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Letters to the Editor

Should the chiropractic profession embrace the doctrine of informed consent? Lehman et al. *Journal of Chiropractic Medicine* 2008;7:107-114

To the Editor:

The narrative review by Lehman et al¹ that posed questions for the chiropractic profession to consider, relating to informed consent, is to be applauded. We disagree, though, with your premise that the “informed consent doctrine” is not promulgated as the standard of care. The prevailing view in the profession, in our opinion, is that this “process” is a part of the standard of care but is not routinely implemented.

The National Board of Chiropractic Examiners Job Analysis of Chiropractic found that the chiropractors who responded to this survey reported counseling patients about informed consent “sometimes” but get written informed consent “frequently.” Because informed consent must include counseling, it appears that those responding to the survey do not have a good comprehension of the process of informed consent and thus have not implemented it in a routine way in their practices.²

Informed consent is not explicitly mentioned in the “new” American Chiropractic Association (ACA) Code of Ethics (revised and ratified September 2007, http://www.acatoday.org/content_css.cfm?CID=719), but it is implied by the following provision of the code:

V. Doctors of chiropractic should use their best good faith efforts to provide information and facilitate understanding to enable the patient to make an informed choice in regard to proposed chiropractic treatment. The patient should make his or her own determination on such treatment.

The ACA House of Delegates expanded upon the Code of Ethics and implied requirement for providing patients with informed consent within their updated informed consent policy ratified on September 19, 2008 (http://www.acatoday.org/level2_css.cfm?T1ID=10&T2ID=117#51).

“Since the American Chiropractic Association (ACA) recognizes that there are varying legal standards for informed consent among different jurisdictions, it is recommended that Doctors of Chiropractic consult with their personal attorney, malpractice carrier, licensing board, state statutes, case law and CMS (Medicare) to determine the range and detail of the information required locally in an appropriate informed consent process.”

The Council on Chiropractic Education³ mandates that students demonstrate an ability to “appreciate the need to obtain the patient’s informed consent, cooperation and compliance with care and/or referral recommendations” (x) and “understand the appropriateness of obtaining informed consent from the patient prior to initiating clinical care” (y).

Some chiropractic examining boards, such as Oregon, have affirmatively addressed informed consent.

811-015-0070 Scope of Practice Regarding Examinations, Tests, Substances, Devices and Procedures

(3) ... In determining risk, the Board may use the following criteria:

(c) For moderate risk procedures, defined as those which when properly performed on the general public have a significant chance of mild injury and a mild chance of moderate injury, when improperly performed on the general population have a slight chance of severe injury, and when properly performed in select populations have a slight chance of serious injury.

(A) Written informed consent is required;

Some are reluctant to create specific rules regarding informed consent, especially written (www.chiroweb.com/mpacms/dc/article.php?id=36273).

Thus, although it appears that chiropractic professionals do not appropriately implement the informed consent process with most of their patients, the profession through its associations has acknowledged that informed consent is a part of the standard of care.

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Should the chiropractic profession embrace the doctrine of informed consent?

In reply:

We appreciate the opinions of the authors, for they imply that the chiropractic profession recognizes the importance of the doctrine of informed consent and patient safety. For clarification, we elect to elucidate our position of the utilization of the terms *promulgate* and *standard of care* in our article. It is our collective opinion that the chiropractic profession make it be known by open declaration (promulgate) that the "Doctrine of Informed Consent" be clearly and forcefully supported as the standard of care that chiropractors must implement into their clinical practice on every patient. We believe the national organizations and, to some extent, the state licensing boards fail to meet this threshold obligation. As a result of this leadership failure, chiropractors are not provided

with an unambiguous platform with which to integrate this mandatory practice procedure.

It is not enough to state that chiropractors should enable patients to make an informed choice; but rather, chiropractors must inform patients of the appropriate and necessary information required for the patients to make informed decisions in which to consent to treatment. We agree with the premise that chiropractors do not appropriately implement the informed consent process. Yet, our question "Should the chiropractic profession embrace the doctrine of informed consent?" remains to be answered with clarity and firm commitment by the chiropractic associations under the standard of care umbrella.

The recent American Chiropractic Association House of Delegates expanded Code of Ethics language does not go far enough to ensure the necessary clarity to promulgate that the doctrine of informed consent is a requirement rather than simply recommended. It is evident that individual state legislatures are leading the way on this issue with clearly worded statutes defining informed consent language that is required for every licensed health care provider. It appears that the chiropractic organizations and leadership bodies, to date, have been unwilling or reluctant to follow the lead of state legislatures. This egregious error requires immediate attention.

We propose that to promulgate the Doctrine of Informed Consent under the chiropractic profession standard of care umbrella requires revising current national organizational language. Furthermore, the utilization and methodology of incorporating appropriate and standardized informed consent procedures will require an educational process for all licensed chiropractors. In the United States, informing and educating the chiropractic profession should be provided by the Association of Chiropractic Colleges and the American Chiropractic Association. We believe that these groups must be in the forefront because of the importance of ensuring that all chiropractors are fully informed as to the standard of care requirements for informed consent. We strongly encourage regulatory actions by the State Boards of Chiropractic Examiners to clearly define the informed consent process and require it to be performed as a standard of care. This statutory mandate by state licensing boards would demonstrate professional maturity and further promote patient safety. Chiropractic State Associations could complement the effort to promulgate the Doctrine of Informed Consent by teaching the informed consent process at continuing educational seminars.