

CONNECTING THE DOTS # 4

Connecting The Dots is an E-Newsletter regarding Chiropractic Malpractice cases. Periodically, I review a malpractice case involving a chiropractic physician and patient. After discussing the allegations made and the facts of the case, I will offer my opinions as to what lessons can be learned from each case. It is my intention that chiropractic physicians will learn how to reduce their risk of malpractice liability and improve the quality of their services. I also hope that the legal community will gain some insight into the nuts and bolts of a chiropractic experts perceptions of these cases.

JOANNE GOES TO A CHIROPRACTOR*

*Actual names of individuals have been changed to protect the privacy of all parties. Otherwise, the following comes directly from the medical and legal records.

Joanne Hinckley presented to a community based medical clinic in April of 2013 for treatment of her neck pain. Initially she was provided conservative medication only based treatment by the medical physician in residence at the facility. Failing to respond to pain medication treatment only, the resident medical physician referred her to the resident chiropractor for evaluation and treatment.

HISTORY

The medical facility records reveal that Joanne had been experiencing neck pain over the past 25 years on an "on/off" basis. Those records also noted that Joanne had a history of, low back pain, hernia, food allergies, anemia, arthritis, asthma, high blood pressure and a prior work injury involving carpal tunnel injury, carpal tunnel syndrome and bilateral carpal tunnel release surgery. The medical record also indicated that in 2002 she had been treated surgically with a gastric bypass. On her visit to the community health center she reported a further history of dizziness, headaches, joint pain and stiffness and blurred vision.

Comment: The medical health history did not request any information from Joanne regarding any prior injuries, car accidents etc.

On 05/17/2013 Joanne was first seen by the chiropractic physician (Dr. Singer) at the community Health Center. She describes her symptoms as pain in the right upper thoracic spine near the shoulder and under the scapula which had been increasing for the past few months. She rated her pain as 6–7/10. Joanne also provided a history to the chiropractic physician which she described as "overactive nerves, asthma, gastric bypass and hypertension." Joanne also apparently told Dr.

Singer that over the years she had been seen by “a lot of chiropractors”. However, the medical records reveal no indication that Dr. Singer made any attempt to secure the chiropractic treatment history from Joanne or secure prior chiropractic records.

The chiropractic physician according to the May 17 2013 records performed an examination that included maximum foramina compression of the cervical spine, Kemp test, straight leg raise and Yeoman test. He provided a diagnosis of cervical sprain / strain.

There is no indication in the medical record that Dr. Singer made any attempts to secure Joanne's prior medical records particularly those records involving her 2007 industrial injury related to carpal tunnel syndrome and any imaging that had been performed as a part of the treatment plan regarding the industrial injury. Later, in his deposition Dr. Singer testified that he did not believe it was important to his treatment if he had prior records including x-rays.

Commentary: The medical records do not reveal any review on the part of Dr. Singer of the medical records of Joanne held at the Community Health Center. (Later, at his deposition, Dr. Singer would testify that he did not consult Joanne's medical file). There was no initial neurological evaluation performed by Dr. Singer. Deep tendon reflexes were not evaluated and there was no assessment of sensory or motor function involving the cervical spine or the upper extremities.

INFORMED CONSENT

When it comes to informed consent for chiropractic treatment the standard of care is that every patient shall have risks of treatment explained and sign an informed consent. Unlike many states, in the state of California this is required by Board of Chiropractic examiner's regulation. And must be specific to the risks of chiropractic treatment to the patient, and be done in writing and kept in the medical record. In this instance, there is no specific written chiropractic informed consent nor did Community Health Center's provide Joanne with any type of medical informed consent.

THE TREATMENT

Chiropractic treatment utilizing diversified technique was commenced provided at C1, C4, T1, T3, T12 and L5. Dr. Singer describe the anticipated outcome as "guarded due to comorbidities pending reevaluation in 4 weeks". He placed Joanne on a treatment plan of 3 times per week for 4 weeks.

Joanne continued to see Dr. Singer for chiropractic treatment three times a week from 05/17/2013 until 07/26/2013. During the time period from 05/17/2013 until 07/26/2013 Joanne presented to Dr. Singer three times per week and received cervical spinal adjustments/manipulation with the diversified method on each visit. The records reveal that Joanne's symptoms did not improve, and that they in fact got worse, not only resulting in increased neck pain, but also the onset of arm and hand bilateral numbness, tingling, dizziness, loss of coordination and loss of strength.

THINGS START TO GO DOWN HILL

The medical records indicate that Dr. Singer concluded that the deterioration was most likely related to her prior history of carpal tunnel syndrome. In June of 2013 Dr. Singer amended his diagnosis to include cervical disc degeneration. However, there was no imaging study upon which to base such a diagnosis nor was there any new examination most particularly orthopedic testing and or a neurological evaluation to support such a diagnosis. To his credit, it was at this juncture, that Dr. Singer indicated the need for cervical x-rays. Despite the fact that he had the legal authority to order the x-ray study at any imaging facility, the Community Health Center required that the resident medical physician make all imaging orders.

