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NOVEMBER 2007 NEWS

Statewide Non-Profit Chiropractic Association

Alan M. Immerman, D.C., President and Executive Director



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• • •

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Publication Editor

Alan M. Immerman, D.C.

ACS SOUNDS ALARM ON DANGEROUS NEW CA RULES

ACS has sounded the alarm on a dangerous change in the Chiropractic Assistant rules. As a direct result of the attention brought to the issue exclusively by ACS on 10/20/07, the Board now plans to ask the Governor's Regulatory Review Council (GRRC) on 12/04/07 to change the proposed CA rules. But ACS is not yet convinced that the Board's new proposal is sufficient to protect the right of CA's to continue to administer therapeutic exercise, neuromuscular re-education, therapeutic activities, laser, and other measures.

Without the intervention of ACS, it would have been possible for the Board to discipline DCs for delegating these therapies to CAs to administer, even though the Board denies that was its intent, and insurance companies would not have paid if CAs had administered this care. DCs would have had to personally administer all active rehabilitation to avoid discipline and get paid.

By agreeing to propose a change in the rules to GRRC, the Board admitted a problem. The Board was, at the least, reckless in drafting the rules because it placed chiropractic insurance reimbursements at risk. The reason the CA rules were changed a few years ago was because insurance companies exploited a loophole and stopped paying unless the DC personally administered therapies. Some DCs suspect a pro-insurance company

agenda at the Board.

ACS will be getting a legal opinion regarding what is needed to correct the Boards' rule proposal. ACS still believes that the active rehabilitation part of your practice is at extreme risk. If you want to protect it, you will need to come to GRRC and plan to speak at the public hearing on December 4, 2007. ACS will be posting all pertinent information at www.AZChiropractors.org on the Chiropractic Board webpage.

ACS member Dr. Stephen Brown, DC stated: "I move that the ACS should request that the specific phrases 'Neuromuscular Re-education', 'Therapeutic Procedures' and 'Therapeutic Activities' be added to the language of the new statute. This would make it clear that CA's can perform 97110, 97112 and 97530, without there being any ambiguity. The Board must have some reason they are avoiding mentioning these active rehabilitation codes. I'm sure that these therapies 'have prompted inquiries to the Board over the years' (just as the Board stated was true of the passive modalities listed as within a CA's scope of practice), yet still they did not make the specific list of therapies the Board provided. Something still smells rotten to me." ACS agrees and will carefully protect the right of DCs to delegate active rehab procedures to CAs.

SPECIAL THANKS TO MEMBERS OF THE ACS PRESIDENT'S CLUB

Many thanks to our visionary members who contribute \$200 per month to help ACS work hard for chiropractic progress. These doctors are premier members of the ACS President's Club. Special thanks to Drs. Rob van Zweeden, William Zeiler, Charles McDonald, Leo Rayburn, Trevor Penny, Michael Cormier, Jeff Glaus, Shaun and Nikki Miglore, E.J. Strandlund, Randall Widmaier, Gregg Friedman, Angelo Pisano, Tracy Peruch, Jeff Raiffie, Randy Leraaen, Jeff Rebarcak and an anonymous DC. Please join these leaders today! ACS can do so much more for chiropractic with additional support!

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ACS TO ASK LEGISLATURE TO REDUCE CHIROPRACTIC COPAYS AND DEDUCTIBLES FROM SPECIALIST TO PCP LEVELS

In January 2008, exclusively at the request of ACS, the Arizona Legislature will again consider a bill to reduce copays, coinsurance and deductibles for chiropractic care from specialist to primary care physician (PCP) levels. ACS lobbyist and former state representative Debra Brimhall Pearson has been meeting with legislators full-time. It is rare for an association to have a single client lobbyist. The AAC lobbyist, for example, has more than a dozen clients. Ms. Pearson only represents ACS. This means much more time for our cause and no conflicts. In addition, Dr. Immerman and many ACS members have been meeting with legislators. ACS is determined to pass this important bill in early 2008.

Copays are now often as high as \$60-\$70 for specialists of which DCs are now illegitimately considered one, while copays for PCPs are usually \$20. Deductibles for DCs can be \$500-\$1500 versus \$0 for a PCP. Patients are driven by finances to choose PCPs and not DCs. When the law is changed, your patients and practice will see definite relief.

Such discrimination is unlawful based on the insurance equality laws passed by ACS and its ancestor organizations in 1990-1991 (see www.AZChiropractors.org). ACS continues to press its case at ADOI to gain proper enforcement of these laws. The legislative campaign will begin in January 2008. You can become part of the ACS army to help pass this bill. Go to www.AZChiropractors.org for membership information and much more.

