

**From the Clinic to The Courtroom  
Risk Management & Quality Strategies  
June 10, 2023**



Sponsored by Health Network Solutions

Michael Allen, R.Ph., JD  
Batten Lee, PLLC  
Raleigh, NC

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## Objectives

- › *Attempt to Minimize Your Chances of a Civil Malpractice Claim*
- › *Attempt to Limit Your Potential for a Regulatory Board Complaint*
- › *Improve Your Ability to Defend Yourself Against Future Claims*
- › *Improve the Quality of Your Interactions with Patients*
- › *Improve Quality of Care Provided to Patients*



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## Disclaimers

- › *No Financial Interest in Any Presentation Topic*
- › *Presentation is Not Legal Advice Applicable to Any Specific Situation*
- › *Remember Small Changes in Facts May Make Big Changes in Result or Legal Analysis*
- › *Presentation is Not Intended to Offer Medical Recommendations for any Specific Patient Presentation*



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### Considerations Following Unexpected Response to Care

- › *Established Patient Presents for Care*
- › *No New Complaints- Routine Presentation*
- › *Receives Routine Cervical Adjustment*
- › *When Checking Out of Clinic Reports Potential Neurological Symptoms to Staff Member*
- › *Staff Notifies You of Symptoms*
- › *What Are Your Thoughts and Initial Plans?*



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### Possible Responses?

- › *No Worries- You Attended Dr. Armstrong's Presentation On VAD*
- › *Get Patient Out of Clinic As Quickly as Possible*
- › *Tell Staff to Schedule for Follow-Up Next Day*
- › *Promptly Re-Evaluate Patient*
- › *Put Patient In Your Car and Transport to ER*
- › *Contact Emergency Medical Services for Transport*



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### If Patient is Transported to ER: Discussions With Other Providers

- › *EMS Staff: Unlikely That Your Chart is Available So Report Facts, Facts and More Facts*
- › *ER Medical Staff (Nurses, MDs and Physician Extenders): Be Careful to Provide Complete Clinical Picture*
- › *Follow Up Calls to Patient?*
- › *Follow Up Call to Hospital Clinical Team?*
- › *Hospital Visits ?*
- › *Call Your Malpractice Carrier?*



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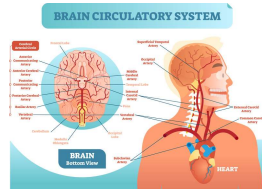
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## Vertebral Artery Dissection Case Challenges

Primary Challenge is  
Temporal Association  
Between D.C. Care &  
Symptoms

Simple Jury Appeal  
to Argument

Cases Often Have  
Larger Damage Claims



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## Common Plaintiff Arguments: Stroke Cases

- › *Inadequate History*
- › *Failure to Perform Appropriate Exam*
- › *Inadequate Documentation*
- › *Failure to Obtain Informed Consent*
- › *Misdiagnosis of Pre-Existing Conditions*
- › *Improper Treatment of Pre-Existing Conditions*
- › *Failure to Timely Refer for Neurological Care*
- › ***Temporal Relationship: Prompter Hoc Doctrine***



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## Prompter Hoc After This- Therefore Because of This

Rooster Crowed



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## Prompter Hoc

Then the Sun Rose



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## Prompter Hoc Fallacy

Inappropriate Attempt  
To Declare An  
Established Causal  
Relationship Between  
Two Sequentially  
Occurring Events.



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The New York Times

<https://www.nytimes.com/2023/03/15/well/live/neck-manipulation-chiropractor.html>

## Is It Safe to Get Your Neck Manipulated by a Chiropractor?

Most joint manipulations aren't dangerous, but one rare complication can result in serious injury.

By Dana G. Smith  
March 15, 2023

### So what should you do about neck pain?

Accidents stemming from chiropractic manipulations are very uncommon, but because of their potential severity, it may be best to avoid the treatment if you are experiencing neck pain. Fortunately, there are several other options available.

The first line of treatment Dr. Hilibrand recommends is over-the-counter pain medications combined with physical therapy. "Eighty percent of the people with neck pain will get better after the first six weeks with just those two interventions," he said.