Finally, the medical physician at the Community Health Center "approved" a request for a cervical x-ray study on Joanne. The findings of the five-view cervical spine study included narrowing of all cervical disc spaces from C3-T1 with osteophytosis posterior anterolateral projecting into the intervertebral foramen at every level from C3-C7 prominently at C3/4 and C5/7 on the right and C3/4 and C5/6 on the left. Further anterior and posterior osteophytes projecting into the spinal cord were described by the radiologist.

BAD PROFESSIONAL JUDGEMENT?

Despite these radiographic findings and Joanne's deteriorating neurological symptoms Dr. Singer continued to provide chiropractic treatment several days per week utilizing diversified technique to the cervical spine, and he did not make a referral to a neurologist. Additionally, there is no indication that the x-ray findings were discussed with Joanne, or that there was any new discussion in regards to informed consent based on the imaging findings.

Following the x-ray examination, Joanne's condition continued to deteriorate. Her neck pain was increasing, she was having episodes of dizziness, falling into walls while she walked, the numbness and tingling in her hands and arms was getting worse and generally she reported feeling bad. The medical records are silent in so far as any consideration on the part of Dr. Singer regarding the deteriorating status of Joanne.

HYDRATION WAS THE ANSWER?

On 07/19/2013 Joanne reported to Dr. Singer that she had fallen several times recently. She further indicated that her neck pain was continuing to worsen and that she was beginning to have more and more difficulty because of the numbness and tingling in her upper extremities. The medical record/soap notes of that date indicate that Dr. Singer did not perform any additional examination. However, he did discuss with JoAnne hydration and diet which is what he attributed her dizziness to.

THE STRAW THAT INJURED JOANNES NECK

On 07/26/2013 Joanne reported to Dr. Singer and was noted to be "notably off-balance today. Increased neck pain. Increased numbness and tingling. Dr. Singer's soap notes reveal no added examination. However, Dr. Singer did make a note that there would be no chiropractic manipulative treatment to the cervical spine only "mobilization" and he referred Joanne back to Dr. Clark the medical director of the Community Health Center. Dr. Singer according to the reviewed records provided only "mobilization" to her neck on 07/26/2013.

JOANNE CHALLENGES DR. SINGERS RECORDS

In her deposition, Joanne stated that she did receive cervical adjustment on the 07/26/2013. She also testified that she had no idea what mobilization was or looked like. Joanne testified that the 07/26/2016 adjustment hurt like no other adjustment she had ever received. Joanne further stated in her deposition when specifically describing the 07/26/2013 chiropractic adjustment she had received that the following occurred: "Well, right away the adjustment hurt. That had never happened before. He does the adjustment the same way he usually does getting it to pop from the left side and getting it to pop from the right side. And this time it hurt. A lot. As I got up from the table I was very dizzy. I didn't feel good. I told Dr. Singer that it hurt and that I was not feeling well. Dr. Singer told me that I should go home and rest. I left the office with my daughter who was with me and

drove me home. I went to bed. I felt dizzy sick and nauseous for several hours. When I tried to get up from bed I fell and was disoriented. It was after that when my daughter took me to the hospital.” Later in the course of Joanne's deposition when asked to describe the nature of the usual spinal adjustments provided to her cervical spine she stated the following “I was laying on my back and he would tilt my head up or down and would give it a good crack on both sides. And if it didn't pop he would give it more - he would want that pop”

THE ER

Joanne was examined by a neuro surgeon at the ER. The exam findings included bilateral stocking glove paresthesia in both arms and hands, loss of cervical ROM, loss of dexterity, and gait dysfunction, myotome motor loss, coordination loss, and general malaise.

At the emergency room following neurosurgical consultation and imaging Joanne was diagnosed with severe cervical stenosis with cervical myelopathy/spinal cord myelopathy with progressive neurological deterioration.

Imaging at the ER included cervical x-ray, cervical MRI, brain MRI

Cervical MRI revealed marked central stenosis at C3/4 with effacement of the CSF collar. There was myelopathy at that level. The radiologist indicated that these findings may be related to "high-grade central stenosis" and recommended an MRI with contrast. MRI Impression further included moderate central stenosis at C5/6 and other degenerative changes including mild/moderate central stenosis at C6/7.

MRI of the brain with and without contrast was provided at the ER. The findings of the brain MRI revealed: age-related white matter changes probably vascular in origin. 5 mm enhancing non-expansive lesion in the high cervical cord posterior to the upper dens on the post contrast axial and sagittal sequences. In light of the nonspecific white matter changes in the center semiovale this may represent a demyelinating process.

