

# Chiropractic Forensics

Navigating Patient Experiences

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## Disclosures:

This information is relevant as of Jan 2024, information is subject to change

Dr. Zagwyn is an active member for the Council on Forensic Sciences

Has been invited train and provide consultations for KMC University

Is an active executive board member for the Maine Chiropractic Association

No monetary financial gains from this presentation are expected

Dr. Zagwyn is not an attorney or attempting provide legal advice of any kind, and individual questions or examples are for educational purposes only.

Any monetary amounts or case scenarios are hypothetical in nature



**MCA**  
MAINE CHIROPRACTIC ASSOCIATION



# Today's Agenda

1. Explore Chiropractic Forensics, a unique specialty within the profession.
2. Recognize and Identify false advertising of supplements
3. Understand the patient's rights to informed consent **and** good faith estimates
4. Identify who and when to implement good faith estimate
5. Increase awareness about cultural diversity components of care including good faith estimate and informed consent.
6. Review a patient case study
7. Bring something new thing to your office to stay compliant!

We have 110 minutes left of learning! Let's Go!



# What is Chiropractic Forensics?



What would you do?



**Forensics  
Consultant**

**ABC Chiropractic Doctors**



ABC Chiropractic Clinic in *New Jersey* calls you up with some questions to review a given a formal complaint that was addressed by their state board with two items listed.

1. At what year in practice would a provider be expected to know the subtle findings of lung cancer in a patient?
  - a. Can you define what is subtle about the findings?
  - b. What did the patient present for care for? Was it in the mid back region or upper torso?
  - c. Did the patient have any respiratory symptoms marked on a review of systems during initial intake?
  - d. Did the chiropractor order any imaging of the spine that visualized the lung field?



A cough  
that persists,  
worsens or  
produces  
blood



Wheezing



Chest pain



Fatigue



Shortness  
of breath



Unexplained  
weight loss

## Let's Poll The Room: Sexual Harassment or Not?

2. If a provider placed a hand on a patient's shoulder while explaining the findings within their spine is that sexual harassment?

- a. Is this the same patient as the first concern? Or is this a different patient?
- b. Has this doctor seen this patient prior to giving the results?
- c. Did this doctor go through an informed consent with the patient explaining that chiropractic is generally a hands on profession and is the patient comfortable with contact by the provider?

1. How likely is it that ABC Chiropractic will have to shut down given these two board concerns?

- a. For this opinion to be formalized, I would need to visit your clinic, observe it for the next week, and identify any shortfalls within the medical legal parameters. I will need to obtain full patient files, and other information about the practice such as any other board complaints in the past, any insurance audits or complaints, etc. I will also need to be authorized to speak with your malpractice carrier and attorney about any concerns that are found. I am NOT your legal counsel.
- a. I'm glad you called a forensic professional, my job is to be unbiased and to fact find. I will summarize a report and present it to you and to the state board. You may or may not like the outcomes in all areas depending on what facts are discovered during the research process.
- b. The more honest you are about the questions I am asking, the better the outcomes for the board review, the practice and providers, and the patients you care for.

