

Case Pushes Doctor's Defense Up Against the Ropes

Up against the ropes is a bad place for a boxer. It is also a dangerous place for a chiropractor to be in the defense of a lawsuit.

Donna Jeppersen, D.C., treated Tonya Jones for several years starting in 2002. She reappeared as a patient from 2011 to 2013. It is this later period of care that became the focus of the lawsuit.

Dr. Jeppersen closed her solo practice in May 2013 and became an associate doctor with Dr. Dan Mercet at the Oak Street Chiropractic Clinic in Jackson, Mississippi.

Tonya was 28 years old and worked for a package delivery company as a loader. She had been a world-class sprinter in college and was currently a wide receiver for a women's professional football league team. In addition, she was an aspiring Golden Gloves boxer.

Based on SOAP note summaries, Dr. Jeppersen was treating Tonya for recurring cervical, thoracic and lumbar segmental dysfunction with associated headache and hypertonicity, as well as recurring right elbow, right hip, and right knee joint dysfunction and restriction.

During this treatment period, Tonya needed assistance with finances to pursue her boxing ambitions. She was sponsored by a shoe manufacturer, as well as a maker of protective headgear. Oak Street Chiropractic Clinic and Dr. Jeppersen also became her sponsors.

Patient Asks Doctor to Travel with Her

Tonya sought more help from Dr. Jeppersen. She asked the D.C. if she would travel with her to tournaments both as her coach and as her chiropractor. Dr. Jeppersen took a class and became a Level 1 amateur boxing coach.

In July 2013, Tonya won the intercity Golden Gloves Championship in her weight class. Her goal was to win a regional Golden Gloves title to qualify for the World Golden Gloves event to be held in February 2014 in Stockholm, Sweden.

In September 2013, Tonya began to spar with male boxers in preparation for the regional bouts slated for early October in Tulsa, Oklahoma. On September 25 and 26, Tonya had particularly robust sparring sessions with a male who was several weight classes higher than she was.

Tonya complained of headache and neck pain following the sparring sessions; however, she made only one visit to Oak Street Chiropractic for an exam and treatment of her right elbow pain by Dr. Mercet because



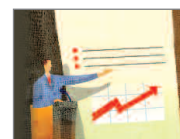
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Dr. Jeppersen was unavailable. Dr. Mercet documented that neurologically Tonya was intact. Several days later, Tonya and Dr. Jeppersen made the road trip to Tulsa.

During the trip, Tonya continued to complain of head and neck pain, and Dr. Jeppersen provided undocumented chiropractic care. In addition, Jeppersen gave her over-the-counter pain medication and hydrocodone from her own personal prescription. This treatment regimen continued until October 2, 2013, the eve of Tonya's first bout. She won that bout and had cleared the pre- and post-fight exams by the ringside physician.

Later that night, Tonya again developed head and neck pain. Once more Dr. Jeppersen provided Tonya with chiropractic care and gave her over-the-counter and prescription pain medications.

Unfavorable Turn at Boxing Match

On October 4, at 1 minute and 32 seconds into the second round of her fight, Tonya collapsed and began the fight for her life. She was sent to Tulsa Regional Medical Center where she was diagnosed with a right temporal subdural hematoma, and she sustained multiple ischemic strokes.

Tonya remained in intensive care for three and one half weeks during which time she experienced pericardial effusion and respiratory failure. She was discharged from the hospital after 38 days and went directly to a skilled nursing facility for follow-up care and physical therapy. She remained in that facility for seven months and was then released to home care at her mother's residence in Hattiesburg, Mississippi.

Tonya Jones was permanently and totally disabled from this severe brain injury. To this day, she suffers from chronic seizures. Her ability to ambulate is greatly diminished due to profound left-side weakness. She is unable to speak clearly and has severe cognitive and memory deficits. She will never work again; receives SSDI, Medicare and Medicaid; and will require continuous care with all aspects of life. At the time of the claim, Tonya's medical expenses already exceeded \$600,000, and they continued to be incurred.

Lawsuit Ensues

A lawsuit was filed against Dr. Jeppersen, Dr. Mercet and his clinic, the Golden Gloves of America boxing association, and against the gym and trainer where Tonya Jones (now the plaintiff) trained.

The claims against Dr. Jeppersen included allegations of medical negligence, negligence as a boxing coach and general negligence. The claims against Dr. Mercet and the clinic were allegations of medical negligence and the negligent supervision of Dr. Jeppersen.

NCMIC immediately retained a defense attorney for Dr. Jeppersen and separate counsel for Dr. Mercet because their interests were diverse.