On 10/24/07, a stakeholders' meeting was held by House Health Committee Chair Bob Stump. Attendees included Senator Gray,

ACS, AAC, and BCBS representatives. BCBS announced that it would lower \$60-\$70 copays to \$55, open up the PPO network to all DCs (which would subject all claims to the copay as compared to non-PPO claims where no copay applies), and no longer call DCs specialists. ACS rejected the \$55 copay as clearly far too high and grossly discriminatory. ACS stated it would be moving forward with legislation to require full parity with PCPs. AAC refused to join ACS in the legislation and thanked BCBS for its show of good faith with the new \$55 copay. AAC stated that this amount of incremental gain is acceptable with the hope that future negotiations in years ahead may provide further relief.

ACS member Nels Larson, D.C., stated in an email to the AAC: "My income has gone down almost 100K THIS YEAR! Guess why? A great majority was from BCBS. While you sit and 'negotiate', all of the doctors I know are going broke. This is not good. So far I'm not sure whose side you are on."

The division in the profession with ACS rejecting the \$55 copay as an acceptable solution and moving forward with legislation while AAC takes the opposite position means that ACS will have to work twice as hard to pass the copay/deductible bill in 2008. It is unknown why AAC refuses to join ACS in taking a stronger stance with the insurance industry.

ACS Board member Gregg Friedman, D.C. said in an email: "A \$55 co-pay is a joke. On many of the policies, there is a deductible for therapy, sometimes \$1000 or more. The most we'd get paid would be for spinal adjustment and extra-spinal adjustment and an exam. With the exam

and the other charges, we could get paid some. Without the exam, we get skunked. I have patients with \$40 copays and I only get \$4.80 from the insurance." Dr. Friedman is a top expert in the country on documentation, coding and billing issues.

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CHIROPRACTIC BOARD'S WITCHHUNTS CONTINUE AND MORE BOARD NEWS

The Arizona Chiropractic Board is racing to revoke the license of another state DC, this time Dr. Michael Watts. Once again, there was absolutely no harm done to any patient. Just recently, Dr. Dave Swan lost his license in a case where the patient at the end of care announced he loved chiropractic so much he planned to make a career out of it. Yes, the Board's mission is to protect the health, welfare and safety of the public. In spite of this fact, however, the Board revokes licenses of doctors who have never actually harmed the patients who were the subject of the complaint. This is unheard of with all of the other healthcare licensing boards in Arizona.

Yes, both Drs. Watts and Swan appear to have fallen somewhat short in their "clinical decision-making ability" and their skills at creative writing in drafting perfect SOAP notes. But they caused no patient harm. This should be the primary focus. Instead, it is not. In the Board's new proposed rules on Unprofessional Conduct, it directly states that discipline shall be dispensed regardless of whether actual injury to the patient is established. ACS will ask the Governor's Regulatory Review Council (GRRC) to add: "although whether actual injury occurred will be the primary factor in determining discipline." ACS will alert you to when the public hearing will be scheduled so that you can come and testify.

In its Fall 2007 newsletter, the Arizona Chiropractic Board discussed its policy on practice standards. This is the first time in history that the Board has ever made an attempt to define standards of practice in Arizona, something which ACS had demanded for many years. The Board stated that it will not use either the Mercy or Wyndham Conference guidelines, regardless of the personal opinions of any Board members.

ACS had previously reported that Board Chair Haydon and Vice-Chair Baker were members of the American College of Chiropractic Consultants (ACCC) which endorses Mercy. Prior to the Fall 2007 Board statement, the Board had never said anything regard-

ing standards. Therefore, state DCs could only assume that the standard in place was Mercy since that was the standard followed by the majority of the Board DCs.

Now, for the first time ever, only after years of pressure applied by ACS, the Board has issued a written statement regarding standards. You should keep a copy on hand permanently. To summarize, the Board says that it does not adhere to any one guideline, but looks at "the literature and guidelines in light of the standards of practice CCE has determined will be taught in chiropractic colleges and the skill, knowledge and competencies that are measured by the National Board of Chiropractic Examiners in its four part testing process..."

Bear in mind that the Board has essentially become a proxy for the insurance companies. According to former Chair Seitz, 80% of complaints are filed by insurance companies. The Board has recently denied that Dr. Seitz made this statement but ACS stands by its report which was based on a first-person statement by Dr. Seitz. The majority of the DC Board members previously worked for insurance companies performing claims reviews and IMEs. The Board has reported that Drs. Haydon and Baker only spent 1% and 10-15% of their professional time, respectively, doing IME and claims review work prior to joining the Board. The Board did not report the amount or percent of income that came from this work. In the absence of complete financial disclosure with all tax documents, it is unknown the exact amount of insurance work done in the past or income derived from such work by Drs. Haydon and Baker. From the reports ACS has received from Mohave and Pima County DCs where Drs. Haydon and Baker practice, it is ACS' impression that both Drs. Haydon and Baker were very active in the claims review and IME world working for companies like State Farm and ASHN, reviewing and cutting claims. If Drs. Haydon and Baker would like to reveal all past tax and income related documents to an independent auditor then this would settle the

question. In addition, ACS invites Drs. Haydon and Baker to first redact and then disclose multiple sample copies of IME reports so that the profession can independently determine if pro-insurance company bias is present as has been stated by certain Mohave and Pima County DCs.

