

Back To Chiropractic CE Seminars

Ethics & Law: Practice Protection ~ 2 Hours

Welcome to Back To Chiropractic Online CE exams:

**This course counts toward your California Board of Chiropractic Examiners CE.
(also accepted in other states, check our website or with your Chiropractic State Board)**

The California Board requires that you complete all of your CE hours BEFORE the end of your Birthday month. We recommend that you send your chiropractic license renewal form and fee in early to avoid any issues.

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- 1. You must register/pay first. If you haven't, please return to: backtochiropractic.net**
- 2. Open a new window or a new internet tab & drag it so it's side-by-side next to this page.**
- 3. On the new window or new tab you just opened, go to: backtochiropractic.net website.**
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- 5. Click on the Exam for the course you want to take. No passwords needed.**
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Please retain the certificate for 5 years. DON'T send it to the state board.

If you get audited and lose your records, I'll have a copy.

I'm always a phone call away... 707.972.0047 or email: marcusstrutzdc@gmail.com

Marcus Strutz, DC

Back To Chiropractic CE Seminars

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Disclaimer

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Ethics & Law:

Practice Protection

- Damien Fertitta D.C., J.D.

Damien Fertitta D.C., J.D.
Palmer West Graduate 2001
Private Practice
Lincoln Law School Graduate 2018



Objectives

- ~What is enough Malpractice Coverage?
- ~How far can a Malpractice suit dig into your business?
- ~Current events and news worthy suits.
- ~What are your liabilities under a suit?
- ~Do you have contracts for your employees?
- ~Associates, worth the risk?

Malpractice Coverages

Professional liability insurance is required
in most provider contracts.

Typically:

\$1,000,000.00 per occurrence and
\$3,000,000.00 in the aggregate.

Statute of limitations against a health-care provider

One year from the date patient knows or should have known about the injury, or three years from the date of the injury whichever is the earlier date.

(California Code of Civil Procedure section 340.5.)

A health-care provider **MUST** be given 90 days notice before filing.

(California Code of Civil Procedure section 364.)

Types of Coverage

Occurrence. The occurrence policy offers a steady base premium. The base premium does not increase as the policy matures

Claims-made. The claims-made policy offers a lower premium during the early years of the policy. The premium steps up each year until reaching maturity in the 5th year. While this saves some money in your early years of practice, potential coverage gaps can occur.

Occurrence.

You are covered for the period of time the policy was or is in effect so, if the alleged incident happened while the policy was in place, you have protection.

Example

In 2006 Dr. Bill graduated from chiropractic college. Dr. Bill secured an occurrence policy. He was in practice for 10 years. Dr. Bill hit the lottery in 2016. However, in his haste with his last patient of the day, broke the patient's rib. Just before the statute of limitations expired, the patient sued Dr. Bill. The occurrence policy will cover Dr. Bill.

Claims-made

The claims-made policy mandates that the D.C. report the issue while the policy is in effect. So if you cancel a claims-made policy (before 10 years), you are no longer covered for the period of time the policy was in effect.

Example

Dr. Bill has his claims-made policy in effect for 6 years. He decides to jump ship to a less expensive insurance company. Dr. Bill finds out that one of his patients who he treated during that 6 year period is suing him for malpractice. Dr. Bill is in trouble.

Tail coverage

Tail coverage is additional coverage you can buy at the time of cancellation which continues to cover you for any alleged incidents that took place during the policy period. In other words, it covers the tail end of your policy. If you have maintained the claims-made policy for 10 years, then you will be covered.

The choice

Gambling on the future...will you shop around for the best price from year to year?
Will you keep the same liability insurance for the duration of your practice career?

**Malpractice suits and the liability to
your business and/or personal
finances**

Depending on how you acted, why you acted, and to the extent a reasonable chiropractor in similar circumstances would have acted.

Generally, your acts of malpractice are covered by your carrier. However, when your acts exceed a threshold greater than negligence you may be subject to further recoverable damages by the patient. These costs may not be covered by the insurance carrier. You could be personally liable.