Right out of the gate, Dr. Mercet contested his liability as he only treated Tonya one time in his clinic for an elbow problem, which was hardly related to her brain injury. He also disavowed any responsibility for Dr. Jeppersen, as she was treating Tonya outside of the clinic and essentially off the books. Essentially, Dr. Mercet contended that Dr. Jeppersen had provided chiropractic care totally outside the scope of her employment.

What Can We Learn?

By Jennifer Boyd Herlihy, Boston, Massachusetts, and Providence, Rhode Island

Increased risk. The concept of sports chiropractic may enthrall many doctors, but like sports themselves, it requires ongoing training, discipline and practice. Corners are not to be cut. In this case, it was clear there were breaches in the doctor's ethical and professional clinical judgment.

Document, document, document. It's all too easy to shortchange the rules of recordkeeping with family, friends, colleagues and patients who are engaged in sports. However, records form a foundational basis for the defense of any case. Therefore, recordkeeping shortcuts hurt a case's defensibility and put a doctor's license in peril.

Licensure. When traveling with an athlete or team, doctors must ensure they are properly licensed where treatment will take place. In this case, Dr. Jeppersen rendered treatment in states where she was not licensed. While NCMIC defended her malpractice allegation, practicing without a license fell outside of her malpractice coverage. Additionally, the D.C. violated considerable laws when she gave her patient medications without the authority to do so.

Tender to all carriers. Because not all of the allegations against Dr. Jeppersen were related to the chiropractic care she provided, her NCMIC-retained attorney looked to all potential sources of insurance coverage. Her business owners' and homeowners policies helped protect Dr. Jeppersen from an excess verdict.

Patient's best interest. The cardinal rule for all healthcare providers is "Primum Non Nocere," which means "First, Do No

Because not all of the allegations against Dr. Jeppersen were related to her chiropractic care and her NCMIC policy, her attorney looked to all potential sources of insurance coverages. She had both a business owners' policy that remained in effect from her solo practice days and a homeowners policy that were applicable because of the allegations of negligence as a boxing coach and general negligence. Those carriers were put on notice and participated in the defense of the case.

Plaintiff Claims that Sparring Spurred Injuries


The plaintiff's case relied upon a theory of second or multiple impacts to the brain and that Tonya sustained a concussion during the September 25–26 sparring sessions. The theory was her brain did not have time to heal before sustaining further injury from subsequent blows to the head, which in turn had a cumulative effect and caused the massive hematoma and strokes. The allegations were that Dr. Jeppersen should have diagnosed the concussion, stopped Tonya from fighting, not provided pain medications to mask the injury and advised the ringside doctor of health issues prior to the fight.

As mentioned earlier, Tonya was briefly examined prior to each fight and after each fight by a ringside physician. It was clear she had made false statements and misrepresentations about her health and condition because she either did not mention head and neck pain or she denied having problems. Obviously, this would have been an issue raised in the defense of Dr. Jeppersen. Unfortunately, Dr. Jeppersen was in attendance at those exams as Tonya Jones' coach, and she allowed the plaintiff to be untruthful about her condition. At the time, Dr. Jeppersen apparently did not interject Tonya's true history either as her coach or chiropractor.

During the discovery phase of the case, NCMIC learned that Dr. Jeppersen provided dozens of undocumented treatments to Tonya. Consequently, the defense was severely handicapped.

What's more, medical consultants retained for the defense agreed with the plaintiff's expert that multiple impacts were the cause of Tonya's injury. In addition, Dr. Jeppersen provided care in a number of states where she was not licensed to do so. Lastly, was the issue of giving the plaintiff her prescription drugs.

Case Resolves

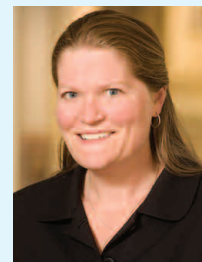
Because the case was virtually indefensible, NCMIC entered into settlement talks with the plaintiff with the consent of Dr. Jeppersen. On behalf of Dr. Jeppersen, the case settled for \$1.9 million with \$800,000 paid by NCMIC, \$750,000 paid by the business owners' carrier and \$350,000 paid by the homeowners carrier. Dr. Mercet was dismissed from the case without an indemnity payment. The plaintiff reserved the right to pursue the case against the remaining defendants. NCMIC's cost to defend the case was \$135,000. 

Examiner case studies are derived from the NCMIC claims files. All names used in Examiner case studies are fictitious to protect patient and doctor privacy.

What Can We Learn? cont.

Harm." Dr. Jeppersen forgot that rule when she did not disclose the patient's health issues during a potentially dangerous boxing event, gave prescription medications that were not the patient's to mask the symptoms and treated without documentation. Further, Dr. Jeppersen allowed her personal involvement to overshadow her professional judgment. The blurring of boundaries, including sponsorship and coaching, should have led Dr. Jeppersen to refer the patient out for treatment.

