

## **CONNECTING THE DOTS # 2**

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.

### **Manipulation Under Anesthesia – The MD, the DC, the College and an Allegation of “Medicine for Money” \***

\*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.

#### **BACKGROUND**

The complaint starts out with the rather headline grabbing allegation that the plaintiff Mr. Black, was a healthy 33 year old family man, professionally employed who was **“FRAUDULENTLY INDUCED BY A CONSPIRACY OF MEDICAL PROFITEERS!”**

#### **NOW THAT GETS YOUR ATTENTION!**

#### **THE MEDICAL FACTS**

On July 20, 2007, Mr. Black first presented to Dr. A Mildio (an internist) for a routine checkup regarding his adult onset diabetes. In September of 2007, Mr. Black reported chronic neck and back pain to Dr. Mildio. He also indicated to Dr. Mildio that he had been treated in the past by a chiropractic physician for these complaints. Dr. Mildio in his 09/28/2007 SOAP notes provided a diagnosis of lumbar and cervical disc pain. He also made a Plan note to request a report from the chiropractic physician. No specific spinal treatment was provided.

From October 11, 2007 through November 11, 2008, there were 4 additional visits with Dr. Mildio. During that time there was no specific treatment described in the records related to neck or back pain. However, spinal (neck and low back) symptoms continued to be noted in the records. The records do not reveal that an orthopedic or neurological examination was ever provided. There is no record of any cervical or lumbar imaging being performed.

In early November of 2008, Dr. Mildio attended a Manipulation Under Anesthesia (MUA) training program Presented by the American Academy of Manual and Physical Medicine and hosted at the Universal Surgery Center in Fort Lauderdale, FL. In addition to the American Academy of Manual and Physical Medicine as the provider of the course, Bridgeport University was a co-sponsor and issued continuing education credits.

#### **AT THIS POINT THINGS BEGIN TO GET INTERESTING.**

MUA training programs are typically attended by Chiropractic physicians. As a part of the standard chiropractic college curriculum of over 4000 hours, chiropractic students complete 765 hours of training in spinal manipulation assessment and technique, as well as 585 hours of hands on training in a clinical setting actually examining, diagnosis and treating patients. With that in mind, accredited MUA training programs rely on the combined 1350 hours of specific training related to examination, diagnosis and manipulation treatment already received by each attendee to an MUA

training course. Typically, MUA training programs also set forth an entrance requirement of a minimum standard of prior years in practice as a chiropractor in order for the chiropractic physician to qualify for the training.

In this case, these standards take on an ominous tone in so far as the outcome of the MUA treatment provided by Dr. Mildio to Mr. Black. Keep in mind that Dr. Mildio IS NOT a chiropractor!

On December 4, 2008, Mr. Black was seen at the Atlantic Surgical Center for an MUA, provided by Dr. Mildio.

### **WERE THE MUA CRITERIA MET FOR MR. BLACK?**

The basic MUA criteria for patient selection are as follows:

1. Recent failed conservative treatment, to have included clinical chiropractic management with in office spinal and or non-spinal manipulation where indicated.
2. Absence of any MRI or other imaging contraindications.
  - a. For example, a lumbar disc extrusion over 8mm, or a free-floating disc fragment.
3. History of chronic nonspecific mechanical back pain (may be due to disc bulge, disc herniation, chronic recurrent sprain/strain), failed back surgery or myofascial pain syndromes.
4. The presence of intersegmental and or global recalcitrant motion restrictions of spinal segments that are fibrosis maintained.

In this case, there is no medical record that Mr. Black's condition was ever reconciled by Dr. Mildio to the criteria set forth above.

There is also no confirmation that there was prior "failed" in office spinal manipulation, even though the records indicate prior chiropractic treatment.