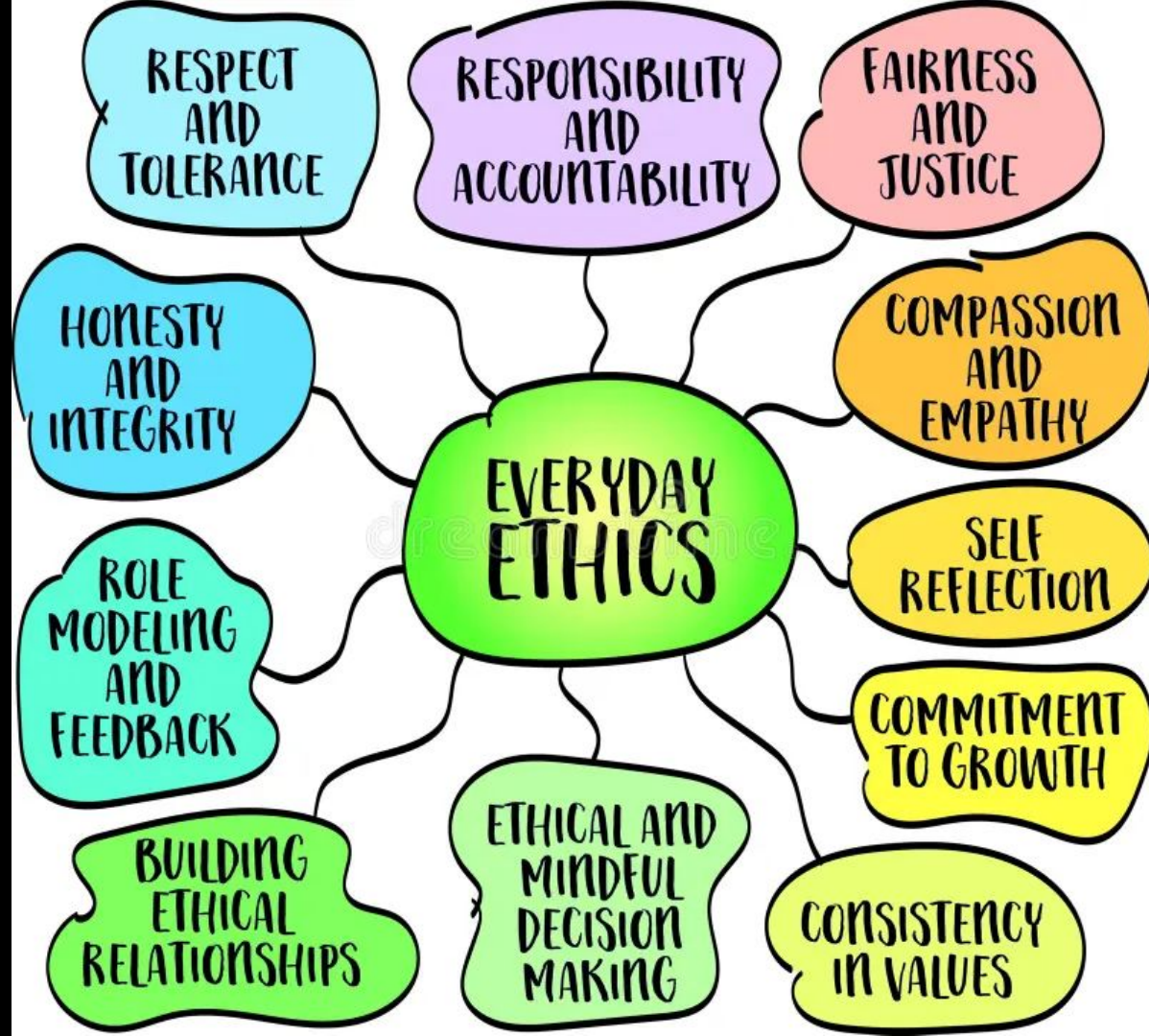


HERE IS NO RIGHT WAY TO DO SOMETHING WRONG,

but there are many miseducated areas that can be trained up and resolved!









What would you do?



**Forensics  
Consultant**

**123 Chiropractic Team**



<https://www.fda.gov/food/information-consumers-using-dietary-supplements/questions-and-answers-dietary-supplements>

123 Chiropractic Clinic in *Connecticut* calls you up with some questions to review given a malpractice lawsuit that is under investigation

- a. The federal trade commission is suing the office for false advertising.
- b. They said I falsely advertised a disease prevention claim.
- c. They also requested all substantiating evidence to support my TikTok, Instagram, Facebook and Youtube page ads.
- d. I don't know how to respond to this. Can you help?



THERE IS NO RIGHT WAY TO DO SOMETHING WRONG, but there are many miseducated areas that can be trained up and resolved!

IT'S IMPORTANT TO REMEMBER- Forensic Chiropractors are NOT attorneys. We will work alongside your attorney.



How many of you advertise your services?





# Types of Health Claims: 101

Health claims describe the connection between a nutrient or food substance and reduced risk of a disease or health-related condition and are regulated by the FDA.