Negligence

A chiropractor will be held negligent when a
DUTY was BREACHED and the
CAUSATION of the chiropractor resulted in
the patient suffering DAMAGES and the D.C.
has no DEFENCES.

In order to win a professional negligence suit against a D.C. on malpractice, the following elements must be proven:

Duty: The patient must show that a chiropractor owed a duty to the patient. A chiropractor who accepts a patient and agrees to treat them owes a duty of reasonable care;

Breach: The patient must show a breach of duty by the doctor and that they have failed to act as a careful, competent and skilled chiropractor would have;

Causation: The patient must show that the D.C.'s conduct caused the injuries; and

Damages: The patient must show that physical harm actually occurred. This usually can be shown through medical bills or other expenses that the patient had to pay.

Example:

A 50 y.o. male enters your office with lower back pain. They have had unexplained weight loss for the past 6 months. They have painful urination and the inability to keep a steady urine stream. You treat them for 8 weeks with no X-rays or referral and he keeps getting worse. Two weeks after your last treatment he dies of an aggressive metastatic prostate cancer.

DUTY OF THE DOCTOR

Your duty to this patient has been breached, because a reasonable D.C. in this situation would have taken X-rays or referred out. Further, because you didn't act reasonably, his condition got worse due to your failure to act.

Bob is young and healthy. He says a stroke in his mid-30s was caused by a chiropractor following a neck adjustment. The treatment was provided by Dr. Bill.

“The word forceful came into my mind. That was more forceful than I ever felt was done...before I even sat up on the table I instantly had a major head rush and started sweating and then within 5 seconds sweat all the way to my fingertips and I was getting dizzy,” Bob said.

Bob went into atrial fibrillation, stopped breathing and was eventually placed on a ventilator. His neurologist provided a letter to his lawyer:

“I believe with reasonable medical certainty that the vertebral artery dissection and subsequent stroke were the result of chiropractic manipulation that Bob received.”

If it can be proven by the patient that the D.C. had exceeded the negligence standard, then the patient's recourse for further damages will be the subject of a personal suit against the D.C.. What does your contract say regarding your malpractice?

Sole practitioners (Sole proprietor):

A sole proprietor is someone who owns an unincorporated business by himself or herself.

<https://www.irs.gov/businesses/small-businesses-self-employed/sole-proprietorships>

Advantages

Simplest business form due to the ease of setup, and nominal costs. May operate under the name of its owner or it can be under a fictitious business name. The taxation is quite simple.

Disadvantages

As the sole proprietor you remain personally liable for all the business's debts. If a sole proprietor business runs into financial trouble, creditors can bring lawsuits against the business owner.

The owner will have to pay the business debts with his or her own money. The owner signs a contract in his or her own name.

Professional Corporations(Corp.)

Professional corporations or professional service corporation (abbreviated PC or PSC). Statutes make special provisions, regulating the use of the corporate form by licensed professionals such as attorneys, architects, chiropractors, engineers, public accountants and physicians.

Can elect to be a “S” or “C” Corp.

Advantages

The ability to shield and limit the personal liability of the professional corporation's shareholder(s) from ordinary business debts and obligations.

Shield the corporation from negligent acts of employees with in the scope of employment.

Tax advantages to qualified small business owners.

Disadvantages

Professional corporations do not insulate a professional from personal liability for his or her own negligence or malpractice.

Flat 21% corporate tax rate.

Minimum costs of \$800 in state fees per year. Statutory requirements.

Examples of Negligence

Failure to diagnose a medical condition that requires immediate care.

Lack of informed consent.

Negligent manipulation of the body.

Chiropractic induced stroke.

Harm to the patient from the treatment.

A jury ordered a chiropractor to pay more than \$800,000 after evidence showed fraudulent records may have been created to conceal part of a woman's treatment performed hours before she was hospitalized.

The patient sued the chiropractic office for alleged malpractice in 2008 on the grounds they failed to fully evaluate her medical history, perform a proper physical exam, take proper X-rays and were acting outside the scope of chiropractic practice.

After a weeklong trial in Circuit Court, a jury awarded the patient \$500,000 in punitive damages and \$305,000 in actual damages.