In a December 1, 2008 a pre MUA medical report authored by Dr. Mildio, the following was found:

1. Subjective:
  - a. low back pain 6-7/10. Radiation of low back pain down to both knees.
  - b. Bilateral shoulder pain with radiation to the hands.
2. Chiropractic history: patient has undergone some chiropractic treatment in the *distant* past.
3. Objective:
  - a. Cervical spine loss of motion with spasm. Myofascial pain paraspinal cervical muscles. Multiple Trigger Points in the bilateral sternocleidomastoids, trapezius muscles and paraspinal muscles.
  - b. Thoracic spine paraspinal muscle trigger points.
  - c. Lumbar spine paraspinal muscle trigger points. Loss of lumbar range of motion.
  - d. Rigid posture to avoid movement.
  - e. ***NO NEUROLOGICAL EXAMINATION WAS PERFORMED.***
  - f. ***THERE IS NO INDICATION OF ANY ORTHOPEDIC TESTING.***
4. Imaging: discussion of radiological studies describes the following: "An MRI was ordered. It is unclear whether the patient had the test performed or not. However, from a medical examination point of view, he was still having these pains etc.
5. Plan: Lumbar x-rays and labs.

6. Assessment: Proceed with MUA

### **CRITERIA NOT MET**

In the absence of an adequate history, a proper orthopedic examination, a proper neurological examination and prerequisite imaging (which should have included x-rays and an MRI of each body part to be treated with MUA) it is safe to say that based on the medical records, Mr. Black had not met the criteria for determining that he was a candidate for any MUA procedure.

### **OVER DIAGNOSIS**

In a December 4, 2008 MUA Operative report Dr. Mildio provides a preoperative diagnosis listing **32 ITEMS** of diagnosis as follows:

1. Cervicalgia
2. Cervical brachial syndrome.
3. Thoracic calcifications/discitis.
4. Cervical, thoracic and lumbar nerve root compression.
5. Cervico-thoracic radiculitis and neuropathy.
6. Sciatica.
7. Adhesive capsulitis of the shoulder.
8. Bursitis and tendonitis.
9. Enthesopathy of the elbow.
10. Enthesopathy of the hips.
11. Enthesopathy of the knee.
12. Muscle spasming.
13. Sprain sacrum.
14. Sprain coccyx.
15. Late effects of injury to the nerve roots and spinal plexus.
16. Myofascitis and myofascalgia of the cervical spine chronic.
17. Myofascitis and myofascalgia of the thoracic spine chronic.
18. Myofascitis and myofascalgia of the lumbar spine; chronic
19. Cervical, thoracic and lumbar nerve root compression.
20. Sciatica.
21. Cervical thoracic radiculitis and neuropathy
22. Adhesive capsulitis of the shoulder chronic.
23. Disorder of the elbow bilateral.
24. Disorder of the wrist bilateral.
25. Disorder of the hips bilateral.
26. Disorder of the knee bilateral.
27. Disorder of the ankle bilateral.
28. Disorder of the sacrum.
29. Pelvic dysfunction chronic.
30. Muscle spasm and hypertonicity of the cervical spine.
31. Muscle spasm and hypertonicity of the thoracic spine.
32. Muscle spasm and hypertonicity of the lumbar spine.

### **LACK OF CONTINUITY**

Upon review of the medical records, it becomes quite clear that Mr. Black had no subjective history of any symptoms involving the shoulders, elbows, wrists, hips, knees or ankles. Additionally, there are no records of any objective findings regarding these body parts!

In light of the paltry documentation of subjective factors related to the neck and low back, any diagnosis beyond a sprain strain of these body parts is not supported by the documentation.

### **UNNECESSARY MUA TREATMENT**

The operative report describes MUA procedures performed by Dr. Mildio, with an assistant physician Dr. George (Chiropractic physician) and an Anesthesiologist Dr. Rosenberg, who provided general and MAC anesthesia.

The MUA procedures performed were described as follows:

1. MUA of the cervical spine
2. MUA of the thoracic spine.
3. MUA of the lumbar spine.
4. MUA of the pelvis.
5. MUA of the both shoulders.
6. MUA of the both hips.
7. MUA of the Pelvis.
8. MUA of both knees.
9. MUA of both ankles.
10. MUA of both wrists.
11. MUA of both elbows.