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A recent graduate who went to a chiropractor for lower back pain and came out of it with four severed arteries and paralysis has made it home after eight months of treatment.



... Catlin Jensen is living in a new home that has disabled access after about eight months of treatment after a chiropractor severed four of her arteries (Pictures: Facebook/Caring Bridge)  
© Provided by Metro

Metro 3/7/23



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### How Do We Defend Alleged Malpractice Cases ?

- ▶ *Challenge Plaintiff's Logic*
- ▶ *Establish Legal Standard of Care*
  - *Statutes*
  - *Expert Witness Testimony*
- ▶ *Challenge Causation*
  - *Review Medical Evidence*
  - *Expert Witness Testimony*
  - *Clinical Literature*



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### What is Medical Malpractice

"Medical malpractice" means doing that which the reasonably prudent health care provider or health care institution would not do or not doing that which the reasonably prudent health care provider or health care institution would do in the same or similar circumstances.

SC Code of Laws Section 1579-110 (6)



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### Medical Malpractice Duty of Care

In a medical malpractice action, the duty of care under South Carolina law is that of an average, competent practitioner acting in the same or similar circumstances.

Sultan v Healthsouth  
400 SC 412 (2012)



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### Medical Malpractice Duty of Care

- Does Not Require Heightened Standard of Care for Health Care Providers
- Does Not Require Standard of Perfection
- Does Not Allow Presumption of Negligence Based on Injury
- Highest Degree of Skill Not Required



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### "Proof" of Standard of Care & Medical Causation: Role of Expert Witnesses



•Expert Witness Must Demonstrate Knowledge of Applicable Standard by Training, Education and Experience

•Expert Witness May Offer "Opinion" Testimony



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## S.C. Expert Witness Reporting

If a judge finds that an expert health care provider or health care institution in a medical malpractice action in this State has offered testimony or evidence in bad faith or without a reasonable basis in fact or otherwise acted unethically in conjunction with testifying as an expert in deposition or at trial, the judge must report the expert to the state entity that licenses and regulates the profession of the expert or the type of health care entity represented by the expert.

► SC Code of Laws Section 15-79-130

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## Proximate Causation



► *Plaintiff Must Show Alleged Negligence Was "A" Cause of Alleged Injury – Not The Only Cause*

► *Often is a Significant Dispute in Many Chiropractic Cases Because Plaintiff Often Presents with Condition that is the Alleged Injury*



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## Common Plaintiff Contentions Legal Causation Stroke Case

*Chiropractic Manipulation*



*Dissection*



*Cerebral Ischemia*



*Stroke*



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### Common Defense Contentions Legal Causation Stroke Case

**Pre-existing Dissection** →

**Neck Pain and/or Headache** →

**Chiropractic Manipulation** →

**Embolization of Thrombus** →

**Cerebral Ischemia** →

**Stroke**



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### Defense Theories: Causation Arguments

- *Reference Chiropractic Literature*
- *Temporal Relationships Create False Assumptions*
- *Imaging Study Analysis re Timing of Events*
- *Importance of Patient History*
- *Importance of Physical Exam Findings*
- *Explore Alternative Causes of Event*



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### Defense Theories: Complete Medical Record Review

- *Reported Onset of Symptoms to Other Providers*
- *Prior History of Ischemia*
- *Dizziness/Nausea and Vomiting*
- *Headaches/Migraines*
- *Vascular Disease*
- *Connective Tissue Disease*
- *Hypertension*
- *Medication Use (Oral Contraceptives, Quinolones)*
- *Smoking History*
- *Family History Stroke*



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## Medical Malpractice Claims History

- › **Code of Hammarabi 1792-1750 BC**
  - *If the Doctor Opening an Abscess Shall Kill the Patient, His Hands Shall be Cut Off*
- › **First U.S. Medical Malpractice Lawsuit Initiated in 1794**  
(*Cross v Guthey, Conn.*) (Surgical Death)



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## National Practitioner Database U.S. Chiropractor Reports



<https://www.npdb.hrsa.gov/analysisistool/#> (Accessed 2.21.22)



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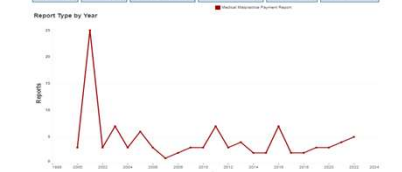
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## National Practitioner Database DC Payments Made S.C. 2000 -2022

**Introduction**  
The National Practitioner Database (NPD) allows you to generate reports for National Practitioner Reports (NPRs) and National Medical Malpractice Reports (NMMRs) using the NPD through September 31, 2022. You may view your data by using the filters available in the 'Filter by' section of the tool. You may also view the data by using the filters available in the 'Filter by' section of the tool.

