

Why are chiropractors being sued?

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Chiropractors are being sued for the same reasons that other health professionals are. The most common reasons are the result of a treatment complication and a failure in communication. Factors that may prevent an eventual law suit include; good communication skills, listening to the patient, availability of the doctor, politeness and compassion, punctuality, respect for patient rights, maintaining a professional office, establishing realistic treatment expectations, exercising humility, and avoiding high risk situations. In conclusion, a communicative, friendly and knowledgeable chiropractor will go far in avoiding law suits. (JCCA 1991; 35(4):237-240)

KEY WORDS: chiropractic, manipulation, standards.

In Canada, chiropractors are being sued for the same reasons that all other professionals are. Generally, the number one reason is because something has gone wrong. There has been some accident or an unfortunate occurrence that has caused the person to feel that they were wrongly treated or negligently treated.

Chiropractors are less likely to be sued than other professionals. For example, a lawyer is eleven times more likely to be sued than a chiropractor, while medical physicians are one and a half times more likely. In Canada, the odds of a chiropractor being sued in any given year are about seventy-two to one.

Interestingly, it is unlikely that a lawyer will initiate a law suit. Rather, the reasons people sue are because of a communication breakdown or an unfortunate occurrence. It is that dissatisfaction or that feeling of being grieved, hurt or not listened to that often results in the patient speaking to a friend or a lawyer who then says, "Why don't you sue?" From that the events come about.

When the chiropractor gets sued, their reactions are typical – pain, anguish, resentment, denial. Nobody likes being sued.

Les chiropraticiens sont poursuivis en justice pour les mêmes raisons que les autres professionnels de la santé. Les raisons les plus courantes sont le résultat d'une complication de traitement et le manque de communication. Les facteurs qui peuvent prévenir un procès possible sont les suivants : des qualités de bonne communication, une bonne écoute du malade, la disponibilité du docteur, sa politesse et sa sympathie, sa ponctualité, son respect des droits du malade, le maintien d'un environnement professionnel dans son cabinet médical, sa capacité d'établir des attentes réalistes quant au traitement, sa modestie et sa faculté d'éviter les situations à hauts risques. En conclusion, un chiropraticien compétent, bon communicateur et chaleureux aura de bonnes chances d'éviter les procès. (JCCA 1991; 35(4):237-240)

MOTS-CLÉS : chiropratique, manipulation, normes.

Any claim, minor or serious, causes tremendous grief and stress to the practitioner involved. Any chiropractor can be sued, good and bad ones. In fact, my experience in dealing with claims over the past six years is that the majority of those being sued are excellent chiropractors, who behaved correctly and properly, but because of some unfortunate occurrence or communication breakdown became involved in a suit.

Common patient complaints

What are the common reasons for initiating a suit? The most common reason is that something went wrong – the patient fell off a table, a rib was fractured, or a cerebro vascular accident (CVA) occurred. Almost as common and perhaps more important, are occasions when a suit was initiated because of very poor communications. The doctor did not convey clearly and plainly to the patient his understanding of the problem, his proposed treatment or the patient never fully grasped what the doctor was trying to do. Subsequently, if the patient does not get better or if an adverse occurrence takes place, he/she may feel that they were inappropriately treated. If confidence in the chiropractor's ability falters or if the patient feels that they were not treated in the most professional and ethical manner, or if a physician colours the patient's way of thinking by way of an adverse comment, then a lawsuit can arise.

In other cases, complaints were filed because the chiropractor

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was not paying attention to the needs of the patient. Their mind may not have been focused on the problem at hand, which is the treatment of the patient. Instead, the chiropractor was more pre-occupied with personal problems and thereby more inclined to talk about their problems or their interests rather than listening to the patient. Patients rarely want to hear what you really have to say about yourself. They have paid for the visit – it is theirs – they want you to listen to them – they want you to be concerned about them! Even when they give you a chatty comment or a passing reference to how was your holiday or how is your family, in the vast majority of circumstances a brief reply is all that is expected and desired from you.

Remember as well, that when patients are in pain they are under stress and as a result may not always act rationally. They certainly do not always remember what you may have said or tried to explain.