Punitive damages, which are usually in excess of provable injuries, are awarded in cases where the defendant's actions are "egregiously insidious, reckless or malicious."

For example:

2015, Florida: \$100,000 verdict. A female minor with severe scoliosis had received chiropractic treatment administered by the defendant and suffers extreme curvature of the spine, compromised thoracic and lung capacity.

2013, Alabama: \$577,000 verdict. A 42-year-old accountant, suffered an onset of stroke symptoms immediately after a neck adjustment with a chiropractor. Plaintiff began treatment with a chiropractor as a result of neck pain. Immediately after the Plaintiff's fourth session, he vomited and had slurred speech.

2013, Pennsylvania: \$21,500 verdict. A woman files suit against her chiropractor and the chiropractic group claiming that he negligently performed a cervical manipulation causing injury to her neck. Plaintiff, who initially sought treatment for back pain, reported immediate and severe neck pain to her chiropractor after he performed a manipulation. He, however, failed to address her concerns. For two weeks, she repeatedly called the chiropractor and reported the excruciating neck pain. Weeks later, he performed another cervical manipulation with no relief.

2012, New Jersey: \$14,596,000 verdict. A 46-year old, presents to his primary care physician with neck pain. He is referred to a chiropractor after being diagnosed with a cervical sprain. A week later, Plaintiff suffers a herniated disc at C5-6 that compressed his spinal cord, leaving him paralyzed from the check down. He files suit against the primary care physician and chiropractor claiming that both failed to correctly diagnose the seriousness of his cervical injury.

Employee contracts

An agreement entered into between an employer and an employee at the time the employee is hired that outlines the exact nature of their business relationship, specifically what compensation the employee will receive in exchange for specific work performed.

Employment Agreement

THIS AGREEMENT (employment contract) made as of the _____ day of _____, 20__ , between [name of employer] a corporation incorporated under the laws California, and having its principal place of business at _____ (the "Employer"); and [name of employee], of the City of _____. (the "Employee").

WHEREAS, the Employer desires to obtain the benefit of the services of the Employee, and the Employee desires to render such services on the terms and conditions set forth.

IN CONSIDERATION of the promises and other good and valuable consideration (the sufficiency and receipt of which are hereby acknowledged) the parties agree as follows:

1. Employment

The Employee agrees that he will at all times faithfully, industriously, and to the best of his skill, ability, experience and talents, perform all of the duties required of his position. In carrying out these duties and responsibilities, the Employee shall comply with all Employer policies, procedures, rules and regulations, both written and oral, as are announced by the Employer from time to time. It is also understood and agreed to by the Employee that his assignment, duties and responsibilities and reporting arrangements may be changed by the Employer in its sole discretion without causing termination of this agreement.

2. Position Title

As a _____, the Employee is required to perform the following duties and undertake the following responsibilities in a professional manner.

- (a) -
- (b) -
- (c) -
- (d) -
- (e) Other duties as may arise from time to time and as may be assigned to the employee.

3. Compensation

- (a) As full compensation for all services provided the employee shall be paid at the rate of _____. Such payments shall be subject to such normal statutory deductions by the Employer.
- (b) (may wish to include bonus calculations or omit in order to exercise discretion).
- (c) The salary mentioned in paragraph (1)(a) shall be review on an annual basis.
- (d) All reasonable expenses arising out of employment shall be reimbursed assuming same have been authorized prior to being incurred and with the provision of appropriate receipts.

4. Vacation

The Employee shall be entitled to vacations in the amount of _____ weeks per annum.

5. Benefits

The Employer shall at its expense provide the Employee with the Health Plan that is currently in place or as may be in place from time to time.

6. Probation Period

It is understood and agreed that the first ninety (90) days of employment shall constitute a probationary period during which period the Employer may, in its absolute discretion, terminate the Employee's employment, for any reason without notice or cause.

7. Performance Reviews

The Employee will be provided with a written performance appraisal at least once per year and said appraisal will be reviewed at which time all aspects of the assessment can be fully discussed.