The report will generate a number of charts and tables for each of the filters you select. The report will also generate a table of the data for each of the filters you select. The report will also generate a table of the data for each of the filters you select.



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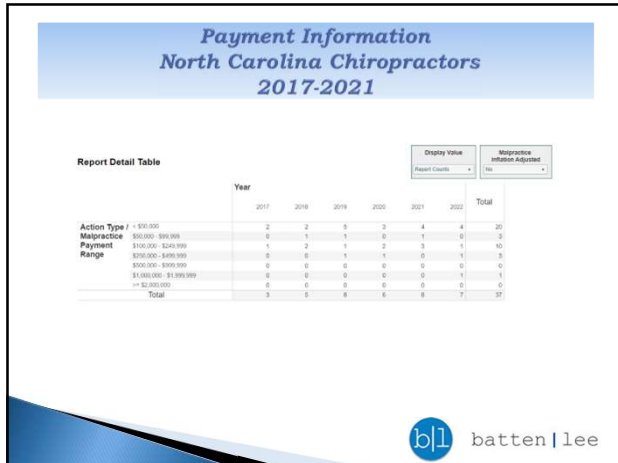
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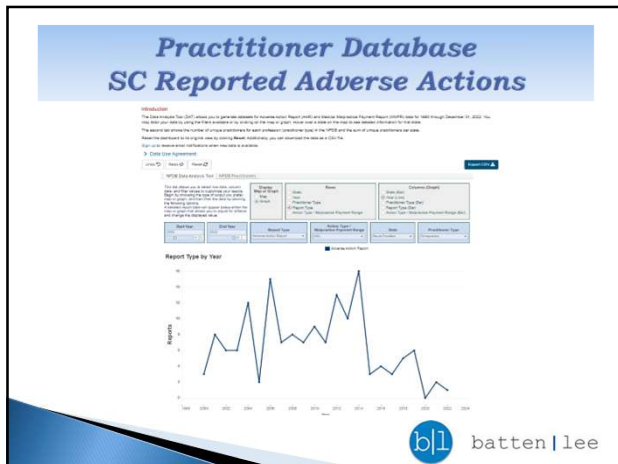
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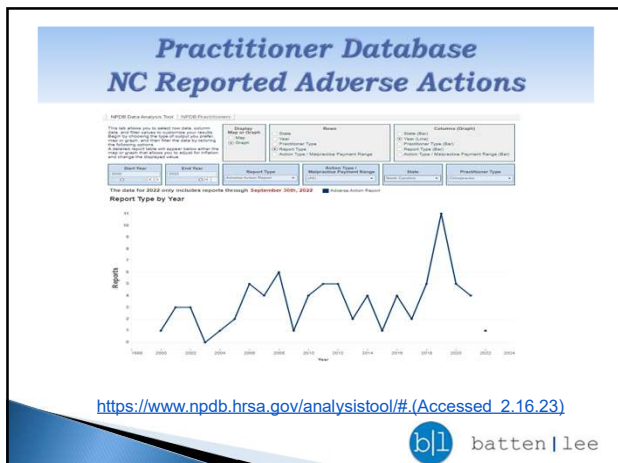
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### Litigation Issues

- › **Disc Injuries**
- › **Soft Tissue Injury**
- › **Fractures**
- › **Failure to Diagnose or Delayed Diagnosis**
- › **Burns**
- › **CVA & VAD**
- › **Informed Consent**
- › **Boundary Issues**



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### Common Litigation Theories

- › **Inadequate History**
- › **Inadequate Orthopedic Exam**
- › **Inadequate Neurological Exam**
- › **Failure to Order Imaging Studies/Testing**
- › **Incorrect Diagnosis**
- › **Contraindications to Treatments**
- › **Failure to Make Referral**
- › **Lack of Informed Consent (Lack of Discussion of Material Risks & Alternatives)**
- › **Improper Forceful or Violent Adjustment**



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### When Can Your Patient File A Lawsuit?

