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OPEN LETTER TO THE PROFESSION

RE: Advertising Limitations

Dear Doctor:

We have been working with the chiropractic profession since 1984 and have been honored to serve as the WSCA's Legal Counsel since 1991. Recently, the following email was sent by a trial lawyer to the WSAJ trial lawyer listserv asking for the following information:

Is there anyone out there handling any cases surrounding this chiropractic machine? Apparently the manufacturer, Axiom, has come under a lot of fire over how it has marketed the DRX9000 and for the claims or assurances they have made for the efficacy of machine. I was contacted by a woman who was, as she put it, "defrauded" out of \$14,000 for treatment on this machine with a chiropractor. According to her, he had a quite a "treatment plan" worked out that he sold to her as a package. He had made some pretty bold assurances to her that the machine would cure her back pain. Obviously, she was not cured by it. Has anyone had any clients have a similar experience? Anyone know of any current litigation going on pertaining to these machines or claims about its effectiveness?

You can be assured that once someone gets sued, and adverse results are posted to the same listserv, over a thousand trial lawyers will be on the lookout for DRX9000 machines as it relates to their clients, past, present and future. The FDA has been investigating Axiom on false advertising claims, and several chiropractic doctors in Florida are being investigated for the advertising used to promote the DRX9000.

However, whether or not you use the DRX, other types of common advertising used by chiropractic doctors do not seem consistent with the advertising restrictions contained in WAC 246-808-600. Prior to any advertising campaign, you should consult with a healthcare lawyer familiar with these chiropractic restrictions.

There are some traps awaiting anyone that fails to heed the various advertising prohibitions in the chiropractic profession's regulatory environment. A sampling of these traps are:

1. Guaranteeing results violates WAC 246-808-600 (1)(a).
2. WAC 246-808-600(2) requires you to be able to substantiate the truth and accuracy of all advertising claims. Any claims you make with respect to the efficacy of any treatment requires a

peer reviewed clinical study regarding the patient outcomes. Do NOT rely on manufacturer representations absent such studies.

3. Any offer of free or discounted services needs to comply with WAC 246-808-600(3).
4. If you claim that any treatment modality is "insurance accepted", you will be required to demonstrate that all carriers do pay for the such treatment and you should be a credentialed provider for all health insurance plans being offered in the State. WAC 246-808-600(1)
5. If you offer "discounted affordable cash plans", those plans may violate WAC 246-808-545(2) if your cash charges for uninsured patients cannot be defended as merely savings on the cost of billing, as opposed to a cash price which results in an inflated price to insurance carriers.
6. The Chiropractic Quality Assurance Commission has created a list of procedures and treatments which meet approval. Check the list. Just because some manufacturer tells you the procedure is approved does not assure it is accurate. For instance, filing a Form 510k with the FDA does NOT equate to approval.

If you are a active member of the WSCA, you have the right to a free phone or email consultation regarding this warning, and a ten (10%) discount off our normal hourly rates if you require additional assistance. If you are not a member of the WSCA, now might be a good time to sign up with the WSCA.

Sincerely,
PEICK | CONNIFF, P.S.

John C. Peick

Encl.
cc: Lori Bielinski, Exec. Director