

Chiropractors and Acupuncture Services

Doctors frequently have questions regarding the provision of acupuncture services to patients. Questions often develop surrounding the interrelationship of a chiropractor who wishes to associate with another individual who is certified in acupuncture and those situations where the doctor is both licensed to practice chiropractic and certified as an acupuncturist. This article addresses the commentary provided by the Chiropractic Examining Board on these issues and other issues of law which should be carefully considered when a doctor explores a professional relationship with an acupuncturist or the provision of acupuncture services.

A. Can a chiropractor who is not certified as an acupuncturist provide acupuncture services to a patient?

It is generally recognized that Wisconsin Administrative Code CHIR 4.05(1)(b) prohibits a licensed chiropractor from engaging in “invasive procedures, such as: ...acupuncture by needle insertion or laser application.” Due to the subcutaneous insertion of needles involved with the practice of acupuncture, it is widely recognized that this type of activity by chiropractors is beyond the scope of chiropractic and would involve a “prohibited practice.” Chiropractors have questioned whether acupuncture type services can be rendered if those services do not involve invasive devices or insertions. The Chiropractic Board’s efforts to maintain distinctions between the practice of chiropractic and acupuncture despite this type of challenge was addressed in Minutes from the June 8, 2000 meeting with the Board. At that time, the Board discussed the issue of non-invasive acupuncture devices and concluded that the practice of acupuncture can only be provided by an individual who holds a valid acupuncture certification. Consequently, it is generally accepted that a chiropractor who is not certified in acupuncture cannot practice acupuncture, regardless of whether there is invasive or noninvasive needle insertion or laser application.

B. Can a chiropractor who is certified as an acupuncturist render both chiropractic and acupuncture services for patients?

It is also generally accepted that a single individual who holds both a license as a chiropractor and a certification as an acupuncturist may render both types of services to patients. This issue was similarly addressed during the June 8, 2000 meeting of the Chiropractic Examining Board. The Minutes indicated that “chiropractors may practice acupuncture only if also certified as an acupuncturist”.

C. What form of titling/credentialing and similar advertising can a licensed chiropractor provide when the chiropractor is also a certified acupuncturist?

There are legal issues associated with both the representation of the doctor’s professional credentials and the manner by which the doctor advertises to the public. Currently, the National Commission for the Certification of Acupuncturist (NCCA) is a nationally recognized accreditation organization for certification as an acupuncturist. The initials commonly used for an acupuncturist are “DIPL.AC (NCCA)”. The initials utilized must be from an accredited organization recognized by the Department of Regulation and Licensing in Wisconsin. It is recommended that a doctor contact both the National Organization providing your certification in acupuncture; as well as, the Wisconsin Department of Regulation and Licensing to insure that the information provided by that organization is accurate. The telephone number for the Wisconsin Department of Regulation and Licensing is: (608) 266-2811. They can also be contacted via the internet at: www.drl.state.wi.us/ or by writing to: Wisconsin Department of Regulation and Licensing – Acupuncture; P.O. Box 8935, Madison, WI 53708.

There is no specific regulation in the State of Wisconsin which appears to prohibit an acupuncturist from also identifying himself/herself as a doctor of chiropractic. The regulations involving conduct by a chiropractor are stated in the Wisconsin Administrative Code CHIR Ch. 6. Particular attention should be given to CHIR 6.02(15). This section of the Administrative Code indicates that a chiropractor’s advertisements cannot include references to or imply specialization or advanced training unless certain conditions are met. These conditions generally relate to post graduate degrees available through chiropractic colleges. A “safe”

approach would be to indicate somewhere in business cards or written communication that you are both a licensed chiropractor and certified acupuncturist and that such certification in acupuncture does not constitute any specialized or advanced training in the profession of chiropractic.

D. Can a certified acupuncturist share office space with a licensed chiropractor?

This issue is commonly debated within the chiropractic community since there are detailed legal lines of distinction which must be maintained between these two areas of practice. There exists Minutes from the June 8, 2000 meeting of the Chiropractic Examining Board during which it was determined that “a licensed chiropractor/certified acupuncturist would not need separate offices for each practice.” However, despite this general conclusion, there are scope of practice and billing issues which must be carefully delineated. In general, the provisions set forth in Wis. Stat. §446.04 and CHIR 10 are applicable to these types of arrangements. The answer to this question will again depend upon whether the acupuncturist is providing separate treatment or adjunctive services for the licensed chiropractor.

In a situation where the acupuncturist is not being provided as adjunctive therapy, there would not appear to be any problem in sharing rental space; provided that the public is not misled into believing that there is a business relationship between the two types of health care services. In order to maintain the distinctive nature of both practices within the same office space, the following actions should be considered:

1. The name/title for both businesses should be separate and distinct.
2. The unique nature of both businesses should be clearly displayed on any signage and written communication.
3. Acupuncture and chiropractic records on patient care should be kept and maintained separately.
4. All correspondence involving acupuncture services should be individualized so that there is no direct reference to the chiropractic business or other doctors of chiropractic within the office.