8. Termination

- (a) The Employee may at any time terminate this agreement and his employment by giving not less than two (2) weeks written notice to the Employer.
- (b) The Employer may terminate this Agreement and the Employee's employment at any time, without notice or payment in lieu of notice, for sufficient cause.
- (c) The employee agrees to return any property of _____ at the time of termination.

9. Non-Competition

(1) It is further acknowledged and agreed that following termination of the employee's employment with _____ for any reason the employee shall not hire or attempt to hire any current employees of _____.

(2) It is further acknowledged and agreed that following termination of the employee's employment with _____ for any reason the employee shall not solicit business from current clients or clients who have retained _____ in the 6-month period immediately preceding the employee's termination.

10. Forum selection

This agreement shall be governed by the laws of California.

11. Independent Legal Advice

The Employee acknowledges that the Employer has provided the Employee with a reasonable opportunity to obtain independent legal advice with respect to this agreement, and that either:

- (a) The Employee has had such independent legal advice prior to executing this agreement, or;
- (b) The Employee has willingly chosen not to obtain such advice and to execute this agreement without having obtained such advice.

12. Entire Agreement

This agreement contains the entire agreement between the parties, superseding in all respects any and all prior oral or written agreements or understandings pertaining to the employment of the Employee by the Employer and shall be amended or modified only by written instrument signed by both of the parties hereto.

13. Severability

The parties agree that in the event any article or part thereof of this agreement is held to be unenforceable or invalid then said article or part shall be struck and all remaining provision shall remain in full force and effect.

IN WITNESS WHEREOF the Employer has caused this agreement to be executed by its duly authorized officers and the Employee has set his hand as of the date first above written. SIGNED, SEALED AND DELIVERED in the presence of:

[Name of employee]

[Signature of Employee]

[Name of Employer Rep]

[Signature of Employer Rep]

[Title]

You have given the employee notice of how the relationship of employment works.

You have outlined their obligations and duties.

You have set forth the long term plan and clearly defined your expectations.
Leave nothing to the imagination.

The plain and simple approach to the
associate in your office

Example A

New D.C. pays you the 60-40% split of production/collection. Gives new D.C. the opportunity to learn the business and become a better Doctor with guidance.

Example B

New D.C. is paid a base salary to perform functions required of them during the course of employment. Gives the principal D.C. freedom and flexibility.

Example A

This is a tricky proposition.

Is it legal?

Is there animosity?

Regret?

Are you grooming the new D.C. for the
future, buyout?

Does the new D.C. understand the
purpose?

Example B

Path of least resistance?

Ease of access by patients to a full
practice?

Less work load for the seasoned D.C.?

New D.C. exposed to work loads.

Patient theft in the event of contract
breach?

California Business & Professions Code 650

Is it fee-splitting to hire a chiropractor in your office and give them a "cut" of patient revenues?

This depends. Clinicians can form a professional corporation under the Moscone-Knox Professional Corporation Act. For example, a D.C. can have shares in a professional chiropractic corporation and thereby derive profits from the venture.

The waters get rougher under federal law when you involve a government insurer, but the above is the basic framework under state law.

If the owner of the chiropractic group says, "I will give you \$100.00 for every patient you send," there are issues.

Example

When you charge the patient \$165 for their first visit, and pay the associate \$66 for the session, this could appear to regulators as though you are splitting your fee of \$165. You were kicked back \$99 from the associate.

Was this a reward, a kick back or the negotiated percentage? This may violate California Business & Professions Code 650.

Sexual Harassment

Overview



SEXUAL HARASSMENT
POLICY



EMPLOYERS
RESPONSIBILITY



TWO TYPES OF SEXUAL
HARASSMENT



UNDERSTAND,
OBSERVE, EXAMINE,
CONFRONT, RESOLVE,
SUPPORT, AND
DOCUMENT

Responsibility

- Managers, chiropractic assistants and the D.C.'s are the “eyes and ears” and have a key legal responsibility
 - Observe: watch and listen
- Approximately 15,000 cases are brought to the Equal Employment Opportunity Commission (EEOC) each year
 - In fiscal year 2017, the EEOC filed 184 merits lawsuits, including 124 suits on behalf of individuals...This is more than double the number of suits filed in fiscal year 2016. Additionally, EEOC's legal staff resolved 109 merits lawsuits for a total monetary recovery of \$42.4 million

Prevent

- Prevent: Sexual Harassment includes unwanted/unwelcome verbal/physical force, lewd jokes, gender-based slurs or sexual contact from either sex.
- The victim does not have to be the person directly harassed but could be anyone affected by the offensive conduct.
- Example: A male employee tells a dirty joke to a female co-worker. She thinks it's funny, but a second woman passing by finds it offensive. The offhand joke contributes to a hostile work environment.

