

## THE CHIROPRACTIC STANDARD OF CARE

When the supreme court of the United States, was considering the issue of pornography. Justice Stewart Potter became a greater part of our legal lexicon when he responded in regards to defining pornography saying “I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description [hard-core pornography]; and perhaps I could never succeed in intelligibly doing so. **But I know it when I see it.....**” [Jacobellis v. Ohio](#), 378 U.S. 184 (1964).

Hopefully, the question of what constitutes a breach of the Chiropractic Standard of Care can be better defined. However, one must consider that the chiropractic profession contains a wide range of variability in terms of philosophical adaptation on the part of the individual chiropractic physician as well as a wide range of legal definitions from state to state in so far as what the scope of chiropractic practice is. This article will not address the 50 state variability, but suffice it to say the various scope of practice regulations range from the very limited (Michigan) to California long known as a state with a broad scope (which is now undergoing a regulatory challenge with the forced importation of the California Board of Chiropractic Examiners into the California Department of Consumer Affairs – which is attempting to limit the scope of practice of the chiropractic physician in California to a 1923 standard!) and most recently in states such as New Mexico where the more recent “advanced practice” regulations allow limited prescription and injections as a part of the scope of chiropractic practice.

An internet search in regards to “chiropractic standards of care” reveals a number of “treatment guideline” or “clinical guideline” documents which are more suited for determination of treatment plans that are reimbursable by third party payors. There is no universal “Standard of Care” document or binding reference to be found in such a search. A few states have various “standard of care or practice” documents on the web sites of state chiropractic associations and or licensing boards.

### DEFINING THE STANDARD OF CARE

Clearly there is a disconnect between the medical legal determination of Standard of Care and guidelines to clinical practice.

Many of the so called clinical guidelines offer a narrowly confined approach to clinical management based on the influence of the insurance industry and what they are willing to pay for (which increasingly seems to be less and less) as opposed to what the chiropractic physician should in fact do to assure his/her own standard of care.

In as much as there is wide diversity amongst the 50 states as to scope of practice, any regulatory body statements or published “scope of practice” standards cannot be used as a “Standard of Care” reference.

Thus the question defaults to this. What is the medical legal definition of a “Chiropractic Standard of Care” Most of the definitions of standard of care have a few common threads. Here is what several sources have to say:

*The Free Dictionary: standard of care* n. the watchfulness, attention, caution and prudence that a reasonable person in the circumstances would exercise. If a person's actions do not meet this standard of care, then his/her acts fail to meet the duty of care which all people (supposedly) have toward others. Failure to meet the standard is negligence, and any damages resulting therefrom may be claimed in a lawsuit by the injured party. The problem is that the "standard" is often a subjective issue upon which reasonable people can differ. (See: [negligence](#), [duty of care](#))

*The Law Dictionary (Blacks):* Degree of care a prudent and reasonable person will exercise under the circumstances.

*Nolo: Standard Of Care.* The degree of care (watchfulness, attention, caution, and prudence) that a reasonable person should exercise under the circumstances. If a person does not meet the standard of care, he or she may be liable to a third party for negligence.

Most of these definitions also cross reference to “duty of care”.

*Law.com duty of care* n. a requirement that a person act toward others and the public with the watchfulness, attention, caution and prudence that a reasonable person in the circumstances would use. If a person's actions do not meet this standard of care, then the acts are considered negligent, and any damages resulting may be claimed in a lawsuit for negligence.

## **IS THERE A LEGAL DEFINITION OF THE CHIROPRACTIC STANDARD OF CARE?**

Based on the definitions above, as well as my medical legal experience, the chiropractic standard of care can be summed up as follows:

*"What a prudent, competent state licensed chiropractic physician in the same general region (state) would do under the same or reasonably similar situations or circumstances."*

## **HOW IS THE CHIROPRACTIC STANDARD OF CARE DETERMINED?**

Like all health care professions, chiropractic physicians are trained in schools/colleges of chiropractic (43 worldwide)\*. In the USA, each of the 17 chiropractic colleges are accredited based on a number of criteria, not the least of which is their respective basic science, and clinical science curriculum. Within these curriculum is contained the foundation for the Chiropractic Standard of Care. In addition to college curricula, the chiropractic profession is supported by established scientific, empirical, and clinical evidence. Over the course of time, a consensus of opinions and conclusions regarding things such as the scope of use of various forms of chiropractic treatment, where these methods are taught, and the clinical utility and proper application for any specific condition(s) for which the treatment is applied are all factors of consideration. In certain cases or jurisdictions Case Law may prove relevant in defining specific aspects of the standard of care on a legal basis.

## **REAL WORLD OCCURRENCES**

So what are the more common lapses in standard of care that end up in a law suit or board compliance action? (this list is by no means complete)

1. Lack of informed consent given to the patient signed by the patient.
2. Adverse consequence resulting from treatment.
3. Negative side-effects of the treatment employed.
4. Mis diagnosis.
5. Failure to diagnose.
6. Failure to reexamine.
7. Failure to refer.
8. Failure to keep adequate records.
9. Altering patient records.

## SO WAS JUSTICE POTTER CORRECT?

In any case involving breach of “Standard of Care” there are going to be advocates on either side of the question diligently working to advocate their side of the argument. Each case will largely depend on the condition of the chiropractic records, and the impressions, opinions and conclusions of the experts who review those records, and eventually give testimony. This article is by no means a treatise on the subject of the “Chiropractic Standard of Care”. It does set forth my experience and the general concepts relating to questions that arise over the “Chiropractic Standard of Care”. Each and every case is unique with its own set of facts. As for me, once I diligently review a case with questions regarding “chiropractic standard of care”, I will apply the principals set forth herein. At the end of the day, even with the availability of the outline above, and others like it, the best I can say is not too far afield from Justice Potter (and I in no way compare my intelligence to his intelligence and wisdom when I say this): “I shall not today attempt further to define the kinds of material I understand to be embraced within the medical records reviewed and perhaps I could never succeed in intelligibly doing so. **But I know what breach of the Chiropractic Standard of Care looks like when I see it”**

Richard K. Skala DC, QME  
Certified Industrial Disability Evaluator  
Certified AMA Impairment Rater  
Fellow Academy of Forensic Industrial Chiropractic Consultants  
Certified Disability Analyst  
Fellow American Board of Disability Analysts  
Certified in Neuro Electrodiagnostics  
Board Eligible Chiropractic Neurologist

\* [http://en.wikipedia.org/wiki/List\\_of\\_chiropractic\\_schools](http://en.wikipedia.org/wiki/List_of_chiropractic_schools)