20/20 hindsight. Every case can be analyzed and dissected through a rearview mirror, and it is easy for reviewers and experts to comment after the fact about the right thing to do. That's why it's important to ask yourself: Would I be comfortable with how my actions would appear before my licensing board or a court of law? If the answer is "no," then it's time to alter your approach.



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healthcare providers in matters related to their professional licenses and malpractice actions. The firm's website is www.adlercohen.com.

Why Healthcare Records Should Never Be “Doctored”

By Carol Romano, Esq.

You are served with legal documents stating that a former patient is suing you for malpractice, or perhaps you receive a letter from the patient’s attorney, advising you that a claim is being made against you (and instructing you to put your carrier on notice). The allegation may be that you caused a vertebral artery dissection while performing a cervical manipulation, or that you failed to recognize or diagnose a serious condition that led to permanent injury. There may be assertions that you did not obtain informed consent.

You have never been sued before; it is startling or perhaps even frightening. The first thing you naturally do is to pull the patient’s chart, either a hard copy or on your computer. You realize that your documentation is inadequate. It appears only fair in your mind that you add things you recall about the patient, or something that you always do as a matter of course, but you simply did not include it in the chart.

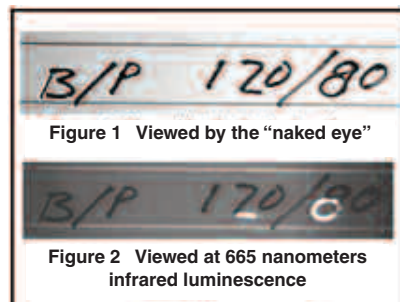
There are situations when adding or deleting information to a chart is legitimate. However, no matter how innocent your intention, any change, if not done properly, can be seen as a self-serving attempt to cover a misdeed.

Say, a week after a visit, you’re reviewing your records and remember a detail you left out. Never backdate an entry. Date your annotation truthfully, and specify that you’re adding it after the fact (a “late entry”). If possible, write why you needed to add new information.

One inviolate rule: Never alter records in any way after they’ve been subpoenaed. That situation is every plaintiff’s lawyer’s dream and every defense lawyer’s nightmare.

How Are Alterations Detected?

Handwritten alterations are extremely easy for a forensic document examiner to detect. Experts can point out variations in handwriting, chemical content of inks, types of pens or types of forms. The example at right shows how obvious detection can be. To the naked eye, the first blood pressure reading appears to be 120/80. However, infrared luminescence



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cases, and has achieved numerous defense verdicts in cases with multimillion dollar exposure.

provided proof that a different writing instrument was used to change the entry, which was originally 170/90. The black ink of the altering pen glows white, showing where the original entry was changed.

In addition, document examiners can do a handwriting examination to determine if the sequence of the documents was altered or to determine who wrote the entry. These experts can determine if any pages were inserted or removed, and by examining folds, creases, and staple or punch holes, they can determine the handling and history of the document.

What About Electronic Records?

Alterations to electronic records are a bit more difficult to detect because the doctor's server or hard drive must be examined by a forensic computer analyst. They can determine the procedures for making entries into the computer, when the entries were made, whether an entry was made during the office visit, after the office visit, days later or at some other point in time. In fact, a forensic computer analyst with specific computer operating systems and software/coding systems can determine whether there had been changes made. This would include reformatting and deletions from any record or records entered into that computer with respect to a given patient. However, this can be quite expensive for some plaintiffs.


There are, however, more common ways in which alterations in both handwritten and electronic records are "caught."

Often, copies of records are supplied to other providers in the ordinary course of treatment, long before a problem or an attorney appears on the scene. The plaintiff's attorney does not assume that the records supplied by you in discovery are identical to the ones supplied to others before a problem manifested itself. Records from all providers for the patient will be obtained, and different charting may be found. Attorneys compare records written by physicians when they are found in more than one set of records.

More often, however, a set of records is obtained by the plaintiff prior to litigation, sometimes without you knowing it (e.g., if you have staff who provide patients with their records without telling you every time) or without you giving it a second thought. If you alter the records after a suit is filed or a claim is made, the records you provide during litigation will be different from those previously obtained. The plaintiff's attorney will look for new entries added to later copies of the records, pages that are missing from the first set of records or additional pages that were in the first set of records.

The Penalty for Altering Records

Improperly changing clinical documents can invite a world of trouble, in addition to jeopardizing a malpractice defense. In some states, you could face criminal charges for fraud and perjury, or you could lose your license. Authorities/state boards may consider an alteration serious professional misconduct.

While it is wise to heed the foregoing precautionary advice, if you are an NCMIC insured, you will have an experienced defense team to fight for you in the event of a claim. They will guide you through the process and protect your interests in all respects. 