Were they examined properly? Was a good history taken? Were x-rays done or not done? The absence of a test, x-ray or exam will sometimes leave a lingering doubt in the patient's mind as to whether proper care was given or not, even though the chiropractor may think otherwise. All this can come together to bring about the fertile ground for a suit in the patient's mind.

It is interesting when people have been surveyed to see why they go to a doctor. The number one reason why they go to a doctor is because they like the doctor. They feel comfortable with them. It is not because of their educational qualifications, nor their position in the profession. It is not because of their demeanour or their ability to project some knowledgeable or superior ability or talent, nor their technique. It is almost solely because they like them.

When patients are asked what they have disliked about going to see any doctor or practitioner, the number one response is failure in communication. It is in communications where we run into our biggest problems, as do physicians and everyone else. The most frequent communication problem reported is that the practitioner failed to listen to the patient. Maybe he was too busy listening to himself instead of listening to the patient.

The next area of concern is about fees. In this case the patient feels the fees were either too high or were not explained clearly, openly and forthrightly to them. As a result patients are surprised when they receive a substantial bill of one, two or three hundred dollars. This can be very distressing, particularly today when people do not expect to be charged for health care services.

Next they complain of hurried and de-personalized, "assembly line" care. Patients frequently mention that they have found the chiropractor or the doctor snobbish and conveying an attitude of superiority of being patronizing. There have been numerous lawsuits resulting from patients feeling that the doctor did not have the same respect for their time as he did for his own. They complained of an unreasonable waiting time and then having only a few minutes of the doctor's time.

There have been several suits involving chiropractors harassing or threatening patients over past due bills. The patient,

objecting to this response, decides to counter sue with a negligence suit. In this case, the defense costs of the suit far exceed the money involved, apart from the aggravation to the chiropractor.

Patients have also complained of rude or rough handling or the treatment was hurtful. The patient may also have thought that the chiropractor did not seem to care how the patient was feeling. He did not show any particular sympathy.

The remaining complaints are those of preaching or criticizing the patient for not following through with recommendations rather than trying to encourage the patient to continue on or to try again. Patients do not appreciate being scolded.

Patients will next frequently complain of our failure to completely answer questions or they were given an abrupt response. This is more likely to occur at times when the doctor is busy and doesn't really analyze what the patient is asking but just gives a very brief standard response; and the patient, of course, is disturbed to hear this.

A further complaint relating to communication is the patient not understanding the terms used or what was being done. Even simple terms such as fixation, subluxation, even pinched nerves, which all have meaning to chiropractors, do not have the same meaning to the patient. The vast majority of patients have a limited understanding of anatomy and physiology. In addition, if forms are given to patients, their level of literacy must be established in order to prevent misinterpretation.

In other instances, complaints have come from discourtesy, tactlessness, lack of etiquette, or some other disrespectful act shown to the patient. This has come out in several situations. For example, in the billing disputes, where the patient was willing to pay their bill but the chiropractor was unwilling to itemize the charges, taking offense to being queried on a money issue. The patient views this as holding back or overcharging them and this leads to further dispute.

Undependability when emergency care is needed is a relatively common complaint with chiropractic patients. The patient is unable to contact their chiropractor, and instead sees someone else on a weekend or another day because arrangements were not made. Unfortunately, the CCPA has had several incidents where the second chiropractor has implied either some superior knowledge or technique or has made derogatory or, in my opinion, rather stupid comments about previous chiropractic care. This is completely inappropriate and has led to more patient dissatisfaction. If there is an urgency to the emergency care, then the patient is more inclined to respond with a suit.

Finally, a common complaint is a failure to take into account the patient's belief systems, convictions, habits, or customs that they may have. Patients are often of different religious persuasions than the chiropractor and/or they may have very strong views. They may be more or less holistically oriented than the chiropractor – but they have strong views and feelings on their own health and what is going to happen. If the chiropractor tries to override or deride this, it immediately sets up a negative confrontational type of situation.

Avoiding a law suit

Having said all this, what are the most important factors in avoiding a law suit? Interestingly enough, surveys reporting how to avoid or minimize your chances of being sued, discuss factors that are opposite to what has been previously noted.