- › **STATUTES OF LIMITATION DETERMINE LITIGATION TIMING**
- › **GENERAL RULES FOR CHIROPRACTIC MALPRACTICE CLAIMS**
  - *Claim Within Three Years of Care*
- › **LOTS OF EXCEPTIONS**
  - *Minors and Incompetents*
  - *Fraud*



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### ***Notice of Intent to File and Pre-Suit Expert Affidavit***

- › South Carolina law requires the filing of a Notice of Intent to File Suit and an affidavit of an expert witness as a prerequisite to filing a medical malpractice lawsuit.
- › The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his attorney.
- › The parties are required to participate in a mediation conference no later than 120 days from the service of the Notice of Intent to File Suit. If the claims cannot be resolved through mediation, the plaintiff may commence a civil action in court.



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### ***Response to Notice or Lawsuit***

- › ***Do Not Ignore- Clock is Running***
- › ***Report Immediately to Professional Liability Carrier***
- › ***Avoid Discussion with Friends & Colleagues***
- › ***Preserve All Records***
- › ***NEVER-NEVER-NEVER - "Clarify" Records***



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### ***Preparation For Initial Meeting with Attorney***

- › ***Understand Privileged Communication***
- › ***Explain Chiropractic Records to Counsel***
- › ***Teach "Medicine" to Attorney***
- › ***Honestly Discuss Case Strengths and Weaknesses***
- › ***Help Your Attorney Understand Reasons for Decisions You Made or Did Not Make***
- › ***Disclose Everything That Worries You***
- › ***Discuss Information Not in Record***
- › ***Provide All Records to Counsel***



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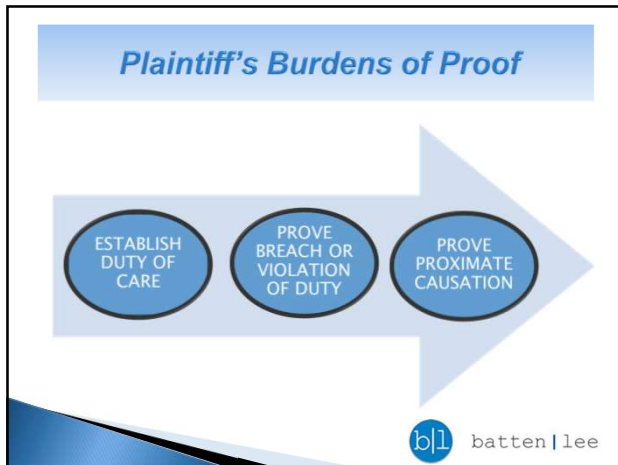
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### Liability for Acts of Others "Vicarious Liability"

- › **Acts Performed in Course and Scope of Employment**
- › **May Also Include Acts of Omission**
- › **Employee May or May Not be a Defendant**
- › **Includes Locums Providers**
- › **Includes Chiropractic Assistants**
- › **Includes Administrative Staff**

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### Damage Claims

- › **Past Medical Expenses**
- › **Future Medical Expenses**
- › **Pain & Suffering**
- › **Funeral Expenses**
- › **Lost Wage Claims**
- › **Loss of Benefit Claims**
- › **Attendant Care and Supportive Care**
- › **Spousal Claims**
- › **Punitive Damage Claims**

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### Significant Litigation Pre-Trial Activities

- › Answer- Response to Complaint
- › Written Discovery – Interrogatories and Requests for Documents
- › Depositions Plaintiff & Defendant
- › Depositions May Include Employees
- › Depositions of Treating Physicians
- › Depositions of Expert Witnesses



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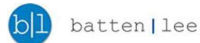
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### Lawyers Behaving Badly



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### Settlement Considerations

- › *Mediation is Mandatory Process*
- › *Settlement is An Option Anytime in Litigation Process*
- › *Settlement Reporting Requirements- NPDB*
- › *Possible Impact on Insurance Participation*
- › *Psychological Considerations*
- › *Settlement Agreement is Critical- Seek Counsel*