FDA can authorize a health claim in one of the following ways:

- **Authorized Health Claims**
- **Authoritative Statements**
- **Qualified Health Claims**
- **Nutrient Content Claims**
- **Structure Function Claims**

[https://www.chpa.org/about-consumer-healthcare/faqs/faqs-about-dietary-supplements-regulations?utm\\_source=google&utm\\_medium=paid-search&utm\\_campaign=dietsupplments-2021](https://www.chpa.org/about-consumer-healthcare/faqs/faqs-about-dietary-supplements-regulations?utm_source=google&utm_medium=paid-search&utm_campaign=dietsupplments-2021) <https://www.fda.gov/food/dietary-supplements>



# Authorized Health Claims:

**Result from an extensive review of the scientific literature and the determination that the nutrient/disease relationship is well established.**

[https://www.chpa.org/about-consumer-healthcare/faqs/faqs-about-dietary-supplements-regulations?utm\\_source=google&utm\\_medium=paid-search&utm\\_campaign=dietsupplements-2021](https://www.chpa.org/about-consumer-healthcare/faqs/faqs-about-dietary-supplements-regulations?utm_source=google&utm_medium=paid-search&utm_campaign=dietsupplements-2021) <https://www.fda.gov/food/dietary-supplements>



# Authoritative Statements:

**The Food and Drug Administration Modernization Act of 1997 allows health claims based on authoritative statements from a scientific body of the U.S. government or the National Academy of Sciences.**

**Currently, this type of claim cannot be used for dietary supplements.**

[https://www.chpa.org/about-consumer-healthcare/faqs/faqs-about-dietary-supplements-regulations?utm\\_source=google&utm\\_medium=paid-search&utm\\_campaign=dietsupplments-2021](https://www.chpa.org/about-consumer-healthcare/faqs/faqs-about-dietary-supplements-regulations?utm_source=google&utm_medium=paid-search&utm_campaign=dietsupplments-2021)

<https://www.fda.gov/food/dietary-supplements>



# Qualified Health Claims:

When the strength of the scientific evidence falls below that required for FDA to issue an authorizing regulation, a qualified health claim may be allowed.

As with a standard health claim, qualified health claims are reviewed for accuracy and to ensure that they are not misleading to consumers.

**The Agency permits their use provided they are accompanied with appropriate disclaimers to ensure their truthfulness.**

[https://www.chpa.org/about-consumer-healthcare/faqs/faqs-about-dietary-supplements-regulations?utm\\_source=google&utm\\_medium=paid-search&utm\\_campaign=dietsupplements-2021](https://www.chpa.org/about-consumer-healthcare/faqs/faqs-about-dietary-supplements-regulations?utm_source=google&utm_medium=paid-search&utm_campaign=dietsupplements-2021) <https://www.fda.gov/food/dietary-supplements>





# Nutrient Content Claims:

Describe the level of a nutrient in a food or dietary supplement.

**For example, a supplement containing at least 200 milligrams could carry the claim “high in calcium.”**

Percentage claims used to describe a percentage level of a dietary ingredient for which there is no established Daily Value are another category of nutrient content claims.

[https://www.chpa.org/about-consumer-healthcare/faqs/faqs-about-dietary-supplements-regulations?utm\\_source=google&utm\\_medium=paid-search&utm\\_campaign=dietsupplements-2021](https://www.chpa.org/about-consumer-healthcare/faqs/faqs-about-dietary-supplements-regulations?utm_source=google&utm_medium=paid-search&utm_campaign=dietsupplements-2021) <https://www.fda.gov/food/dietary-supplements>



# How Many Of You Have Heard?

Because FDA does not pre-clear structure/function claims, they must be accompanied by the disclaimer:

“This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.”



# Structure Function Claims:

Are statements that describe the role of a nutrient or a dietary supplement intended to affect the structure or function of the body, the mechanism of how it helps to maintain that structure or function, or general well being.

**An example of a structure/function claim is:**

**“Ginseng will help maintain your natural energy.”**

[https://www.chpa.org/about-consumer-healthcare/faqs/faqs-about-dietary-supplements-regulations?utm\\_source=google&utm\\_medium=paid-search&utm\\_campaign=dietsupplements-2021](https://www.chpa.org/about-consumer-healthcare/faqs/faqs-about-dietary-supplements-regulations?utm_source=google&utm_medium=paid-search&utm_campaign=dietsupplements-2021) <https://www.fda.gov/food/dietary-supplements>



## **Study on chiropractors and their response to COVID-19**

**“Over an 11-day period between 16 March and 26 March 2020, a group of 19 chiropractors searched social media and the internet for instances of chiropractors making claims related to immunity, chiropractic care and COVID-19.”**