5. Chiropractors should avoid any situations which may constitute fee splitting, as described below.

In situations where the acupuncture is provided as adjunctive services to chiropractic, it is not permissible to base the rent for the space on a percentage of the revenue derived from the adjunctive services. Such an arrangement could violate “fee splitting” provisions of the Wis. Stats. §446.04(4). Nevertheless, the acupuncturist renting space from a chiropractor can enter into a legitimate financial arrangement under which the adjunctive service provider (acupuncturist) would pay a portion of any shared administrative cost of the entire office. Those administrative costs could include phone answering serve, appointment scheduling, bookkeeping, accounting, etc. There must be a definite and clear basis for the sharing of the financial arrangements which is not related to the dollar income from services. Generally, the sharing of the costs can be based on the volume of services rendered by both the chiropractor and the adjunct service provided so long as it is based on a measure other than strictly income generated by the patient services.

E. Can a chiropractor who is also a certified acupuncturist render both types of service to the same patient or otherwise employ the services of an acupuncturist to provide services in the same office?

The chiropractor should be very careful about both personally rendering acupuncture services to a patient or otherwise employing or engaging an acupuncturist within the same office to provide adjunctive type, acupuncture services for the same patient. In these situations, legal or ethical problems can develop with respect to both billing procedures and advertising practices. Chiropractors may attempt to establish separate legal entities which employ and an acupuncturist to provide adjunctive type services or the chiropractor (acting either on his own behalf or also as a certified acupuncturist) may arrange for both chiropractic and acupuncture care of the same patient. The legal concerns in these types of situations are addressed below:

Initially, the doctor should be aware that Wis. Stat. §446.04(4) generally prohibits any splitting or dividing of any fee for chiropractic services with any person except another licensed chiropractor. As such, a chiropractor cannot base an “adjunct health

care providers” compensation on a percentage of the revenue which the non-chiropractic provider collects for patients services. Although most of the cases involving “fee splitting” are related to “cross-referrals” from physical therapists or massage therapists this “fee splitting” statute would also be applicable to billing arrangements between a licensed or chiropractor and an acupuncturist, if the acupuncturist’s treatment is part of the overall chiropractic care (adjunct care of a patient). Although fee splitting with a chiropractor and acupuncturist would not appear to be permitted under this statute, the licensed chiropractor could pay the acupuncturist a fixed salary or hourly wage for the acupuncturist’s work so long as the compensation is not based on any type of percentage of the revenue collected for the non-chiropractor’s services.

Some doctors will establish a separate professional corporation or other legal entity to employ various professionals, including certified acupuncturists. The “fee splitting” provisions could arguably be violated if the net income earned by the doctor as a shareholder/owner of that new entity emanates directly from services provided to a patient under the care of another healthcare provider, such as an acupuncturist. Although a doctor who holds a shareholder or ownership interest in the separate entity can earn that income from services to patients from fellow chiropractors, an argument may be made that the chiropractor is not entitled to direct net income resulting from preferred services provided by a different professional provider, such as, an acupuncturist. These fee splitting regulations often do not apply to the ancillary services of a physical therapist, massage therapist, etc. who is treating the patient upon the referral from the principal chiropractor. However, the chiropractor should avoid situations where any net income is directly received from the independent care and services of an acupuncturist or a licensed chiropractor who is actually providing acupuncture services.

In consideration of this statute, there must be a clear delineation between the services provided by the chiropractor and/or an acupuncturist/chiropractor who is providing patient services billed for the acupuncture care. In that regard, Wisconsin Administrative Code CHIR Ch. 10 regulates delegation and billing of adjunctive services. Depending upon the nature of the acupuncturist services provided it is important to carefully and clearly delineate the type of services provided by both the

treating chiropractor and the acupuncturist. The chiropractor should note that services provided in a chiropractor's office may only be billed under the chiropractor's provider identification number if the services are provided by the chiropractor or an actual employee of the chiropractor who has the training required under the CHIR Ch. 10.

The fee splitting statute clearly indicates that the "loaning of a chiropractic license or certificate to anyone" is a violation of the law; as is "any conduct of a character likely to deceive or defraud the public." See CHIR 6.02(15) The Department of Regulation and Licensing may closely monitor any conduct in which the chiropractor holds themselves out to the public as performing acupuncture services as part of the doctor's practice of chiropractic. In fact, there is an informal legal opinion to the Wisconsin Chiropractic Association dated June 24, 2000; in which legal counsel for the Department commented that a single doctor's provision of both chiropractic and acupuncture services within the same office "must be avoided" since there is a very high "danger of misleading the public".

Recognizing both the fee splitting statute and the advertising provisions of CHIR Ch. 10, the doctor may wish to consider the following suggestions:

1. The chiropractor who is also a certified acupuncturist should obtain separate provided identification numbers for both himself/herself as a licensed chiropractor and as an acupuncturist.
2. Separate patient files
3. Maintain clear distinctions in billing practices for different services provided to the same patient. Those services provided by the chiropractor as an acupuncturist which are adjunctive in nature would be billed under the chiropractic billing provider number or that of another licensed chiropractor. However, a "safe approach" to avoid any question relating to the statutory and administrative code provisions would be to bill each type of care separately and avoid any type of employee or independent contractor arrangement between the chiropractor and acupuncturist which would involve the transfer of some type of compensation between the chiropractor and acupuncturist. Please keep in mind that an insurance company can

refuse to pay for adjunctive services provided directly or upon referral from the chiropractor. As such, this separate billing arrangement for services would likely reduce the delay in payments from insurance companies.

4. Any “intake form” at the office should clearly clarify the distinct nature of acupuncture services provided by the designated individual, as compared to chiropractic services offered by other individuals within the office.
5. All marketing tools, including business cards and correspondence should carefully distinguish the nature of services provided by individuals within the office.

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