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## Going to Trial

- › Preparation- Preparation- Preparation !!
- › Trial Presentations Tools
  - Anatomical Models
  - Illustrations and /or Animations
  - Record Enlargements
  - Exhibits Created During Testimony
- Defendant and Experts Must be “Teachers”
- › Trial Duration: One to Eight Weeks
- › Your Best Opportunity to Tell Your Story
- › Trial Will Likely Occur Years After Care at Issue



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## Who Evaluates Your Care

- › Jury of 12 “Peers”
- › Unanimous Verdict Is Required in South Carolina (Unless Parties Agree Otherwise)
- › Judge May Also Rarely “Direct” a Verdict or “Set Aside” a Verdict



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## Analysis of Bucklew Case: Georgia

- › Jonathan Bucklew, 32, presented for chiropractic care with Michael Axt, D.C. in 2015.
- › Bucklew complained of neck pain, headaches, bouts of blurred vision, and ringing in the ears for the past several days. Dr. Axt adjusted Bucklew’s neck.
- › Following the adjustment Bucklew reported feeling dizzy and disoriented. Shortly thereafter, Bucklew became unresponsive. Dr. Axt called 911, and an ambulance transported Bucklew

ExpertInstitute.com

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## Analysis of Recent Buckelew Case

Emergency Department physician, Dr. Matthew Womack, ordered a CT scan of Buckelew's brain and a CTA of his neck. The neuroradiologist, Dr. James Waldschmidt, read the CTA imaging. Dr. Waldschmidt noted, among other things, a potential dissection of the right vertebral artery. Dr. Womack performed a lumbar puncture to rule out meningitis and encephalitis. Later that night, Buckelew was transferred to the ICU with a diagnosis of encephalitis and altered mental status.

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## Analysis of Recent Buckelew Case

The following morning, Buckelew underwent an MRI of his brain and an MRA. The tests revealed a massive non-hemorrhagic stroke of the posterior circulation of the brain.

Upon receiving the diagnosis, Buckelew was treated with a heparin drip. The heparin drip was unsuccessful.

Buckelew received a diagnosis of "locked-in syndrome." This is a rare neurological syndrome that causes complete paralysis except for the muscles that control eye movements.

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## Analysis of Recent Buckelew Case

▶ Buckelew alleged that the delay in diagnosis caused his brain damage and paralysis. His counsel argued that the imaging performed shortly after Buckelew's arrival at the medical center revealed that he was suffering a stroke, and his physicians did not meet the applicable standard of care based on the results of the diagnostic imaging.

▶ Trial in this matter began on October 4, 2022. Allegations of medical negligence were levied against the emergency room physician Dr. Matthew Womack, the radiologist Dr. James Waldschmidt, as well as the neurologist, critical care physician, physician assistant, and intensive care unit nurses who treated Buckelew.

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## Analysis of Recent Buckelew Case

Dr. Womack's attorney argued that he met his standard of care by properly ordering imaging and conveying Buckelew's known medical history to the other medical professionals.

Dr. Waldschmidt's attorney argued that he properly identified and communicated Buckelew's tear in his arteries, which the other providers should have used to link to the stroke.

According to the defendants, this case came down to causation. They argued that Buckelew's stroke was so severe that his outcome would not have changed regardless of when he received treatment for the condition.

The defendants argued at closing that the proximate cause of Buckelew's injury was the chiropractor's performance of a spinal manipulation when Buckelew had a two-week history of headaches. According to the defendants, the chiropractor is solely responsible.

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## Analysis of Recent Buckelew Case

### ► The Verdict

► On October 20, 2022, after a three-week trial, the jury delivered a verdict in favor of the plaintiff. The jury awarded Buckelew \$75 million, which included \$29 million in medical expenses and \$46 million in non-economic damages. Dr. Womack was found to be 60% at fault and Dr. Waldschmidt was found to be 40% at fault for missing the arterial blockage causing the stroke when he read Buckelew's images. Buckelew and Dr. Axt, who was initially named as a defendant and later dismissed, reached an amicable resolution.