The on-call Neurosurgeon who was called in to consult on Joanne's case made a recommendation for cervical surgery, to include fusion of C2/3 and C3/4 due to the stenosis and myelopathy.

Joanne was reluctant to have surgery right away, and wanted to rest and think about it. The ER neurosurgeon warned her to return to the ER if her current

symptoms worsened at all, and also warned her that a prolonged delay could result in complications.

Joanne returned to the ER a few weeks later with report of worsening neck and upper extremity problems as well near full loss of balance.

A new cervical spine MRI without contrast was performed which revealed the following: 2 mm anterolisthesis C3/4 trace anterolisthesis C7/T1. Abnormal cord signal intensity from the C3/4 level to the C5/6 level splaying shape. This is larger than the area of abnormal signal previously. C3/4 diffuse bulge osteophyte complex moderately narrowing the central canal and lateral recess with severe bilateral foraminal narrowing and edema in the articular process on the right. C4/5-disc bulge indenting the thecal sac probably acquired fusion of the right facet joint mild right foraminal narrowing. C5/6 Diffuse bulge osteophyte complex with a more focal right central protrusion resulting in moderate central canal narrowing. Moderate bilateral foraminal narrowing. Conclusion: Continued moderate canal narrowing at C3/4. The area of cord signal abnormality has increased and now extends inferior to the C5/6 level. Once again, a contrast study is recommended.

Joanne's diagnosis was again confirmed as severe cervical stenosis with cervical myelopathy/spinal cord myelopathy with progressive neurological deterioration.

Shortly after the second ER visit Joanne was treated surgically with a C2/3, C3/4 fusion

THE LAW SUIT

Subsequent to her surgery Joanne filed a lawsuit for malpractice against Dr. Singer.

JOANNE HIRES A CHIROPRACTIC EXPERT

Following review of all of the chiropractic records, medical records and hospital records the chiropractic expert on behalf of Joanne testified to the following:

Dr. Singer failed to obtain a proper history conduct a proper physical examination, conduct proper neurological exams and obtain informed written consent prior to treatment. Dr. Singer failed to keep adequate and complete medical records. Dr. Singer failed to refer JoAnne to a neurologist when her neurological symptoms were not improving but were getting worse. Dr. Singer breached the standard of care by continuing to provide cervical spine adjustment/manipulation even after he

reviewed x-rays which indicated JoAnne had severe cervical disc disease with osteophytes projecting several millimeters into the spinal canal. Dr. Singer should have obtained further imaging and conducted further neurological examination to ensure that adjustment/manipulation of Joanne cervical spine was not contraindicated. Dr. Singer should have personally visualized and reviewed cervical x-rays not only for pathology but to help determine whether JoAnne was in a manipulatable condition. Dr. Singer should have suspended treatment when he finally had reason to obtain x-rays and or an MRI due to concerns of stenosis and myelopathy. When Joanne first reported, "feeling off" and experiencing dizziness Dr. Singer should have suspended treatment, obtained an MRI, conducted a neurological exam and referred Joanne to a neurologist. Instead Dr. Singer continued to perform "grade 3 mobilization" for several visits.

Joanne's expert further noted that Dr. Singer had argued there was a delay in obtaining x-rays and MRIs because he was not "allowed" to order these studies himself while working at Community Health Center. Joanne's expert stated that chiropractors have a legal entitlement to order or refer individual patients to outside facilities to obtain imaging. Chiropractors also have a professional responsibility to obtain further imaging when they have or should have had reason to suspect imaging is needed. At that time treatment, should have been suspended until the proper imaging was obtained to determine whether cervical spinal manipulation/adjustment was contraindicated. Joanne's chiropractic expert's final opinion was that Dr. Singer fell below the standard of care in the chiropractic community when treating JoAnne.

DR. SINGERS DEFENSE EXPERT WEIGHS IN

Dr. Singer, through his malpractice insurance company, engaged a defense chiropractic expert.

Dr. Singer's chiropractic expert, when asked if Joanne's pre-existing cervical myelopathy prior to commencement of chiropractic treatment could have been exacerbated as a result of chiropractic adjustment/manipulation resulting in an increased degree of cervical myelopathy, testified "No" and further stated that cervical spine adjustments "when properly performed" cannot exacerbate a pre-existing myelopathy.

He went on to testified that Joanne's symptoms and her declining neurological progression were a "natural progression of things"

Dr. Singers chiropractic expert also testified that there should be an informed consent telling the patient about the risks associated with chiropractic care. He stated that it is the basic standard of care when you are being presented with a new patient. He further acknowledged that in this case there was no such informed consent provided to Joanne. Insofar as informed consent was concerned the defense expert further testified that informed consent could be acquired verbally. However, despite the absence of any evidence of either a mandatory written informed consent or notes in the medical record regarding a verbal informed consent the expert relied only on the deposition of Dr. Singer as his foundation for believing informed consent had been provided.

