# Defend Yourself

## The Coming Attack on Chiropractic

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The chiropractic profession is always growing, developing and improving. That is the nature of science and the nature of chiropractic. However, there is a strong and developing trend to attempt to limit chiropractors to the practices and modalities in effect in 1922. This push, spearheaded by some insurance companies and politicians, is a pure cost containment strategy and it threatens to turn chiropractors into highly regulated physical therapists.

One technique used to control the profession is to target chiropractors with SIU (Special Investigation Unit) action against a practice, deny QME renewal, seek board discipline and persuade state prosecutors to file unfounded criminal charges.

Sadly, this article is not directed to dishonest practitioners. The challenge is not to your ethics but to the scope and nature of your practice. If you trigger the cost computer, you are a target. Recently, some of the most respected chiropractors in this state have been unfairly targeted. While in the end each and every one was vindicated, the personal and economic cost was high.

Here is how to protect yourself. First, ask yourself why you may be targeted. The answer is pure economics. Chiropractors provide low cost, highly effective treatment for a range of conditions that would otherwise go untreated. Shut down chiropractic and people quit seeking help because there are so many barriers to effective treatment in the traditional medical system. Of course, insurance companies are entitled to establish reasonable cost control. Many chiropractors have established a good relationship with CorVel and other management service companies in the Worker's Comp arena. However, cost control by shutting down all treatment is not ethical. But it happens.

In the personal injury field, the insurance companies are aggressive and dangerous. Unwritten SIU rules trigger investigations, slow payments, complaints to the board and insurance company funded investigations.

Attorneys are pressured so that they in turn pressure chiropractors. Demands for Med-Pay reimbursement upon case settlement are increasing. With Med-Pay (and self funded ERISA plan) reimbursement so expensive, attorneys prefer having treatment on a lien basis so that they can more aggressively seek to reduce your bill at the end.

Specific chiropractors are being targeted. The insurance carriers are refusing to settle cases where they are the primary treating entity. This refusal is designed to force attorneys to move their clients to more compliant chiropractors. In a recent case, an excellent chiropractor provided treatment that was highly effective for the symptoms that the patient experienced following her auto accident. However, the hospital MRI and CAT scan showed no injury. The treatment exhausted most of the med-pay allowance and then stopped. Even though there was stipulated liability, the case would not settle. As we viewed the case, this DC had been targeted based upon the following factors:

1. His billing closely tracked the med-pay allowance.

2. His diagnosis (and report), showed a myriad of conditions but nothing that he diagnosed had imaging support.

3. The chiropractor had a significant web presence.

Practices that receive referrals from 1-800 attorneys or patient referral services are seeing a lot of undercover officers masquerading as patients. This happened recently in a case that we won at trial.

The undercover officer claimed that the billings reflected treatment that was never rendered. At trial, we proved that this officer had no medical understanding. He thought that chiropractors could only treat the spine (and not even the cervical spine!). For this reason he ignored all non-spine treatment and came to his completely unfounded conclusion. At trial, his absurd conclusion was supported by an insurance industry "expert." She claimed that based upon my client's rather sparse S.O.A.P. notes, she agreed with the conclusion of the undercover officer.

While the jury acquitted and we got a factual finding of innocence from the judge, the insurance company still inflicted their damage.

The next area of concern is the newer modalities, techniques without much journal support, and the treatment of conditions that are broadly defined. The areas of greatest concern are:

a) Craniosacral therapy, b) Fibromyalgia treatment, c) Laser treatments/cold laser therapy.

If you advertise these techniques you are on their radar. Be very careful to review your advertising to ensure that your assertions of efficacy are well grounded in science. If the technique is accepted but not well documented, you need to be very careful about your claims.

The same is true in the office. As you describe a technique, imagine that whatever you say is being recorded and will be played for a jury.

It is critical that you listen to the Board of Chiropractic Examiners. They are broadcasting their concerns. In the BCE newsletter for Summer/Fall 2015, the lead article is entitled, *Common Violations and Helpful Tips to Keep Your License in Good Standing*. Item 3 is entitled, *Ensure Chiropractic Patient Records are Compliant with Board Rules*.

We have had numerous recent cases where acceptable but sparse chart notes were considered part of an attempt to commit billing fraud. While logically, it is just as easy to commit fraud with good S.O.A.P. notes as with bad ones, in the real world, juries, judges and prosecutors equate good notes with honesty and bad notes with a cover-up.

The newsletter also cautions, *Practice Within the Scope of Your Practice* (item 5). No guidance is provided as to how scope is defined. This is the warning shot against the modalities not in existence in 1922. This includes cold laser and audible sound waves.

You will be seeing disciplinary proceedings in this area. How do you protect yourself? Here are some ideas that are not that difficult to implement.

If you perform procedures that are potentially controversial, print out, read, mark up, and save articles in the scientific journals and other authoritative publications that support the use of that technique. If you write reports, reference those journals. If cases are litigated and outside experts support your use of the technique, save that report.

Personally review your website. If you make a claim on your site, be certain that you can support that claim before the board and before a board appointed expert (who is often someone who knows a lot less about chiropractic medicine than you do!).

Make certain that you have the patient's prior records, reports and imaging results before you write a report. If you disagree with prior findings, conclusions, point this out so that your credibility is not in question.

In your reports, be fair and balanced. You cannot allow yourself to be self-justifying in both your diagnosis and treatment. A series of conclusions without clinical findings is a major trigger for an SIU review of your cases. If you have a case with no findings on an MRI but you note a significant restriction with range of motion, consider pulling out your smartphone and making a short video. It may be something that you never have done before, but the personal injury attorney will appreciate it, and it will protect you against claims that your findings are fabricated in order to justify what would otherwise be excessive treatment.

Much of what I advise here is different from what you have done in the past. But these are critical times for the profession. Cost control is the trend of the future. The ability of chiropractic to change with the times while maintaining its core values is the challenge for the future. By protecting yourself from unfounded attacks, you also protect the integrity of the profession and the reputation of chiropractic.