I. A brief historic background

According to reported statistics, cerebrovascular accidents (CVAs) are not the most common cause of litigation against chiropractors but these CVAs are the most serious and widely publicized because such events can and do result in permanent neurological deficits or death.

The *Mercy Guidelines* were commissioned by the Congress of Chiropractic State Associations and were developed as a consensus document and published in 1993. The *Mercy Guidelines* have been widely disseminated and accepted by the chiropractic profession. These *Guidelines* indicated that complications in a chiropractic office setting may be attributed to any of the following:

- Misdiagnosis
- Presence of coagulation dyscrasias (clotting disease)
- Cervical manipulation
- Presence of a herniated nucleus pulposus or,
- Improper technique application.\(^1\)

The *Guidelines* also listed the six most common malpractice claims made to National Chiropractic Mutual Insurance Company (NCMIC) during the year of 1990.\(^2\) CVAs accounted for 6% of those claims. The same *Guidelines* indicated that there had been a “rapid growth of literature on manipulation-induced
accidents." This statement was confirmed by more recent statistics kept by NCMIC which indicated that during the year of 2009, claims pertaining to CVAs associated with manipulation had risen to 13.3% of claims made to the litigation department.

II. Evolving technology aids in the detection of VAD

One answer accounting for what many neurovascular surgeons refer to as a “routine” diagnosis is that the diagnosis of cervical artery dissection is more easily identified due to advances in imaging capabilities. Another reason is the growing awareness of cervical artery dissections among all healthcare professionals.

Strokes following manipulation do occur. The temporal relationship between young healthy patients without apparent osseous or vascular disease attending a spinal manipulation practitioner, then suffering these strokes during or shortly after spinal manipulation therapy, is well documented. It is almost certain, however, that the incidence of stroke following manipulation is under-reported.

III. Information the Lawyer should obtain

In the event of a stroke that occurs subsequent to a manipulative procedure the lawyer retained to review the case should request the following:

• All past medical records,
• All documentation surrounding the treatment leading to the stroke to include the complete clinical records and billing statements of the subject practitioner,
• The emergency medical technician records (if any),
• The records from the emergency department (if any),
• All subsequent medical records,
• Copies of all subsequent imaging study reports.

The well qualified chiropractic expert will rely on these records to identify any adverse acts or omissions of the subject practitioner. The subsequent report from the expert finding such failures will outline the identified failure(s) and demonstrate that the subject practitioner failed to exercise the degree of reasonable care and skill in providing health care to a patient in comparison to what a reasonably careful, skillful and prudent health care practitioner should have done under the same or similar circumstances.

IV. What one looks for in the records

The literature reports clear-cut predisposing factors of vertebral artery dissection. In the competent approach to chiropractic care, these alerts are searched for during the history and examination portions of the patient’s evaluation. The most important points in the case history, which would warn of the potential of a vertebrobasilar syndrome, also known as the 5 Ds And 3 Ns, are:

1. Signs and symptoms of vertebrobasilar ischemia:
- Dizziness (vertigo, light-headedness)

- Drop attacks (sudden numbness)

- Diplopia (double vision or other visual problems)

- Dysarthria (difficulty in articulation of joints)

- Dysphagia (impairment of speech)

- Ataxia of gait (muscular incoordination)

- Nausea (possibly with vomiting)

- Nystagmus (constant, involuntary, cyclical movement of the eyeball)

- Numbness (hemianesthesia – anesthesia of half of the body)

2. Sudden onset of severe head and/or neck pain which is like no other pain the patient has previously suffered.

3. Signs and symptoms of carotid artery ischemia:

   - Numbness (hemianesthesia – anesthesia of half of the body)

   - Hemiparesis / Monoparesis (paralysis affecting one side or part of body)

   - Headache

   - Dysphagia
- Visual field disturbance, and/or,

- Confusion, and,

4. A history of migraine may be an important risk factor for the clinician to consider.

In addition to closely inspecting the records for the level of skill the subject practitioner demonstrated in taking the patient history or conducting and documenting examination findings, it is also important for the retained expert to closely review the documentation to form an opinion as to whether the subject practitioner coded for levels of service that were either not performed or not supported by medically necessity. The practice behaviors of practitioners too often exhibit a tendency to be more entrepreneurial than clinical in nature.

There are no testing procedures available for chiropractic practitioners to rule out the pre-disposition to VAD in a patient. It is not possible for the practitioner to always be able to determine if the symptoms of head/neck pain are caused by a lesion that will respond to manipulative care or from pathology within the vertebral artery wall. Therefore, one should determine whether treatment methods that apply stress to the arterial structures were considered by the chiropractor and reviewed with the patient.

One should inquire of the patient whether the chiropractor discussed alternative treatments with the patient before engaging in manipulative therapy. One should
examine the chart to determine if the chiropractor documented that alternative treatments were considered and discussed with the patient. One should determine whether the patient was fully informed of her condition, alternative treatments and the risks attendant to those treatments. The current policies of the American Chiropractic Association include the following policy of informed consent.

**INFORMED CONSENT** – The process of informed consent should include an ongoing discussion throughout the patient’s course of care that generally includes:

- The Doctor of Chiropractic’s recommended course of action and the nature of any recommended examination procedure, diagnostic test and/or treatment intervention.
- Discussion of reasonable alternatives to the proposed course of action (regardless of their cost or the extent to which these options are covered by health insurance).
- The benefits, material risks and options, related to the recommended course of action.
- An assessment that the patient reasonably understands the discussion and is legally and mentally competent to make the decision.
- The patient’s voluntary acceptance of the proposed course of action.
The patient is the one who determines if she will undergo treatment, not the chiropractor. A thorough reading of the ACA’s code of ethics and policies on informed consent is recommended.

When you have assembled the information listed above, you will be in a position to have a thorough discussion with your chiropractic consultant who can discuss with you the liability issues, if any, that may be present.

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References

1 Shekelle et al, 1991
5 Ibid, page 37.