

Factors to Consider in Responding to a Investigation for Alleged Statutory/Regulatory Violations

In the course of a professional career, chiropractors may face allegations that there was a violation of a particular statute or administrative code provision. In many of these situations, the allegations are exaggerated, inaccurate, or occasionally simply "false". In other situations, critical facts may have been overlooked or not considered as a basis for refuting the allocation of such aspects of violations. As a result, chiropractors are encouraged to promptly and formally respond to all allegations since the finding of a violation can have long term consequences on the viability of the doctor's practice.

In responding to these allegations, there are a number of actions which can be taken by the chiropractor in properly responding to the investigation. Listed below are several of the common factors which should be considered in responding to the allegations:

1. Determine whether insurance coverage exists to hire legal counsel.

Many chiropractors are surprised to learn that their malpractice insurance carrier offers coverage for these types of regulatory investigations. Many policies will provide the maximum amount of coverage and allow the doctor to obtain any attorney they wish to defend against the allegations. Other insurers require that the doctor utilize one of the attorneys on their "approved list" of lawyers eligible to provide a defense to the allegations. Doctors should carefully weigh the qualifications of their lawyer and insist upon choosing the lawyer who the doctor believes is most capable of defending against the allegations.

Chiropractor should be aware that the extent of coverage may be limited to a certain number of "events" during a policy period. In addition, the doctor should take into consideration that premium rates may increase if coverage is sought for the defense of a regulatory department investigation. Consequently, the doctor should carefully consider whether an attorney should be hired with coverage outside of the policy so as to avoid a negative impact on future premium costs. In most situations, the insurance carrier will ultimately become aware of any regulatory violations either through investigating the background of the doctor or requesting that type of information on an application.

2. Calmly gather all relevant records, documents, and information from witnesses.

Simply receiving a letter of an alleged violation can be a very stressful event for the doctor. Instead of panicking or attempting to "ignore" the allegations, the chiropractor should take an "offensive" in aggressively seeking the information necessary to present all of the accurate information to the Regulatory Board. The type of information sought generally falls into three (3) categories.

First, the doctor should make a complete and accurate copy of all patient records and billing charges. This documentation should include any and all letters, telephone messages, other correspondence from the patient or other party making the allegations. It is important to note that the doctor should not alter or otherwise falsify treatment records since that action, alone, can constitute a violation of the Administrative Code provisions. Many doctors fail to thoroughly gather all documentation from the patient's file even though this documentation is often critical in providing a defense to the allegations.

In addition to reviewing the patient's complete file, the doctor should consider obtaining the names of all witnesses or other individuals who may have knowledge regarding the investigation. Even though many investigations can be years after an actual event, the doctor should insure that he/she has contact information on anyone who has knowledge about the allegations. This contact information should be forwarded to legal counsel rather than the doctor attempting to contact the individuals directly for further information. Pre-emptive contact with witnesses by the doctor can result in a negative implication as to the guilt or fault of the doctor under investigation. A trained investigator or other individual retained by legal counsel will typically make the appropriate contact with any such witnesses or parties having knowledge about the matter.

In addition to treatment records and investigation of witnesses, the doctor should begin collecting data demonstrating good faith compliance with either other patients or under other circumstances. In many situations, the doctor under investigation may have acted properly in many other situations; but simply had one patient or one event which was not fully and properly addressed. The doctor should begin gathering the information which can be forwarded to legal counsel which demonstrates that the doctor typically performs the action or otherwise conducts himself/herself in a manner which fully complies with the statutes and Administrative Code.

3. Timely respond to all investigations.

Many doctors fail to timely response to the regulatory bodies request for records or information. It is important to note that untimely responses to investigations may themselves constitute further violations or otherwise result in increased sanctions should the doctor eventually be found to have improperly acted under the statutes or Administrative Code. In most situations, the investigatory body will allow a reasonable extension of time to a doctor if a legitimate reason is given for the requested need for an extension of time. Acceptable reasons for requesting an extension of time include (a) the need to retain legal counsel; (b) unknown time restraints of legal counsel, (c) additional time needed to obtain records or contact witnesses, and (d) health demands of the doctor or other close family members.

4. Provide a specific response to the inquiry.

The response provided by many doctors to an investigation often fails to address the specific inquiry posed by the Department. On other occasions, the doctor may provide excessive information which can actually form the basis for other complaints against the doctor. A doctor should strive to provide a response which is "just right", by avoiding providing too much information; but just enough information to address the specific questions raised by the regulatory body. In all circumstances, the response must be accurate and truthful since deliberate efforts to deceive the investigatory body can only result in increased punishment or form of sanction.

Competent legal counsel can also provide appropriate legal defenses to any allegations since many investigations are commenced based exclusively upon the broad inaccurate accusations of a patient. Many lawyers will site to specific cases or other applicable statutes which either refute the allegations or otherwise tend to mitigate the severity of the allegations made against the doctor. The initial response to any investigation should carefully note the factual weaknesses of the allegations or legal basis for refuting those allegations. In other situations, the doctor may be able to provide scientific information, peer review articles, and other information which may be useful to legal counsel in responding to the accusations. The doctor should realize that legal counsel may lack full understanding of certain protocols and other office functions which may be commonly utilized by chiropractors acting under similar circumstances. The doctor should insure that he fully and adequately explains all details of operations to their legal counsel so that a full and proper response can be provided.

Doctors are also discouraged to avoid making character references or unprofessional comments on the individual(s) who initiated the accusations. In many circumstances, the doctor

may not even know the name of the actual complainant but may have an unfortunate tendency to "strike back" at the accuser or the investigator contacting the doctor. In almost every situation, the doctor should avoid contacting the complainant in any manner and should also insure that none of his/her office staff makes any contact with the suspected complainant. These types of personal and unprofessional responses should be discouraged.

5. A proper defense to the allegations should always consider an appropriate remedy or sanction for the situation and the "direction" which the investigator is pursuing.

The investigator assigned to a matter will often provide just enough reference or information so as to enable the doctor or his legal counsel to develop a sense of either the severity of the allegations and/or the type of sanctions or discipline that may be appropriate under the circumstances. In those circumstances, doctors are often encouraged to consider whether there is some type of action or preventative course of conduct which can be undertaken as a means of resolving the matter without any type of "formal discipline". From the beginning, doctors are encouraged to seek an informal resolution of the matter that limits their exposure to high legal fees and adverse publicity which may be generated by a formal investigation. As a result, doctors are often encouraged to consider taking the initiative in offering some type of remedial action which can be made to promptly and inexpensively involve the investigation. In addition to seeking an informal resolution of the matter, the doctor and his/her legal counsel should always be questioning what key facts or actions the investigator is truly focusing on as the "trigger" for transferring the matter from an informal investigation to a formal complaint. Again, an experienced attorney can often develop a sense as to which specific factors or actions seem to be of greatest importance or highest severity so as to prompt a particular investigator to move the matter towards a formal investigation. In most cases, the investigator are not lawyers, but have a certain bias or focus with regard to the information they are seeking or details requested from the chiropractor. From the beginning, the chiropractor or their legal counsel should be attempting to determine what specific events are most relevant to the investigator and focus upon providing defenses, witnesses, or other argument which tend to diminish the importance of that matter so as to result in a situation where the investigator does not pursue a formal complaint.

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