

BLOG: Evaluating the “Greener Pasture” Arguments
(Advanced by those supporting a “duty to refer”)

This “history lesson of osteopathy” certainly raises critical, long-term questions. Chiropractors should never forget this history lesson. There are definite benefits of being DISTINCTIVE and applying unique techniques that should be limited in use to chiropractors. The chiropractic profession will be well served by never forgetting the unfortunate history lesson from “that other profession” that health care consumers now know very little about.

A cursory review of the minutes from the Chiropractic Examining Board reveal that there is an ongoing initiative to alter the scope of practice of chiropractors so as to **establish a “duty of referral”**. As readers of this newsletter are aware, chiropractors in this state presently have a basic “**duty to inform**” patients of aspects of their health condition under various circumstances, but do not have an express obligation to refer patients to other types of physicians. This “agenda” appears to be driven by various legal counsel to the Chiropractic Examining Board and others who either do not understand or are not satisfied with the result of recent decisions involving alleged acts of chiropractic malpractice. This “initiative” appears to have gained some interest with various members of the Wisconsin Chiropractic Association despite a thorough review of this matter approximately two (2) years ago. At that time, the Chiropractic Examining Board’s efforts to alter the standard of care was resoundingly rejected. After numerous chiropractors throughout the state expressed concern with the proposed changes.

During the **April, 2002, meeting of the Southeast District of the Wisconsin Chiropractic Association**, Executive Director Leonard reviewed (without taking a position) several “arguments” for establishing a duty of referral which has been advanced by various individuals. Two (2) of those “arguments” presented in that meeting are addressed in this article.

First, **it is argued that establishing the “duty of referral” on the part of chiropractors will lead to greater use of chiropractors within hospital and medical clinics**. It is asserted that these types of medical facilities cannot adequately trust or rely upon healthcare providers, such as chiropractors, if the healthcare provider does not have a duty to refer amongst other physicians within that facility. The **second**

argument advanced is that those chiropractors who are eventually accepted into these types of medical settings will have higher levels of utilization and resulting increases in their income levels. Chiropractors making these arguments generally theorize that practicing within the context of hospital or medical settings presents a much **“greener” financial “pasture”** in which to practice chiropractic.

The author of this newsletter had an opportunity to “test” both of these arguments during a deposition in a civil case involving a chiropractor retained by an insurance company to serve as an “independent medical evaluator”. Both of these arguments were addressed during the deposition of Dr. Eric J. Kirk, a chiropractor associated with the Rehabilitative Care Center at Aurora “Center for Well Being” in West Bend. Dr. Kirk is one of seven (7) chiropractors associated with Aurora statewide. He has worked as an employee of Aurora since December of 2000 and should have insight as to the influence of “chiropractic” within a “medical or hospital setting”.

During that sworn deposition, **Dr. Kirk provided information which clearly runs contrary to both of the “greener pasture” arguments presented in support of the “duty to refer”:**

A. As to the First Argument ...Dr. Kirk testified:

Q: Do you think that more stringent duty of referral for chiropractors, in other words, a duty of chiropractors specifically to refer to other professionals, would accelerate or increase the number of chiropractors that would be affiliated with organizations such as this?

A: No.

B. As to the Second Argument ...Dr. Kirk testified:

Q: How many patients do you see on average per day or week at the present time?

A: It varies.

Q: Give me a feel for that?

A: Ten to fifteen in a day.

Q: Would you regard your treatment as limited to musculoskeletal problems?
Is that correct?

A: My treatment?

Q: Yes.

A: Limited to musculoskeletal problems. I'd say yes.

As a footnote, Dr. Kirk also provided this testimony as it relates to the duration of care:

Q: Is there a general pattern or length of time that in terms of your treatment you would seek treatment of patients with musculoskeletal problems?

A: It ranged, obviously there are a variety of severity of conditions. But on average per musculoskeletal condition, it's roughly four to six treatments over the course of two to three weeks to resolve their musculoskeletal condition.

Q: What's the longest you have ever seen [a patient for treatment]?

A: I can't recall. I would estimate approximately two months. About eight weeks.

Chiropractors in this State are urged to carefully scrutinize those "arguments" presented by others since they are frequently incomplete, inaccurate, or even untrue. This testimony from a chiropractor who regularly works with the medical community confirms that the arguments advanced for the duty to refer simply is not resulted in greater utilization and recommendation of chiropractic treatment by the medical community. This only goes to prove what any common sense farmer will tell you; "it's not always greener in the other pasture"!