Axén, I., Bergström, C., Bronson, M. *et al.* Misinformation, chiropractic, and the COVID-19 pandemic. *Chiropr Man Therap* 28, 65 (2020). <https://doi.org/10.1186/s12998-020-00353-2>

# "4 Great Supplements to Boost your Immune System against COVID-19: Vit D3 (with K2), Probiotics, Zinc, Vitamin C" 10/21/2020

[https://\[redacted\]houston.com/4-supplements-to-boost-your-immune-system-against-covid-19/](https://[redacted]houston.com/4-supplements-to-boost-your-immune-system-against-covid-19/)



## Raise Your Shield

The body's enemies take on many forms — stress, seasonal changes, environmental contaminants.

They're virtually everywhere, hoping to capitalize on a moment of weakness.

It's a fight that never stops. It's a fight that we want to win.

Though we can't make the immune system invincible to these pressures, we can make it more prepared through regular chiropractic adjustments which support the nervous system and nutritional and herbal remedies.



“Though we can’t make the immune system invincible to these pressures, we can make it more prepared through regular chiropractic adjustments which support the nervous system and nutritional and herbal remedies”  
3/27/2020

<https://fortmyerschirostudio.com/2020/03/27/coronavirus-and-strengthening-the-immune-system/>



**Essential Nutrition to Protect Yourself Against  
Coronavirus**



False  
Advertising-

Structure-  
Function  
Claim  
specific to  
Covid-19

Ginger

Alpha Lipoid Acid

Capsaicin Cream

Chiropractic care

Massage

Acupuncture

Regular Exercise

## HOME REMEDIES FOR TREATING A **DIABETIC NERVE PAIN**

Due to diabetic neuropathy, you can experience numbness or tingling in your fingers, toes, hands and feet. Another symptom is a burning, sharp or aching pain. While the pain may be mild in the beginning, it can get worse with time and spread to other areas of the body.



MASSAGE



WARM WATER BATH



GINGER



REGULAR EXERCISE



CHIROPRACTIC CARE



CAPSAICIN  
CREAM



ALPHA  
LIPOIC ACID



ACUPUNCTURE

## Don't fall for using "support, maintain, promote" in Structure/Function Claims with specific disease interpretation

These type of statements are ONLY safe to use so long as the statements do not suggest disease prevention or treatment or use for a serious health condition a consumer lacks the ability to evaluate.



# Chiropractors cannot advertise a supplement for a specific health condition/disease- this is regulated by FDA and it would not be a supplement but a medication...

## Dietary Supplements vs OTC Drugs vs Prescription Drugs

Dietary Supplements/ Nutraceuticals <sup>[a,b]</sup>	OTC Drugs <sup>[c]</sup>	Prescription Drugs <sup>[c]</sup>
<ul style="list-style-type: none"><li>• Dietary ingredients (ie, vitamins, minerals, amino acids, herbs) taken to augment diet</li><li>• Not required to be proven safe to FDA's satisfaction before they are marketed</li></ul>	<ul style="list-style-type: none"><li>• Do not require a prescription for purchase</li><li>• Regulated by FDA through OTC drug monographs (ie, acceptable ingredients, doses, formulations, and labeling)*</li></ul>	<ul style="list-style-type: none"><li>• Efficacy/safety proven through clinical trials prior to FDA approval</li><li>• Requires prescription for a specific patient for intended use</li><li>• Purchased at pharmacy</li></ul>

**Omega-3 fatty acids are available as dietary supplements (unregulated) or prescription drugs (regulated)<sup>[d]</sup>**

\*Monographs are continually updated. Products conforming to a monograph may be marketed without further FDA clearance, while those that do not, must undergo separate review and approval through the "New Drug Approval System."

a. Patti AM, et al. *Arch Med Sci*. 2018;14,2:422-441; b. FDA.gov. FDA 101: Dietary Supplements; c. FDA.gov. Prescription Drugs and Over-the-Counter (OTC) Drugs: Questions and Answers; d. Drugs@FDA.gov.

The **Red Wording** is FALSE ADVERTISING!