The number one factor is to improve your communication skills, i.e. develop positive patient relations. Treat patients as friends – remember, friends may fuss at you, but they don't sue. Friends overlook mistakes. Both you and your staff should make an effort to know the patient and their family, understand their fears and demonstrate that you care about their welfare. Remember the patient's name. On the other hand, don't become overly familiar, remain professional.

It is also important to respect the patient's dignity – remember this particularly when you are gowning women. All patients should be dressed appropriately and their sensitivities respected. Their privacy is always crucial. You must never discuss the patient's condition, or even the fact that the patient is a patient, outside of the office. Your staff must be reminded of this and this must be firmly enforced. Never release patient information without appropriate consent!

Other factors include:

- Listening to the patient. Listening is part of the healing process and important to the therapy. Don't be rushed.
- Always trying to be available. Return patient calls when they call you. If you are going to be away make sure there is someone to cover for you.
- Always being polite. There is no excuse for rudeness. The patient may have the right to be obnoxious because they are sick, but rudeness from the patient never justifies the doctor being rude in return.
- Trying to stay on time. If your time is important, their time is also important. Don't make patients wait too long. If you do, apologize and try to make sure it is a rare occurrence.
- Maintaining a professional office. Frequently patients will complain about offices being dowdy or dirty. Try to make your office a friendly place – clean and pleasant. Frequently chiropractors may experience a rapid turnover in staff. Be reasonable in your pay levels to your staff and try and encourage them to stay and become part of your office, rather than changing frequently and moving on. A pleasant professional office always makes people feel better.
- Keeping patients' expectations realistic. In surveys of both patients and practitioners, a frequent reason for law suits is the patient's unrealistic expectations of the therapy.^{1,2} You must make sure that the patient understands the therapy and the prognosis. Don't let patients expect 100 or 50 percent improvement when that cannot be delivered because of deterioration or other changes in their spines. They should clearly understand what they can realistically expect. In this regard, I have always found it helpful to talk about improvement in percentage terms. Also, the treatment frequency should be noted and specifically described. Avoid using "fixed formulas" and "cookbook" approaches to treating them.

The question of realistic expectation also brings up the question of informed consent. I don't want to belabour this point, but how can people give consent to treatment if they don't know what the expectations are and what the odds of success are for what you have planned? An informed consent involves their full and free understanding of any potential risks that may be there and their willing free consent to go along with your treatment. Don't force yourself on them.³ If they want other care or they don't want some particular manipulation, then that is their right – you cannot force your techniques or your beliefs on the patient no matter what.

Once having obtained a case history and given a resumé, try to encourage the patient to join in the decision making process. Make sure they understand both the risks and the benefits of your proposed treatment. The best choice is usually the one that the patient is most comfortable with. Remember, I said the patient not the chiropractor – not everyone wants to come for a lifetime of chiropractic care, some do and some don't. Let the patient decide. We should always avoid selling the patient on a proposed treatment. Explain your procedures and what you are proposing to do, and let the patient make some of the choices.

Do not be afraid to discuss the possible complications and chance of failure of the proposed treatment. If the case is not responding as it should, don't be afraid to say that. If perhaps further treatment would help with a resistant problem, try to explain that to the patient. The responsibility for patient management should not be dodged and the importance of the events that have been caused or have occurred because of treatment should not be minimized. Always show genuine concern for the patient and leave them with the feeling that everything possible is being done on their behalf.

One point that can never be over emphasized is document, document, document. Always record what is happening, e.g. write down the case history and the proposed plan of management. In the event of a lawsuit, the patient's and the doctor's memories are often not clear. In this regard your notes and your clinical file are the items that will redeem you. Ensure your notes are dated and properly noted. Never ever alter or fiddle with your notes after a lawsuit has been initiated or when you anticipate one will be. Write down what you think you can remember at that time and date it with the date you are writing it down. Do not go back into the files and change notes from the past. This destroys the value of your clinical notes and your history, and can wipe out any potential defense.