The defense expert also testified that Dr. Singers' obligation to obtain medical information was necessarily more limited because Joanne was being co-treated by a medical physician.

Dr. Singer's expert also testified that it was completely unnecessary for Dr. Singer to have taken a history regarding Joanne's prior carpal tunnel conditions or for that matter have obtained her prior medical records and or cervical imaging. When asked a question of whether or not it is accurate that Dr. Singer fell below the standard of care by not obtaining information related to the pre-existing carpal tunnel surgeries the expert however testified affirmatively. When asked whether or not Dr. Singer met the standard of care of chiropractors in so far as obtaining a complete medical history on the first visit the expert responded that it "depended on the circumstances". When asked if, based on the circumstances of Joanne's case, Dr. Singer should have documented better the medical history, the defense expert stated:

"A better history would have been preferable" but the history that was taken was not below the standard.

When asked specifically whether or not Dr. Singer fell below the standard of care when not documenting Joanne's prior carpal tunnel syndrome and the related paresthesias, the expert admitted that when the patient has complaints of extremity paresthesias he believes that history should have included more inquiry regarding the prior carpal tunnel syndrome surgery. When asked as to whether or not it is the standard of care that a chiropractor obtain x-rays prior to performing any manipulation/adjustment he responded by stating it is not the standard to take x-rays ever in any chiropractic case. When asked about the International Chiropractors Association Best Practices and Practice Guidelines publication in regards to spinal imaging which concluded that routine plain film radiography is

the standard practice of chiropractic and has been for nearly 100 years Dr. Singer's expert disagreed with those guidelines.

OUTCOME

Joanne's case never made it to trial. Following the declarations and deposition testimony of the respective experts for both the plaintiff and the defense, the parties agreed to a pretrial mediation. At the mediation, the case was decided in favor of Joanne. Joanne was awarded a mid-6 figure award.

COMMENTARY

It seems almost beyond belief to me that at this point in time any doctor of chiropractic could fail to provide a specific chiropractic based patient based Informed Consent discussion to a patient, and memorialize that discussion in writing.

For many years, the issue of Informed Consent in general, and the California Board of Chiropractic Examiners regulatory requirements in that regard have been on the curriculum of Chiropractic Continuing Education programs. There is simply no way that any DC could have failed to be on the receiving end of such a discussion, unless of course, something else was the focus of attention during the program.

This is even more so where the California Board of Chiropractic Examiners sets forth the regulatory requirement that a DC SHALL provide “A WRITTEN INFORMED CONSENT TO EACH PATIENT SIGNED BY BOTH PATIENT AND CHIROPRACTOR”.

While having provided written informed consent to Joanne would have mitigated in part the Standard of Care issues faced by Dr. Singer, it is a worthy discussion to consider the concept of informed consent over the course of a treatment plan. We need to ask ourselves, if our understanding of the risks of chiropractic treatment understood at the end of the first visit, can in any way change over the course of treatment. I suggest, that while perhaps not a legal necessity, ongoing informed consent during the course of a treatment plan, when known circumstances change, (such as in the case of Joanne) is of great value for multiple reasons. In a case like that of Joanne, as soon as the imaging became available, my understanding of the risk of treatment and the techniques to use (garnered over a 40 + year career as a chiropractor) would have most certainly changed. Informing a patient of the impact of newly known medical information such as imaging findings, keeps the patient

aware of the risk factors, gives them understanding of the steps taken by the DC to mitigate those risks, and allows the patient to make informed decision making as to how they wish to proceed. As a further benefit, it seems common sense to me, that such an implementation of ongoing informed consent, also mitigates the risks taken on by the DC.

Many an allegation of malpractice against a DC has been mitigated when the subject of the allegation, can be shown to have been described to the patient after which the patient provided their informed consent to proceed.

So, consider this, which do you want your patients to say about you to their friends and family?

“That chiropractor really screwed me up, I will never see a chiropractor again!”

OR

My chiropractor was great! He/She figured out that my problem was something that needed more than just chiropractic treatment, got x-rays and an MRI, referred me to another doctor, who worked with the chiropractor, and I avoided what could have been a really bad problem! I refer all my friends to my chiropractor!

Questions / Comments:

If you have questions, comments, or just want to argue with me over the issues I discuss in this case, please by all means send me an email at dr.rick.skala.dc.qme@gmail.com
Hopefully you do not need to contact me because you need my services as a chiropractic expert, but if you do please send me an email at dr.rick.skala.dc.qme@gmail.com

Yours Truly

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"Good philosophy must exist if for no other reason, because bad philosophy must be answered."
CS Lewis