What Does "Spoliation" of the Records Mean?

Any change to the record, particularly deletions or the removal of documents, is called spoliation. Plaintiffs' attorneys know that evidence of spoliation of records in healthcare negligence actions can strengthen their clients' cases. They apply the mantra "assume nothing," and believe that record tampering is far too common to think that it does not happen in a malpractice case.

Jurors tend to believe what they see in black and white. Proof of altered records is a sure way to anger and alienate jurors.

However, if there is genuinely an error, it should be corrected or edited only by using the proper methodology. The physician is to draw a single line through the incorrect information without obliterating it. Then the correct information is recorded above, below or beside the original incorrect data, and is initialed and dated.

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October 1–2, 2016

Rogers, Arkansas
Hosted by: Arkansas Chiropractic Physicians Association
Speaker: Thomas E. Hyde, DC, DACBSP
Topic: Manual and Instrument Assisted Soft Tissue Immobilization (12 hours)
To register: Contact Arkansas Chiropractic Physicians Association at 870-739-6880

October 6–9, 2016

Anchorage, AK
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Speaker: K. Jeffrey Miller, DC, DABCO
Topic: Exams and Technique (Two 4-hour sessions)
Speaker: Janet Lintala, DC
Topic: Autism Spectrum Disorder (Two 4-hour sessions)
Speaker: Lori Holt, RN-BC
Topic: Ethics, Professional Boundaries, Risk Management and Ethical Use of Social Media (4 hours)
To register: Contact Alaska Chiropractic Society at 907-903-1350

October 21–22, 2016

Bellevue, WA
Hosted by: Washington State Chiropractic Association
Speaker: David R. Seaman, DC, MS, DABCN
Topic: Chronic Disease Management (4 hours)
Speaker: Janet Lintala, DC
Topic: Autism (4 hours)
To register: Contact Washington State Chiropractic Association at 206-878-6055

November 19–20, 2016

Port Orange, FL
Hosted by: Palmer Chiropractic College, Port Orange Campus, Florida
Speaker: Mario Fucinari, DC, CCSP, DAAPM, MCS-P
Topic: Coding and Documentation (12 hours)
To register: Contact Palmer Chiropractic College at 800-452-5032

December 10–11, 2016

Chesterfield, MO
Hosted by: Logan University
Speaker: Janet Lintala, DC
Topic: Autism (12 hours)
To register: Contact Logan University at 800-842-3234

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Setting the Record Straight When It Comes to Research

Q

I ran into a colleague who told me he was impressed by another chiropractic malpractice insurer's reported funding of chiropractic research. I'm confused because I always thought NCMIC was the leading supporter of chiropractic research. What is the truth here?



A

You're right that a reality check is in order.


NCMIC's support of chiropractic research dates back over two decades. Ask this competitor how long they have been making contributions to chiropractic research and researchers. While you're at it, ask them how much they have really contributed. While they may talk thousands, at NCMIC, we talk millions—\$14.3 million in support of chiropractic research and education since 1995.

At NCMIC, our focus has been to support key projects that validate the impact of chiropractic care and chiropractic's cost effectiveness in healthcare. Some specific funding examples from NCMIC and the NCMIC Foundation include:

- \$1 million to the Foundation for Chiropractic Progress
- \$2 million to the Neck Pain Task Force, which now serves as the latest evidence in research on vertebral artery dissection*

You may hear one of our competitors taking credit when none is warranted. For example, they credit themselves with funding key stroke research, but what they really have done is pay an attorney to simply review the findings of research projects that were funded in large part by NCMIC. At NCMIC, we do not make irresponsible claims that violate your trust and confidence in us.

In today's environment, research is not only expected but also required by policymaking organizations. That is why NCMIC supports research without bias toward philosophy, technique, college or statute. For research to be taken seriously in the world outside of chiropractic, it must be ideologically blind. This is not the case with some of the "pet projects" funded by one of our competitors.

We are proud of the research NCMIC has done to support the chiropractic profession and thank you for allowing us to set the record straight. 

The NCMIC Foundation's Support of Research

In 2003, NCMIC founded the NCMIC Foundation, a nonprofit 501(3)(c) entity, dedicated to ensuring the availability of dollars for chiropractic research and education. This chiropractic research funding has been comprehensive and far-reaching.

The NCMIC Foundation also provides grants to dual-degreed Doctors of Chiropractic to increase the number of people who recognize the value of chiropractic in the healthcare delivery system.

See www.ncmic.com/foundation for project lists.

* The authors of this important research concluded that "... increased risks for VBA stroke associated with chiropractic ... is likely due to patients with headache and neck pain from VBA dissection seeking care before their stroke. We found no evidence to excess risk of VA stroke associated with chiropractic care compared to primary care."