By Dr. David Graber
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Are Clinical Practice Guidelines Risky?

The use of clinical practice guidelines (CPG) within the chiropractic profession has historically been a controversial topic. In 2017, the American Chiropractic Association (ACA) adopted CPGs for the treatment of low back pain from the American College of Physicians (ACP) and the Council on Chiropractic Guidelines and Practice Parameters (CCGPP). This generated a firestorm of debate on the issue of practice guideline utilization. From what I observed, the biggest issue had to do with potential liability from following the guideline in practice. This led me to inquire about how much risk is there from following a CPG.

The literature lists several potential harms for a doctor who commits and adheres to a CPG. These include the risk that the CPG is flawed and inaccurate, outdated, Inflexible to apply to an individual patient, conflicts with other guidelines leading to confusion over clarity, and may open the doctor to malpractice liability by setting up a standard of care to judge them by.

To answer the question in the real world of practice, I contacted five malpractice carriers, the ACA, Ronald J. Farabaugh, D.C. (former chairman of the CCGPP), and ANJC legal counsel Jeff Randolph, Esq. I asked several questions summarized the responses below:

Do the adoptions of guidelines by doctors, state or national societies increase the risk of malpractice, because it gives a standard of care that doctors can be judged against? Guidelines include those from the CCGPP, ACP imaging criteria for LBP, etc.

ChiroSecure: "Guidelines, in and of themselves, do not increase or decrease risk of malpractice. Guidelines are NOT standards of care."

NCMIC: "NCMIC does not dictate how doctors practice. Doctors of chiropractic are expected to use their best clinical judgement and act in the best interests of their patients."

ACA: The ACA reported that they have not received any reports of unfavorable judgment based on any guideline. They referred to NCMIC to answer the questions of liability.

Dr. Ronald Farabaugh: "In my opinion, NO. The research the ACA and others have done have pretty conclusively suggested that there is no evidence that "red flag" guidelines increase the risk of injury, or the risk of malpractice."

Jeff Randolph: "In my experience as a medical malpractice defense attorney for 20 years, establishment of guidelines by a state or national organization can be argued to set the standard of care and, if not followed precisely by a doctor, can be used against them at trial.

"Juries typically do not get that specific as to indicate it was a deviation from a specific guideline, but I believe deviation from guidelines plays a large part in many verdicts against chiropractors in New Jersey."

Many doctors take X-rays for defensive purposes. They have been told by attorneys defending chiropractors and other experts that not having X-rays of areas they adjust puts a doctor at risk. Is there any validity to this statement?

ChiroSecure: "Provider defense is not a reason to take X-rays. As noted above, allegations of negligence will be made in the absence of X-rays. We rarely, if ever, see allegations based upon taking an X-ray and it being negative for a given finding or possibility."

NCMIC: "….we do not impose requirements upon the practice models chosen by our policyholders. We simply require policyholders to practice legally within their states' scopes of practice. Our commitment is to provide the best protection and defense to our policyholders."

Dr. Ronald Farabaugh: "That has not been my real-life experience over a successful 35-year career and in providing expert testimony in over 100 malpractice cases. It is simply not true. You should NEVER order a diagnostic test purely as a defensive maneuver. Any diagnostic test should only be ordered if there is justification after consultation and examination. "

Jeff Randolph: "I have experienced plaintiffs' chiropractic experts taking the position that a failure to take an

X-ray of an area treated was a deviation from the standard of care. They take this position even if there is no clinical indication for X-ray and do not address the unnecessary exposure of the patient to radiation."

A review of the literature provided little additional benefit to the above responses. CPGs have been used by the legal profession and other third parties both as a "liability shield" to defend or support a doctor's patient care decisions and actions, and as a "liability sword" to those who don't adhere to them. Most malpractice cases are decided on the state level, and evidentiary rules vary widely from state to state. CPGs are general and may not reflect what is considered customary care for the locale and situation of the doctor providing care.

From the responses I conclude the following:

1. Adhering to a CPG can be problematic if a doctor deviates when treating a patient and a bad clinical outcome occurs. This is in spite of the fact that the two are likely not associative or causative. The CPG can be interpreted by attorneys and others as a "standard of care" that may be a potential liability.
2. CPGs can be used by third party payors as a standard of care for medical necessity and a rationale for denying services.
3. Utilizing guidelines can be an asset when dealing with third party payors in justifying and supporting medical necessity. They can be used with patients and the others to establish care plan parameters and to validate care. They can be an asset for defense in a legal liability case, but the benefit may require strict adherence to them.
4. We care for patients, not guidelines. Patients too often don't follow the clinical algorithms. Many CPGs represent an idealized situation, not the complexities and "messiness" of actual patient care. Doctors need to apply CPGs as a clinical tool rather than a prescription. Adherence to a CPG should never be at the expense of a doctor's clinical judgment in a particular case.
5. The main reason for an association to adopt guidelines is to set up a minimum standard of care for their members to follow. Their members would have to agree to follow them and the accompanying liabilities. The question of whether an association should be involved in recommending clinical care directives is one that must be undertaken by its leadership.

In summary, the main risk of CPGs comes not from their use, but from their misuse. They can be used and distorted to serve the agendas of insurance companies, plaintiff and defense attorneys, or professional groups. Guidelines are best utilized as they are intended, as guides to better patient care. They inform and interpret the latest clinical research findings, professional consensuses, and current thinking that individual practitioners may not have the time, resources, or inclinations to do. They are not dictates or directives, and should never be positioned as such.

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