

### **Case Law on Series: Duty to Recognize Medical Condition**

The “Case Law on Series” addresses different legal issues of interest to chiropractors. Each part of the series highlights recent, decisions from the Wisconsin State Courts that specifically involve chiropractors or aspects of chiropractic. On occasion, leading opinions from the Wisconsin Attorney General will be cited when those opinions are relevant to the legal issue. This series provides specific citations to all the relevant case law. This issue in the series addresses the chiropractor’s **duty to recognize a medical condition**.

**Relevant Case:** Murphy v. Nordhagen, 222 Wis. 2d 574, 588 N.W.2d 96, (Ct. App. 1998).

**Relevant Facts:** Chiropractor’s records indicated that he consulted with a patient complaining of lower back pain, especially when bending, lifting, and changing positions. The doctor noted that the patient had occasional numbness in the buttocks and that there was no traumatic event preceding the treatment. Chiropractor took x-rays and informed the patient that her condition was a “mechanical” problem as a result of a disc disease. Chiropractor performed various chiropractic adjustments.

During the course of adjustments over the succeeding two (2) months, patient continued to complain of numbness and problems sleeping at night. During the initial visit, the doctor suggested that patient undergo an MRI or CT scan. Patient reported that she was beginning to suffer from constipation and bladder related problems. By that time, approximately one (1) month after the initial visit, chiropractor recommended that she see a “family physician” for her constipation problems. The local MD eventually referred the patient to a neurologist who performed an MRI and determined the existence of a herniated disc.

Plaintiff sued the chiropractor claiming that the doctor did not properly diagnose the condition and refer her to a medical doctor; as well as, failed to provide her with any informed consent for treatment.

**Legal Issues:** Does a chiropractor have a duty to recognize or diagnose a medical condition prior to and during the course of patient treatment?

**Principle Rule of Law:** In reliance upon the decision in Kerkman v. Hintz, 142, Wis. 2d 404, 418 N.W. 2d 795 (1988) the court determined that a chiropractor only has the duty to determine whether the patient presents a problem which is treatable through chiropractic means both before and during the course of care. In exercising such determination, the chiropractor must exercise the degree of care and skill exercised by reasonable chiropractors under similar circumstances when analyzing or evaluating the patient's health care issue. (Murphy, 222 Wis. 2d 574, 581) In evaluating the facts, the Court determined that there was adequate expert testimony in the case which establishes that the patient's initial complaints were treatable through chiropractic means. The Court went on to note that "numbness, coupled with lower back pain" is a condition which can be amenable to chiropractic treatment.

The Court went on to note that there is a "fine line between recognizing the existence of a medical condition from a patient's symptoms, and recognizing that those symptoms represent a condition that is beyond the scope of chiropractic care." The chiropractor is required to use the reasonable care and skill of a chiropractor in making that determination. As such, the chiropractor is permitted to treat up to the point where he exercises such chiropractic judgment in determining that the patient can no longer benefit from chiropractic care. (Murphy, 222 Wis. 2d 583-584)

**Additional Considerations:** The principles from Kerkman which was analyzed in this case was also considered to the significant case of Goldstein v. Janusz Chiropractic Clinics, 283 Wis. 2d 683, 582 N.W.2d 78 (Ct. 1998). The Goldstein decision involved a situation where the patient died from lung cancer approximately two (2) years after initially undergoing chiropractic treatment. Patient alleged that the chiropractor was negligent for failing to detect and inform the patient of an abnormal mass near the patient's lung which was revealed on x-rays ordered by the chiropractor and examined during the course of chiropractic treatment. The Court determined that the question of whether a chiropractor has a duty to recognize "an abnormal mass in the lung area on

x-ray” is an issue which can be determined directly by the judge without the need for trial to a jury. In analyzing the chiropractor’s scope of practice defined in Wisconsin Administrative Code CHIR 4.03, the reviewing court determined that discovery of a mass in the lung area does not fall within the scope of chiropractic expertise because the lungs are not consider as “adjacent tissue” to the “spinal column” and “spinal articulations” under the definition of chiropractic practice. The Court noted that “chiropractors are certainly not licensed to diagnose or treat lung cancer.”

Between these cases, the Court places particular emphasis upon the patient’s symptoms and doctor’s evaluation in analyzing whether the overall condition can be treatable through chiropractic means. The complaints ultimately documented and treated by the chiropractor must fit within the overall definition of chiropractic. Under the statutory and administrative definition of chiropractic practice, the overall problem or condition treated by the doctor must involve analysis and correction of subluxation involving the spinal column, spinal articulations, and adjacent tissue. The chiropractor must also insure that the patient’s diagnosed condition is one which can be improved through chiropractic analysis and adjustments to the spinal column, skeletal articulations, and adjacent tissue.

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