Example

The D.C. began referring to her as “babe” or “sugar” and asked her if she had a boyfriend after overhearing a phone conversation. The D.C. massaged them in a “creepy sensuous” manner, asked them to undress in ways they found inappropriate, and on at least one occasion removed their breast from their bras and fondled it.

Example

“He grabbed the blanket and he threw it off of me and said, 'Now it's time for your chest and stomach massage,’” The D.C. said. "He rubbed down over my breasts and nipples, down my stomach. His hands went partially into my underwear and then went all the way back up. I was so shocked that this was happening. I wasn't sure how far it would go."

Conduct

- Repeated sexual innuendos, obscene or off-color jokes, slurs, lewd remarks and language
- Sexually offensive content in emails, notes, and workplace decor
- Sexual propositions, insults, threats, leering, whistling, or other suggestive sounds.
- Persistent unwanted sexual or romantic overtures.

Two Types

- Two types of sexual harassment:
- 1- Quid pro quo which means “this for that” and is the most blatant, a single incident could justify a lawsuit. It’s when a person of power uses that to gain sexual favors.
 - Victims don’t have to suffer actual physical contact; they need to only show that an offer was made.
- 2- Hostile Environment is the most common form of sexual harassment. The behavior can be subtle yet its on-going creating an environment that is sexually charged to the point it affects job performance.
 - Employees must prove that they were subjected to repeated offenses and don’t have to be the intended victim

Listen

- Prevention: Employers are required by law to prevent and deal with harassment in the workplace. The employer may be liable for any harassment which does occur, even if unaware that the harassment was taking place.
- Make it clear that sexual harassment will not be tolerated.
- Encourage communication from those that may experience a situation that bothers them to open up meaningful and supportive dialogue.
 - This will encourage employees to come forward because you can't fix what you don't know about.

Set the Example

- Observe: be aware of subtle behaviors, be sensitive to employees and patients who may be offended by verbal and non-verbal behavior.
 - Be Aware: do not assume that employees want to hear risqué jokes or comments. Subtle behaviors create the tone and feel of the workplace environment.
- Examine your own behaviors and comments. Ask yourself, “Could I unknowingly be encouraging sexual interplay by the way I interact and communicate?”

Address Immediately

- Confront: address behavior promptly, this will discourage additional behavior
 - Document: who, when, what, where
- Tell the employee or the patient that their behavior affects the work environment or office negatively and has the potential of affecting others work and can be grounds for a potential lawsuit against them personally and/or the employer.

Close the Loop

- Resolve and Support; communicate back to the victim that the behavior that offended them has been addressed and encourage them to keep you updated if behavior persists
 - Document: who, when, what, where
- Resolve and Support; Harasser- communicate back to the harasser that the investigation of the incident is over and the findings. Go over past problems and complaints. Warn the harasser that retaliation is against Federal law and is a serious offense.
 - Document: who, when, what, where

Investigation

- Investigate
- Who, when, what, where
 - Take concise notes using their words
- Talk to the complainant and to the person who allegedly acted inappropriately
- Conduct fair, impartial, complete and un biased investigation.
- Collect evidence such as emails, notes, pictures

Discipline

- Discipline: If there is a serious violation, you may need to discipline the harasser. This is confidential! Do not 'ease' the victim by telling them what you did to remedy the violation, you can give assurance that "appropriate action is being taken."
- If there has been a violation of policy or the law look for appropriate ways to correct any harm that resulted, and take measures to prevent it from happening again.

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I hope you enjoyed the course. Please feel free to provide feedback.**



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