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## SOUTH CAROLINA MEDICAL MALPRACTICE TORT REFORM 2005



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## Non Economic Claims

Under the statute, "[i]n an action on a medical malpractice claim when final judgment is rendered against a single health care provider, the limit of civil liability for noneconomic damages of the health care provider is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, regardless of the number of separate causes of action on which the claim is based...." [SCCL § 15-32-220\(A\)](#).

In an action on a medical malpractice claim when final judgment is rendered against more than one health care institution, or more than one health care provider, or any combination thereof, the limit of civil liability for noneconomic damages for each health care institution and each health care provider is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, and the limit of civil liability for noneconomic damages for all health care institutions and health care providers is limited to an amount not to exceed one million fifty thousand dollars for each claimant....



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## Damages Limitation Exclusion

The limitations on noneconomic damages contained in the statute do not apply in cases involving grossly negligent, wilful, wanton, or reckless conduct or where the defendant engaged in fraud or misrepresentation related to the claim. SCCL § 15-32-220(E).

According to SCCL § 15-32-220(F), the actual damage limitation amounts must be calculated and adjusted annually. Current limits are \$545,869 and \$1,637,608.



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## Litigation Risk Management



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### Risk Management Tip

- › Your Chiropractic Record is a Legal Document and Must be Treated Like One
- › Even Well Intentioned Changes to Record May Lead to Distrust by Jury
- › Audit Trail Information



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### Risk Management: New Patient Patient History



- › Clinical and Legal Significance
- › Develop /Select Intake Process to Explore Details of Onset , Aggravating and Mitigating Factors and Duration of Symptoms
- › Consider Utilizing Pain Diagrams
- › Include all Reported Prior Treatments- Including Self Care
- › Interview and Supplement Initial Patient Report



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### Risk Management: New Patient Physical Exam



- › Initial Physical Exam Findings: Document all Areas of Dysfunction
- › Include Vital Sign Measurements
- › Also Include Significant Negative Findings
- › Validate Quality of Exam- Example ROM Description
- › Should Be Able to Demonstrate Exam Findings Sufficient to Support Initial Impression



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### Risk Management: Documentation of Treatment Provided



- › Describe Areas of Treatment
- › Avoid Repeated "Cut and Paste" Descriptions
- › What Does "Treatment of Affected Areas" Mean Years Later?
- › Does Your Chart Describe Care with Enough Detail that Juror Would Understand the Care Provided
- › Document Response to Treatment



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### Risk Management: Patient Progress and Responses



- › Evaluate Changes in Condition
- › Note Any Activities Associated with Changes in Condition
- › Include Requests for Activity Increases
- › Document Any Modifications to Treatment Plan or Goals
- › Beware of Cut and Paste Notes that are Not Reflective of Visit
- › Appropriate Reassessment or Reevaluation
- › If New Problem Appears- Perform New Focused Physical Exam



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### Risk Management Tip

›Utilize Methods to Have the Chart Reflect Actual Patient Statements

›Give Patient Chance to Share Progress and Express Concerns

›Patient Comments Can Be Very Effective Evidence to Refute Claims Made Years Later



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### Risk Management: Doctor Shopping Patients



- › Vague or Exaggerated Symptoms
- › History of Multiple Providers
- › Address History Directly with Patient
- › Ask for Permission to Obtain Records
- › Red Flag- Reference to "Terrible Doctor"



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### Risk Management: Patient Referrals When and Why



- › Do You Need to Rule-In or Rule-Out a Significant Consideration
- › Does Delay in Identification of Potential Problem Create Risk of Bad Outcome or Significant Harm
- › When In Doubt- Refer it Out!!
- › Document Efforts to Refer if Patient Declines or Refuses



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### Risk Management: Treating Employee As A Patient



- › Employee Reluctance to Provide Full History
- › Limited Exams and Assessments
- › "On the Fly: Adjustments"
- › Employees Likely to Become Ex-Employees
- › Must Document Care and Obtain Consent



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## Risk Management: I'm Sorry: Reimbursement for Care



- In any claim or civil action brought by or on behalf of a patient allegedly experiencing an unanticipated outcome of medical care, any and all statements, affirmations, gestures, activities, or conduct expressing benevolence, regret, apology, sympathy, commiseration, condolence, compassion, mistake, error, or a general sense of benevolence which are made by a health care provider, an employee or agent of a health care provider, or by a health care institution to the patient, a relative of the patient, or a representative of the patient and which are made during a designated meeting to discuss the unanticipated outcome shall be inadmissible as evidence and shall not constitute an admission of liability or an admission against interest.