In 2006, ACS successfully lobbied for a bill to prohibit Board members from continuing to do this work. The Board spent \$20,000 to try to defeat this bill and protect the private income of a few of its members. The Board has protested ACS' characterization of this \$20,000 as "taxpayers' money." ACS stands corrected. The fact is this was money generated from payments by DCs for licensure, relicensure, etc. Readers of this newsletter paid to protect the right of Board members to work for insurance companies. It was not the taxpayers in general, it was the chiropractic profession. The Board apparently believes the profession will be relieved to learn this fact.

ACS holds that the Board must not examine files on behalf of insurance companies, and that it should only protect the health, welfare and safety of the public. Be certain to read the Board information on the ACS webpage for extensive background and current updates.

ACS RECEIVES LETTERS

"We all appreciate your valuable work to remove the corruption at all levels of the profession.



I am encouraging others to join ACS. I dropped my 27 yr. AAC membership, which is just an extension of the Board and the Insurance Co.'s. The CA ruling is another farce and merely reflects the insanity of the Board. It's a disgrace to the profession. Thanks again," Dr. John.

ACS: Not afraid to speak truth to power! Join today.

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STATE FARM SUES ARIZONA CHIROPRACTOR JEFF REBARCAK, DC FOR \$10 MILLION

State Farm has sued Arizona DC Dr. Jeff Rebarcak for \$10 million alleging insurance fraud. State Farm claims that Dr. Rebarcak provided forms of diagnostic tests that were not medically necessary, even though State Farm has paid for these exact same tests when billed by other doctors. State Farm also claims Dr. Rebarcak is responsible for the fact that some tests were not read by a licensed MD, even though there is clear evidence that Dr. Rebarcak himself was the victim of fraud by the company with whom he contracted to retain licensed and qualified MDs to read the tests.

ACS has researched this case carefully by examining scores of court filings both plaintiff and defense. Moreover, Dr. Immerman was sometimes an invited to the Gateway Chiropractic Training seminars to speak about ACS and current events in chiropractic. A small part of Gateway focused on diagnostic testing as a means to document medical necessity in a scientifically documented manner that would prove the need for care to forever-doubting and claims-slashing insurance companies, particularly aggressive ones like State Farm. Dr. Rebarcak brought in faculty from a

licensed chiropractic college to teach a 12 hour accredited course in the tests he described. ACS has concluded that Dr. Rebarcak did not commit fraud. Gateway only devoted 6 pages in its 248 page manual to the diagnostic tests that are the subject of this lawsuit.

For background, ACS suggests that you read a key article on the ACS webpage at www.AZChiropractors.org. Go to the section on Important Reports and Articles and read the 24 page 2000 Phoenix New Times article: "SNAKE KILLER - They call it 'Snake Farm.' Lawyers like Cal Thur battle State Farm to protect consumers from their own insurance company. Moral of the story: Don't have an accident." Then ask the personal injury attorneys that represent your patients how State Farm treats injury victims in general. Tucson doctors, ask attorneys about State Farm lawyer David Curl who is leading the charge against Dr. Rebarcak from Pima County. Phoenix doctors, ask attorneys about State Farm attorney Diane Lucas who is leading the charge from Maricopa County. ACS has done all of the above.

The problem in a case like this is whether a defendant like Dr. Rebarcak can hold out financially until the trial

is over a year or more from now. Attorneys' fees are reportedly in the tens of thousands per month. No single doctor can match the financial resources of State Farm. In almost all cases, this forces early settlement regardless of the merits of the case. ACS is hopeful that Dr. Rebarcak is able to afford to bring his case to a jury in order to prove his innocence and clear his name.

A lawsuit like this will definitely have a chilling effect on other chiropractors who teach how to document medical necessity. Any documentation instructor could be sued with the insurer simply claiming the teacher was trying to show DCs how to trick the system to unfairly get paid for unnecessary treatments. If the instructor does not have millions of dollars to stand up to the insurer, there would be a guilty verdict for insurance fraud. Dr. Rebarcak, in the opinion of ACS, is a victim of State Farm abuse. This case should sicken and horrify every health-care practitioner.

ACS SOMETIMES CRITICIZES THE AAC BUT . . .

