

Case Law on Series: Informed Consent

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 sited 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 **obligation to provide informed consent to the patient.**

Relevant Case: Hannemann v. Boyson, 282 Wis. 2d 664, 698 N.W.2d 714, (2005)

Relevant Facts: Patient filed a complaint against chiropractor alleging that the doctor’s chiropractic treatment of a cervical spine resulted in the patient suffering a stroke with permanent disability. Prior to several of the adjustments, the patient had been diagnosed with meningitis. Following a particular set of adjustments, the patient experienced paralysis which was subsequently diagnosed by a medical doctor as resulting from a stroke. The Court record indicated that the patient signed a consent form to treatment on two occasions, but that the written consent form did not contain any warning that chiropractic treatment carried the risk of the patient suffering a stroke or other neurovascular injuries. The consent form used in the case did not contain any information as to the risk of neurovascular injury following chiropractic care.

Legal Issues(s): (1) Does a chiropractor have a duty to obtain written, informed consent from the patient before proceeding with treatment?

(2) What is the nature or duty of the chiropractor in obtaining any such informed consent?

Principle Rule of Law: (1) The Supreme Court determined that a chiropractor, as a healthcare provider, has a duty to disclose the risks of treatments or procedures to a patient. Hannemann, 282 Wis. 2d 686-687. The Chiropractic Examining Board already has an administrative obligation to maintain written records of the patient’s informed

consent. The patient's right to be informed is recognized and protected because a patient cannot make a rational, reasonable judgment until he has been reasonably informed by a doctor of the inherent and potential risks. Accordingly, the principals of informed and consent should apply equally to both medical doctors and chiropractors. (2) In analyzing this duty of informed consent, a doctor must make such disclosures as appear reasonable necessary or under circumstances then existing, to enable a reasonable person, under the same or similar circumstances confronting the patient at the time of disclosure, to intelligently exercise his/her right to consent or to refuse the treatment or procedure proposed or to request an alternative treatment or method of diagnosis. (Hannenmann, 282 Wis. 2d 693.)

Additional Ruling(s) or Commentary: In addressing the first legal issue, the Supreme Court again confirmed language from the Kirkman Decision in which it was noted that the State Legislature "has recognized that the practice of chiropractic is distinct from the practice of medicine." In relying upon that decision, the court noted that a chiropractor does not treat or diagnosis disease; but rather a chiropractor's practice is limited to the analysis and correction of subluxation. As such, the chiropractor's function is to locate the subluxation, as it exists, adjust such subluxation back to the correct position, and then allow the body to restore itself to normalcy. In comparison, the court noted that a medical doctor's practice is completely opposite in that the doctor's concern with the diagnosis and treatment of the diseased areas through the use of drugs and surgery or other techniques. (See Hannenmann, 282 Wis. 2d 689.)

In addressing the second issue, the Court noted several additional matters. First, a doctor providing informed consent may need to provide such consent on multiple occasions should there be "a substantial change in circumstances", be it medical or legal. (Hannenmann, 282 Wis. 2d 688.) Second, the Court noted a failure to provide informed consent is a form of malpractice which is separate and distinct from negligence exercised in the course of treatment. (Hannenmann, 282 Wis. 2d 694.) Finally, the Court noted that the material issues of fact for the determination of a breach of this duty to provide informed consent are: (1) The patient was not informed of the

risks in the proposed treatment or procedure of which a reasonable person in the patient's position would wish to be made aware; (2) A reasonable person in the patient's position presented with such information would not have chosen to submit it to the treatment or procedure; and (3) The failure to disclosure such information was the cause of the patient's injuries. (Hannenmann, 282 Wis. 2d 694.)

Other Considerations: The general statutory duty of informed consent is stated in Wis. Stat. §448.30. Under this statute, there are several exceptions to the duty to inform. Those exceptions include:

- (a) Detailed and technical information that in all probability the patient would not understand.
- (b) Risks apparent or known to the patient.
- (c) Extremely remote possibility that might falsely or detrimentally alarm the patient.
- (d) Information in the event of an emergency where failure to provide treatment would be more harmful to the patient then the treatment itself.
- (e) Information in cases where the patient is incapable of consenting.

Wisconsin Administrative Code CHIR 11.02(5) requires that chiropractors keep records of patient's informed consent. Inform consent should be made with respect to both a form of treatment and diagnostic procedures utilized in the course of treatment. See Martin v. Richards, 176 Wis. 2d 339, 500 N.W.2d. 691 (Ct. App. 1993).

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