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## Billing Disputes & Missed Appointment Fees



- Evaluate Benefit/Risk
- May Generate Regulatory Complaint
- May Generate Litigation Claims
- Apply Office Practices Consistently



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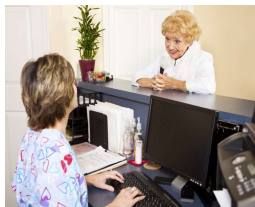
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## Clinic Staff Risk Management Team Member



- Face of Your Practice
- Train to Report Patient Complaints and Concerns to DC
- Document All Telephone Calls of Clinical Nature
- Report Clinical Telephone Calls to DC
- Clinical Call Information Belongs in Medical Record
- DC Should Document Response to Call



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## Risk Management: Security Cameras



- HIPAA Concerns
- Treatment Area Concern
- Front Door/Back Door vs. Inside Office
- PHI- Anything that Could Identify Patient
- Must Treat Information with HIPAA Level Confidentiality
- Patient Consent
- Patient Might be Recording You as Well



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## Chiropractic Documentation Why Does it Matter?



- May Be Your Best Witness in Defense of Case
- Facilitates Quality of Care
- Facilitates Continuity of Care



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## Chiropractic Documentation Audit Issues



Centers for Medicare and Medicaid Services' (CMS) Medicare Fee-for-Service 2013 Improper Payment Rate Report estimated chiropractic claims had a 51.7 percent improper payment rate, of which 92.5 percent was attributed to insufficient documentation.

U.S. Department of Health and Human Services. The Supplementary Appendices for the Medicare Fee-for-Service 2013 Improper Payment Rate Report. [www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/CERT/Downloads/November2013ReportPeriodAppendixFinal12-13-2013\\_508Compliance\\_Approved12-27-13.pdf](http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/CERT/Downloads/November2013ReportPeriodAppendixFinal12-13-2013_508Compliance_Approved12-27-13.pdf)



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## Electronic Health Record



- Review Use of Templates and Macros
- Cut and Paste Record Appearance
- Dictation Errors
- Review for Accuracy
- Incorporate Real Time Information Such as Visit Number or Patient Complaints/Quotes
- Incorporate Updated Patient Assessments



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## Patient Satisfaction Questions Risk Management Tool



- Always Record Response to Care in Clinical Record
- Consider Use of Updated Patient History Forms
- Internal Surveys



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## Risk Management Tip

**TRUST YOUR INSTINCTS**

**TRUST YOUR STAFF  
MEMBER INSTINCTS**



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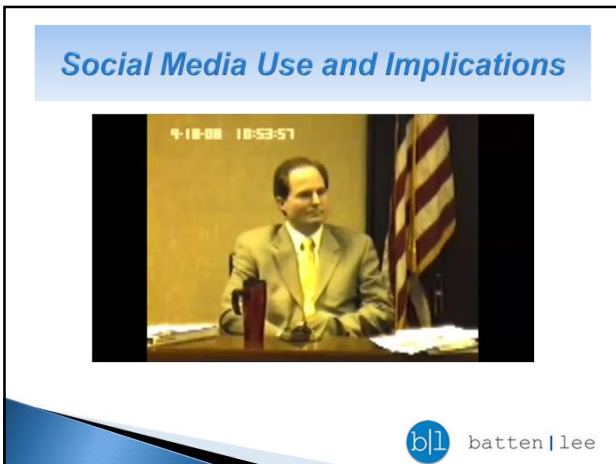
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**Use of Social Media Marketing – Privacy Issues**

- *Maintain Privacy of PHI- Protected Health Information*
- *Protected Health Information has a Very Comprehensive Definition in HIPAA*
- *Educate Staff About Confidentiality Issues and Use of Personal Social Media*
- *Consider Staff Confidentiality Agreements that Include Reference to Social Media*