ACS sometimes criticizes the AAC. However, the following must be said: the chiropractors who are the leaders and members of the AAC are a far cut above the hundreds of chiropractors in this state who belong to no organization at all. Both ACS and AAC have about 200 members each. These 400 chiropractors care about their profession enough to invest money monthly into protecting their future by belonging to a state association. Many leaders of ACS and AAC additionally volunteer time to work for progress. Non-members do none of the above. In the past few years, ACS and AAC leaders have even issued joint statements urging DCs to join at least one of the organizations if not both. This is still the only intelligent choice for any licensed DC in Arizona. ACT TODAY and safeguard your future. In the spirit of the holiday season, ACS wishes the best to ALL chiropractors in Arizona, including all of our friends at the AAC!

JUDGE RULES

IDAHO CRIMINAL INSURANCE FRAUD CASE AGAINST DOCTOR IS FRIVOLOUS

An Idaho doctor, Mark Capener, MD, was accused of billing for sinus surgeries that were either unnecessary or not performed. He had been "red flagged" following an independent audit by a local health plan (BCBS) because there was, supposedly, a "huge discrepancy" in the number of sinus surgeries he did compared with the rest of the doctors in the state. All charges were either dismissed or a jury found him not guilty. Then, he decided to fight back. He sued the government for damages, ultimately proving the case against him was frivolous. A federal judge awarded him \$175,000 in expert witness expenses, and \$104,000 in attorneys' fees. Both sides have appealed

to the 9th U.S. Circuit Court of Appeals. If the doctor prevails there, it will impact Arizona since the 9th has jurisdiction over this state.

Word to the wise: The consulting attorney for the MD said that while it is difficult to prevent an unwarranted investigation, doctors should at least use a coding expert to help them accurately file claims and track their billing patterns. The doctor was judged innocent in the end, the case was ruled frivolous, he did win his lawsuit against the government and damages of almost \$300,000, but his original defense cost \$1 million. An ounce of prevention is worth many pounds of cure. (*American Medical News, 8/20/07*)

AZ CHIROPRACTIC BOARD ISSUES

ADVERSE ACTION REPORTS FAR MORE THAN AVERAGE STATE

Chiropractic regulatory boards in all fifty states report all disciplinary actions to the National Practitioners Data Bank (type this phrase into any internet search engine). As of 08/13/07, there were a total of 5117 adverse action reports for the entire country in 2007 for chiropractors. Of these, 298 or 6%

of all adverse action reports were from Arizona. Arizona has 2% of the U.S. population within its border. Therefore, the rate of discipline in Arizona is 3 times greater than the average in the country for DCs. This means that if you practice in Arizona compared to another state, you are 3 times more

likely to be disciplined by the state board. This is why ACS has stated that the Arizona Chiropractic Board has created a "reign of terror." The facts speak for themselves. In many cases, the Board could have issued non-disciplinary advisory letters since there was no danger to the health, welfare or safety of the public. Instead, the Board disciplined doctors, often for record keeping violations. All reports to the NPDB result in doctors being removed from health plan networks with subsequent loss of many new patients. None of the 298 adverse action reports from the AZ Chiropractic Board resulted in reports of judgments or convictions, according to NPDB.

There are only nine states with more than 200 adverse action reports: AZ-298, CA-664, CO-257, FL-306, IL-324, MI-287, PA-263, TX-581, and WA-215. New Mexico had 1. Utah had 39. Nevada had 13. Wyoming had 2. Arizona is the fifth worst state in the nation to practice as far as total number of Board disciplinary actions.

NEW ERISA SELF-FUNDED PLAN SOLUTIONS ADDED TO ACS MEMBER BENEFITS

ACS has added two new documents to its list of member benefits. The first is modern and complete instructions from the Arizona Department of Insurance (ADOI) on what to do when an ERISA self-funded health plan denies a claim. The second is a key rule for ERISA that explains how to force the health plan to tell you exactly what to say in an appeal to get payment. This rule is the key rule that you must have to know how to appeal a claims denial by an ERISA plan. We have it ready for you once you join.

Other documents and forms deal

with a wide variety of third party payer and Chiropractic Board regulatory issues including timely payment of claims, medical necessity denials, IME report rebuttals, and personalized advice to help members on many issues. ACS President and Executive Director Dr. Immerman has been licensed in Arizona since 1980 and works full-time helping members. For a full list of current member benefits, go to www.AZChiropractors.org and click on Member Benefits. Join today and get the help you need.

Arizona Chiropractic Society Application for Membership

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CHIROPRACTIC COLLEGE			DATE OF GRADUATION	
TOTAL YEARS IN PRACTICE	TOTAL YEARS PRACTICE IN ARIZONA		AZ LICENSE NUMBER	
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<input type="checkbox"/> 2nd Year Out of Chiropractic College, \$50 per mo. <input type="checkbox"/> 4th Year Out, and thereafter, \$100 per mo. <input type="checkbox"/> Part-Time Doctors, \$50 per mo.				
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