### **THE MUA OUTCOME**

As a result of the cervical component of the MUA provided by Dr. Mildio, (who had no prior training or experience in spinal manipulation of any kind) Mr. Black was severely neurologically injured. He suffered severe brain damage and is now in a permanent vegetative state.

### **THE LAW SUIT**

In light of the tragic outcome of this MUA case, the family of Mr. Black filed a lawsuit against 4 physicians (including two MDs and two DCs). This group of defendants was composed of Dr. Mildio (MD) who performed the MUA, Dr. Rosenberg the anesthesiologist and Dr. Williams the MUA course instructor (also a chiropractic physician). In addition to these physicians, all their related business entities were named defendants. The surgical center and all of its affiliated business entities were named. Finally, the University of Bridgeport, (the academic entity co-sponsoring the MUA course and certifying continuing education credits for the MUA course) was named.

In the aftermath of this tragic outcome, the surgery center was closed by the State of Florida and Federal overseers.

The medical basis of the complaint revolves around the lack of training of Dr. Mildio, issues of informed consent, and supervision of the procedure (which was performed as a part of Dr. Mildio's attempting to gain MUA certification).

In addition to the medical basis of the complaints related to the outcome of the MUA procedure and Mr. Black becoming permanently, totally disabled the complaint also alleged a large of volume of claims regarding management and compliance of the surgery center, fraud in terms of billing and the marketing incentives behind the MUA course and the intentions of all of the physicians involved relative to "practice building"

## **TRIAL OUTCOME**

Prior to trial, confidential settlements were entered into with Dr. George and Dr. William the chiropractic physicians, Bridgeport University and Universal Surgery Center along with all of their related business entities.

The case was tried before Honorable Judge Carlos Rodriguez in the 17<sup>th</sup> Judicial Circuit of Broward County between April 18, 2013 and May 17, 2013.

On May 21, 2013 after a month, long trial the jury in a Broward County, FL court awarded Mr. Black 28.5 MILLION dollars and his two daughters 5 MILLION dollars each for a total of 38 Million dollars.

Mr. Black is now being cared for by his mother and sister, along with nurses at his mother's home in Georgia.

## **COMMENTARY**

MUA is a not a new treatment modality. It has been in use since the 1960s. MUA is a viable and effective means of treatment for patients who meet the candidacy criteria. Despite some health industry rhetoric to the contrary, there is well established Evidence Based Medicine that demonstrates the effectiveness of MUA.

MUA, like many treatments and procedures has some degree of risk. These risks are mitigated initially by several factors. Physician training and competence in basic skills involving spinal manipulation prior to training in MUA is step one in risk reduction. MUA training under the auspices of a curriculum approved by an MUA certifying body that includes a well-structured practical aspect (actual hands on performance of cases) performed under the supervision of an experienced MUA practitioner further reduces risk. A competent physician either medical or chiropractic who follows the dictates of their training, which includes strict adherence to candidacy criteria prior to performing MUA on a patient also reduces the risk.

Interestingly, in so far as chiropractic physicians are concerned, adding MUA to their practice, **DOES NOT** increase the cost of their malpractice premiums.

In this case, the risk factors were not mitigated in any way, and in fact were magnified on multiple counts. As a result, Mr. Black and his family were devastated forever.

What we learn from this case is that, as in all good health care, attention to basic details is of paramount importance. Selecting a case for MUA without a proper history and full understanding

of current subjective factors that are consistent with the MUA criteria is the first step toward reduced risk. This **MUST** be followed by a thorough orthopedic and neurological examination that provides objective factors (including imaging) consistent with the subjective factors. The diagnosis **MUST** reflect both the subjective and objective factors. Diagnosis of conditions in multiple body parts **NOT ASSOCIATED** with any symptoms or examination findings is **unacceptable**. Finally, the physician who performs the procedure, **MUST** be competent in spinal and extraspinal manipulation. As far as I know, spinal and extraspinal manipulation is **NOT** a part of internist training.

In so far as the allegations of “**FRAUDULENTLY INDUCED BY A CONSPIRACY OF MEDICAL PROFITEERS!**” I will leave that discussion to someone else.

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](mailto: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](mailto: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