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## HIPAA Protected Information

### ► **PROTECTED HEALTH INFORMATION:**

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
  - (i) That **identifies the individual; or**
  - (ii) With respect to which there is a **reasonable basis to believe the information can be used to identify the individual."**



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## Negative Social Media Considerations



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## Possible Responses to Negative Reviews

- *Develop a Strategy for Interacting with Patients Online Before Situation Develops*
- *Consider Developing Scripted Language to Respond to Negative Reviews to Emphasize Commitment to High Quality Patient Care and to Encourage Individuals with Concerns to Contact Office Directly*
- *Protect Patient Privacy and Confidentiality*
- *Consider Not Responding at All*
- *Avoid Responses that Attack Patient or Makes Excuses*
- *Seek Legal Counsel or Contact Webmaster if False or Defamatory Information is Posted*



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## Patient Boundary Issues



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## PATIENT BOUNDARY ISSUES EXAMPLE CONCERNS

- › *Sexual Relationships with Patient*
- › *Sexting and Suggestive E-Mails*
- › *Lack of Informed Consent for Treatment Involving Sensitive Areas*
- › *Verbal Sexual Harassment*
- › *Employee as a Patient – Potential Danger*
- › *Trust Your Instincts*

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## Risk Management Tip: Warning Signs Patient Boundary Issues

- › *Atypical Patient Attire*
- › *Cards, Notes or Emails from Patients*
- › *Requests for Off-Hour Appointments*
- › *Patient Initiated Discussions of Sexual Issues*
- › *Patient Initiated “Exhibition”*

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### Risk Management Tip: Protective Actions Patient Boundary Issues

- › Consider Chaperone Presence
- › Document Chaperone Presence in Chart
- › Utilize Open Treatment Environment or Open Doors
- › Frank Discussion of Boundary Issues with Patient if Concern Develops
- › Consider Documentation of Incident in Risk Management File and/or Patient Record
- › Appropriate Draping Techniques
- › Detailed Documentation of Informed Consent Discussion



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### Workplace Culture



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### Professional Disciplinary Complaints

- › South Carolina Board of Chiropractic Examiners Regulates Practice
- › Focus of Public Protection, Health and Welfare
- › Board Complaints Appear to be on Rise Nationwide
- › Complaint Can Have Significant Effects on Practice
- › Resolution Possibilities
  - › Dismissal
  - › Letter of Caution
  - › Consent Agreement
  - › Public Reprimand
  - › Civil Penalty
  - › Cost Reimbursement
  - › Probation
  - › Suspension
  - › Revocation



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Hypothetical

It's been a really tough year, with the divorce and the challenges of getting this new practice started. Not to mention all the challenges with child custody arrangements. The one bright spot has been Jane. She comes in every week for maintenance adjustments, and she's a breath of fresh air. It's also great to see her at her our kids' softball games. I can tell we have real chemistry. I'm planning to ask her out this weekend. This shouldn't be a problem, right?

**WHAT IF?**

- › A. Terrible idea. A chiropractor is prohibited by statute from ever having a relationship with a current or former patient.
- › B. This is not a problem, we're both considering adults, and it's not the Board's business.
- › C. Ask Jane to sign a written consent and a promise she will not make a Board complaint.
- › D. Tell Jane that you would like to see her outside the office, that you really care about her, and tell her that you will need to refer her to another chiropractor for her ongoing care to prevent any future misunderstandings.



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Hypothetical

Cindy is the most appreciative patient you have ever had. She is always very grateful for the care, and has explained over and over she doesn't know what she would do if she didn't have you to help her with her low back pain. Last night as you were getting ready to go to bed, she sent you a text message, stating she was thinking of you, couldn't wait to see you soon. What should you do?

**WHAT IF?**

- › 1. Ignore it.
- › 2. Text back and tell her thanks.
- › 3. Delete message before your wife sees it
- › 4. Give the patient a call the next day during business hours and remind her that you need to maintain a professional relationship.



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**QUESTIONS ???**

*Michael C. Allen, R.Ph., JD*  
919-459-4292  
mallen@battenlee.com



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