**FALSE CLAIMS**

**“Support diabetic radiculopathy with vitamin B12”  
would violate a structure function claim**

**\*MAY support is the best we can offer\***



When we return:  
Medication/Supplement Interactions  
Informed Consents  
Good Faith Estimates



# Take a Break





## The Clinical Pharmacist and the Chiropractor connection:


Do Your Patients Have:

**The Pharmacist**

**The Chiropractor**

★ Heart Disease:	Yes	Yes
★ Bone Disease	Yes	Yes
★ Chronic Respiratory Diseases:	Yes	Yes
★ Diabetes: Type 1 and Type 2	Yes	Yes
★ Chronic Kidney Disease	Yes	Yes
★ Thyroid Disease	Yes	Yes
★ Chronic/Acute Pain	Yes	Yes
★ Mental Health Conditions	Yes	Yes





A recent study from 2015 suggests 15% of older adults are potentially at risk for a major drug-drug interaction (including supplements)

Changes in Prescription and Over-the-Counter Medication and Dietary Supplement Use Among Older Adults in the United States, **2005 vs 2011**

Dima M. Qato, PharmD, MPH, PhD<sup>1,2</sup>; Jocelyn Wilder, MPH<sup>1,2</sup>; L. Philip Schumm, MA<sup>3</sup>; et al

Published in JAMA 2015

**“ Conclusions and Relevance** In this study, the use of prescription medications and dietary supplements, and concurrent use of interacting medications, has increased since 2005, with 15% of older adults potentially at risk for a major drug-drug interaction. Improving safety with the use of multiple medications has the potential to reduce preventable adverse drug events associated with medications commonly used among older adults.”

<https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2500064>



## Drug-Supplement Interactions

- Almost 5,000 drugs are available on the US market.
- There are multiple databases available for identifying interactions but none can guarantee 100% accuracy
- **Drugs.com**
- **Medscape.com**
- **Memorial Sloan Kettering Cancer Center website**
- **Natural Medicines Comprehensive Database**

**It is estimated that 95% of ADRs go unreported for prescription drugs.**



# Anti-Cholesterol Agents

Statins: **simvastatin (Zocor), atorvastatin (Lipitor), rosuvastatin (Crestor), lovastatin, pravastatin**

- **Green tea** – (extract) can cause acute liver damage when used for “fat burning” properties
- **Red yeast rice** – works similar to lovastatin. Increased risk of liver damage and muscle pain.
- **St. John's wort** – may decrease effectiveness of statins



# Thyroid Agents

## Levothyroxine (Synthroid, Levoxyl, etc.)

- **Calcium** – will decrease levothyroxine levels
- **Iron** – prevents levothyroxine from working
- **Vitamin C** – will increase levels of levothyroxine = hyperthyroidism
- **Goitrogenic foods** (broccoli, cauliflower, strawberries, kale, etc.) – have “anti-thyroid” effect
- **Biotin** – can cause abnormal thyroid test results – false diagnosis of Grave’s disease



# Immunomodulators & Immunosuppressants

**Methotrexate, cyclosporine, dexamethasone, prednisone, etc.** – the goal of these agents is to suppress or alter the way the immune system is functioning.

- **Red yeast rice** – increased risk of liver damage when taken with methotrexate/cyclosporine. Increase risk of muscle damage/breakdown.
- **Ginseng**
- **Echinacea**
- **Vitamin C**
- **Licorice** – can increase blood pressure when combined with corticosteroids



# Cardiovascular Agents

**Warfarin (Coumadin), clopidogrel (Plavix), metoprolol (Toprol), lisinopril, digoxin, etc.**

- **Sage, flaxseed, St. John's wart, cranberry, goji juice, chamomile, coenzyme Q10, ginseng** - reduce effectiveness of warfarin
- **Licorice** - decreases levels of warfarin and can increase the effects digoxin
- **Evening primrose, ginkgo biloba** - increases risk of bleeding when taken with warfarin or clopidogrel
- **Garlic, saw palmetto** - increases risk of bleeding when taken with aspirin, clopidogrel, or warfarin
- **Hawthorn** - “duplicate” therapy with drugs like metoprolol, verapamil, etc. = increased risk of low blood pressure/irregular heart rhythm.



