

Case Law on Series: On Intentional Interference with Doctor Patient Relationship

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. Unfortunately, there is no prominent, reported, decision in Wisconsin on this issue specifically involving a chiropractor. Nevertheless, this article in the series reviews this theory as applied to the **intentional interference with the doctor-patient relationship**.

Prominent (Non-Chiropractic) Case: Charolais Breeding Ranches LTD v. FPC Securities Corporation, 90 Wis. 2d 97, 279, N.W.2d 493 (Ct. App. 1979) and Cudd v. Crownhart, 122 Wis. 2d 565, 364 N.W.2d 158 (Ct. App. 1985).

Practical Applications: There are several notable situation where the existing or prospective “contractual relationship” between a chiropractor and the patient may be improperly influenced by a third-party; including: (1) Patient’s attorney instructing the patient to no longer treat with a particular chiropractor, (2) A worker’s compensation insurance adjuster instructing a patient that there will be no reimbursement for chiropractic care with a particular doctor, (3) Patient’s own health or liability insurer instructing the patient not to see a particular chiropractor or indicating that the chiropractor’s charges will not be covered under a policy when that policy specifically authorizes reimbursement for chiropractic care, (4) A physical therapist, nutritionist, or other non-medical doctor advising a patient to no longer receive chiropractic care without an appropriate “medical”, or legal basis for such recommendation.

Current Legal Requirements: There are several specific elements which constitute a claim for intentional interference with a contractual relationship.

1. Did the doctor have an existing or prospective contract with a third-party-patient at the time of the party’s alleged interference?

An action may exist when the defendant is preventing a party (patient) from performing a contract or otherwise causing compliance with that contract to be more expensive or burdensome. In addition, liability may exist when there is interference with a prospective contractual relationship.

2. Did the offending party interfere with the doctor's contractual relationship with the patient?

The doctor does not have the burden of proving a privilege or justification for the interference. The burden of proving such a justification or privilege for any interference shifts to the interfering party.

3. Was the interfering party's conduct intentional?

The Court has determined that interference may be found where the interfering party knows that interference is certain or substantially certain to occur as a result of his or her conduct.

4. Was the interference on the part of the acting party a cause of resulting damages for the doctor?

The damages suffered by that doctor can include actual pecuniary loss of the benefits of the contract, any causally related consequential losses, and emotional distress which is reasonable expected as a result from the interference.

Defenses Available: Various defenses can be asserted by the interfering party including: (A) truthful information or honest advice within the scope of a request for advice offered by the offending party to the patient, (B) a privilege to make such recommendation exist, (C) the offending party has a legally protected interest and believes that his or her own interest would be impaired or destroyed through the patient's continued contractual relationship with the doctor, and (D) where healthy competition exists so long as no wrongful means are employed, no restraint of trade occurs, and the purpose of the interfering parties actions is to advance his or her own competitive interests. The jury instructions note that the other possible ways of avoiding

liability involve situations where the offending party has a financial interest with the patient, where there is a responsibility for the welfare of the patient, or where the existing doctor/patient relationship is an illegal one or contrary to public policy.

Other Considerations: The Wisconsin Attorney General's Office issued an opinion on October 22, 1979 addressing the issue of "whether a physician has authority under the Medical Practices Act to counsel a patient on whether or not continued chiropractic professional care is necessary." The Attorney General concluded that the medical doctor has the authority to make such a recommendation except where the medical doctor does not possess the skills or qualifications necessary to properly formulate such advice or where such advice may prove dangerous to the patient. By rendering such advice, the medical doctor is not effectively "practicing chiropractic" without a license. The Attorney General noted that a medical doctor should be "given the latitude to perform services within his or her authority, whether those services overlap with professional services properly performed by a chiropractor or other healthcare professional." Consequently, at least a licensed medical doctor has the authority to "intrude" with the chiropractor's relationship with his patient if that medical doctor has adequate training to comment upon the efficacy of chiropractic care.

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