the Supreme Court of Canada edict on the matter, most professions, including chiropractic were avoiding the issues with either sublime ignorance or a latent fear. Discussions ensued within the chiropractic profession as to the need for information to be given to a patient concerning the matter of an upper cervical adjustment and the risks associated with such treatment. In any event, the case of Mason and Forgie² decided the issue.

Whether good law or bad law, the Mason case determined through the courts what the standard of care with respect to the matter of informed consent is to be. Each and every practitioner should acquaint themselves with the publications on this matter.^{3,4} It has been said that there are three criteria for the carrying on of a professional practice, that being, legality, reality and morality. The imposition of a "Standard of Care" when established by the courts is usually a matter of legality which will require the profession at some time, to adhere to.

Contract

There is a fourth method by which a Standard of Care of a chiropractor may be altered. It arises from the arrangements or "contract" entered into between the doctor and patient.⁵ This is an extremely dangerous and volatile situation which can give rise to extreme cases of a breach of the Standard of Care imposed upon a practitioner.

There are a number of examples which exist in the area of liability arising from a breach of the implied or expressed agreement between a doctor and patient. There are cases involving the abandonment of an uncooperative patient; the failure to

satisfy a guarantee of a cure; exceeding the consent given by a patient; and revealing confidential patient information.⁵

Whether the Standard of Care requires that a practitioner carry out a particular function or alternatively cease and desist from acting in a particular fashion, it is imperative that the doctor realize that a failure to adhere to the Standard of Care will result in action being taken by the various bodies as referred to above. As important, it is imperative that the practitioner be cognizant of the fact that the Standard of Care of today is not necessarily that of tomorrow. It is a rare practitioner who would have acted differently than the practitioner in the Mason case. The accepted adage is "There but for the grace of God go I".

Changes

The Standard of Care is a volatile concept changing as rapidly as the daily judgements emanating from the courtrooms. The concept of "Customary Practices" and adherence to the accepted method of practicing may not be enough protection. If a practitioner adheres to an accepted method of practicing the doctor will be protected as long as the courts do not determine that such a practice is unacceptable, as was the decision in the Mason case. However, failure to adhere to the customary practice will be initial proof of the failure of the practitioner to adhere to the accepted Standard of Care.

Technology and training

The Standard of Care can be changed by innovations in technology which can require a practitioner to adopt without any intention to do so. An example of such a change is evident in Ontario with the requirement to adhere to the regulations concerning x-ray safety and inspection (Healing Arts Radiation Protection Act). In addition, the Standard of Care can be changed by the training taught in chiropractic colleges. Legislation and scope of practice is generally linked to that which is taught in Chiropractic Schools.⁶ Innovations and research can be the downfall of a practitioner who has been long out of school and fails to attend continuing education seminars.

Specialization

The Standard of Care can also be changed for a practitioner who undertakes to "specialize" in a particular area of chiropractic practice. A chiropractic radiologist or sports practitioner will be expected to have some greater standard by which they should be judged by their acknowledgement of a speciality and superiority to that of the general practitioner.

Finally, there are a number of instances when the practitioner can voluntarily change the Standard of Care to which they must adhere by assuming additional obligations such as claims of superiority, or exaggerating available services.⁵ These examples will result in potential claims of a breach of the Standard of Care as will instances deriving from substance abuse by the doctor or his staff.

It is the prudent practitioner who adheres to a Standard of Care which is based upon the reasonable doctor who does no act which another doctor would not do and does those things which a reasonable doctor would do. The reasonable doctor practices defensive health care having regard to the needs of the patient,

the established protocols of the profession, and the ethics by which he or she is bound.

Conclusion

To summarize the issue of Standard of Care, the following appear to be the encompassing principals:

1. Standard of Care is established by:
 - i. Legislation i.e. government
 - ii. Administrative Bodies i.e. licensing boards, review committees and associations
 - iii. courts through civil actions
2. Standards of Care may be altered by:
 - i. Changes in the Scope of Practice
 - ii. Changes in Chiropractic College curriculum
 - iii. research and innovations in the profession
 - iv. the voluntary acts of the practitioner

If there is any paramount message to be given from a review of the issues involving a Standard of Care within a profession it is that the education of a practitioner must, of necessity, continue throughout a professional career. It is folly and dangerous for a chiropractor to become isolated from the development of the profession and to avoid participation in continuing education. It is a lawyer's delight to cross examine a doctor who has not attended continuing education lectures, retained membership in associations or attended conventions since graduation many, many years ago. There is an obvious attempt by lawyers to "paint" such a practitioner as a doctor who is out of touch with present Standards of Care.

Finally, it is incumbent upon a practitioner to maintain current Standards of Practice for a number of reasons, namely for his or her protection against claims of improper practice, to ensure that the practice of chiropractic maintains a high level of professionalism, and to protect the public in ensuring that the highest level of care is received.

It has been said that a practitioner should "hope for the best and plan for the worst". As the area of health care continues to undergo its rapid changes and the public continues to become more demanding of adherence to consumer rights the adage becomes:

**Hope for the best
Plan for the worst and
Expect the unexpected.**

References

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- 2 Mason v. Forgie, Queen's Bench, New Brunswick, Trial Division (12/84).
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