Try not to let your billings be an irritant. If the fees appear to be too high or if the patients has objected to them strongly enough, try to find out the reason for this but be reasonable. Sometimes it is better to write off or forgive a small amount of money rather than bring on a lawsuit and the stress that accompanies it. Do you want a lawsuit over amounts of money ranging from 10 to even two hundred dollars?

Next is the obvious issue of avoiding high risk situations. If your patient is at risk of a CVA, don't adjust them. If the patient is so osteoporotic that fracture is probable, don't adjust them.

Ask yourself – can I generally help this patient? Are the odds that I can help them greater than the odds that I will probably hurt them?

Remember too that there are those who you don't get along with simply because of a personality clash. It is best that you refer that patient to another chiropractor or another type of care. Don't continue to confront an unfriendly, uncooperative patient merely because you need the money. Invariably it is this type of patient that will cause you more stress than the satisfaction of the fees received and be more apt to sue you.

One of the key signs that I think any practitioner should be aware of and be alert to is any patient who bad mouths their previous chiropractor or physician. Be prepared to exercise extra caution with this type of person because you may be next.

If something irregular happens don't hesitate to apologize. An apology can go a long way. Several lawsuits have been dropped because the CCPA and the chiropractor apologized for the incident. Keep in mind that humility is not demeaning!

The key to all of this then, obey the golden rule: *"If the patient is sick enough to need care, then they want to be treated with kindness, friendliness, and attention, and they want to be made better"*. Therefore, treat the patient the way you would like to be treated. If your back was sore or if headaches were driving you up the wall. The golden rule is still in vogue – always keep it in mind!

Having reviewed some of the negatives and the positives of being sued, we will refer to another survey of patients, those who have actually sued their practitioners. Two hundred and sixty-three patients were surveyed and asked why they sued their doctors.¹ Their quoted statements are very illuminating. For example, "They wanted to sue him even before the alleged malpractice took place." Many surveyed delighted in the practitioners agony, citing revenge, not money, as the primary motive behind the suit. Patients and/or their families continue to see the offending doctor despite disliking him until something went badly wrong enough to support a lawsuit and even then sometimes members of the family will continue to see the doctor until they start to feel that they are maybe embarrassed by this.

Another common response is, "He made a terrible first impression." At times a patient may reveal they felt uneasy with the practitioner from the beginning. In our discussions with either the patient or their lawyers, they sometimes comment that, "I figured he had to be a quack."

In other instances, it is the patient's relationship with the front office. This is especially so in situations where the patient feels unable to complain because the doctor's wife is acting as the

office assistant – "I was just waiting for my doctor to mess up so I could get back at him and his grouchy wife who runs the front office." Frequently, patients feel they are unable to freely exchange information with a spouse at the front desk that they would otherwise do with a person that isn't the spouse. Comments such as "Well he didn't seem to be paying attention to me today" or "You know, I thought I waited too long" or something like that cannot be said to spouse as freely as to a non spouse. They cannot say, "He rushed through a visit too fast" which is another reason people have given me why they sue.

When others are asked why they sued the doctor, they respond "I figured it was so serious that the doctor couldn't bring himself to talk about it." What happened here was that the doctor did not explain to the patient what was going on. The patient viewed it as far more serious and took it to court. Again the problem with communication is seen.

Another example of poor communication is when a practitioner is rude or insensitive to the patient's personal life or situations. Again compassion and understanding may prevent an unnecessary court appearance.

Conclusion

In conclusion then, remember that anyone can be sued. It is more likely to happen when there is a failure in communication. This is one of the greatest risks of a lawsuit. We know that people will sue when some unforeseen, unfortunate accident occurs. In reality, this often follows a breakdown in communication and is much more likely to occur when the communication breakdown is the actual precipitating factor. It follows then that you can bring your risk of a lawsuit down to almost the very minimum if you follow the rules:

- 1 communicate with the patient; listen, listen, listen;
- 2 record results, occurrence in detail;
- 3 remember to make friends who participate in their treatment; and
- 4 in particular, follow the golden rule. By doing this, you maximize the chance of staying with the majority of doctors who will never be sued, rather than joining the smaller group who will.

References

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