# Antidepressant/Psychiatric Agents

- SSRIs: **sertraline (Zoloft)**, **paroxetine (Paxil)**, **fluoxetine (Prozac)**, **escitalopram (Lexapro)**, **citalopram (Celexa)**
- TCA (tricyclic antidepressants): **amitriptyline (Elavil)**, **nortriptyline (Pamelor)**
- Others: **bupropion (Wellbutrin)**, **duloxetine (Cymbalta)**, **venlafaxine (Effexor)**, **desvenlafaxine (Pristiq)**
  
- **St. John's wort** – prevents serotonin breakdown = serotonin levels increase = increased risk of serotonin syndrome (agitation, sweating, diarrhea, tremor, lethargy, seizures, etc.)  
Increases metabolism of amitriptyline and nortriptyline = treatment failure.
- **Ginkgo** – possibly can increase levels of antidepressant agents
- **Valerian root**

**No antidote for the serotonin syndrome.**





# Addiction Management

Opioid addiction – nationwide issue. Requires multidisciplinary approach for best results.

Common medication management: methadone, Disulfam (Antibuse), Buprenex (Buprenorphine) side effects include: vomiting, nausea, **sweating, dizziness, severe constipation, hypotension**, arrhythmia, **throbbing pain in head and neck, syncope, anxious feelings, confusion**.

"19.7 MILLION American adults (defined age 12 and older) battled substance use disorder in 2017" and "8.5 million adults suffered from both a mental health disorder and substance use disorder, or co-occurring disorders" - American Addiction Centers on the February 22, 2021.



# Co-Occurring Disorders with Opioid Addiction

- Anxiety
- Mood Disorders (bipolar, depression)
  - **20% of people with substance abuse disorders**
- Personality Disorders
  - **35-73% of people treated for addiction**
- Post Traumatic Stress Disorders (PTSD)
- Attention Deficit/Hyperactivity Disorder (ADHD)



## Possible DHEA interactions with:

Alprazolam

Birth Control Pills (estrogen)

Amlodipine

Clomiphene

Cilostazol

Prednisolone

Clopidogrel

Warfarin

Testosterone  
agents

Insulin and oral hypoglycemic

And more....



## The Basic Rights of Medication/Supplement Administration

- Right Patient
- Right Medication/Supplement
- Right Dosage
- Right Time
- Right Route of Administration

**\*\*Right Documentation; Right Reason; Right to Know (Patient Education);  
Right to Refuse\*\***

# Heart Disease

CDC “1 person dies every 36 seconds in the US from heart disease”. “Heart Disease costs \$219 BILLION each year from 2014-2015”.

Side Effects of **blood thinners (Anticoagulants)** such as Coumadin (warfarin), Plavix (clopidogrel), Xarelto (Rivaroxaban) includes: prolonged excessive bleeding, **myalgia, arthralgia**, diarrhea, pruritus, **muscle spasms**.

Side Effects of cholesterol medication (**Cholesterol/Lipid Management**) such as Zocor (Simvastatin), Lipitor (Atorvastatin), Mevacor (Lovastatin), Lovaza (Omega-3 Fatty Acid Ethyl Esters), Zetia (Ezetimibe) includes: **muscle pain or weakness, joint pain**, and diarrhea.

Side Effects of **Ace Inhibitors or Calcium Channel Blockers** Prinivil (Lisinopril), Norvasc (Amlodipine), Cardizem/Tiazac (Diltiazem) include: cough, **headache, weakness, dizziness**.

<https://www.cdc.gov/heartdisease/facts.htm>



## The Case- Hypothetical

- 49 yo athletic female comes in and lists they had a heart attack 4 months ago.
- Chief Complaint: headaches, dizziness on transition from sit to stand, neck pain, right hand weakness
- They have been given a new cocktail of prescriptions to take to manage an underlying heart arrhythmia and to prevent any future cardiovascular events.
- The chiropractor sees the review of systems has changed and is wanting to help alleviate the muscle spasms, weakness and myalgia the patient presents with.



## The Case Continued

- Chiropractor performs vitals, orthopedic checks/tests, and functional outcome scores.
- Findings: BP: 133/84 mmHg Pulse 66.
- Dizziness provoked with active cervical range of motion in right rotation and left lateral flexion. Pain and Tenderness with palpation of C1/C2 and C5/C6 on the right LPJ.
- Cervical distraction relieves pain in C5/C6 on right.
- Upper Motor/Neuro/Sensory are “normal”.
- Patient has persistent dry cough every 5-10 minutes of talking.
- Other cervical orthopedic tests normal including swivel chair testing. Neck Pain Disability is rated 34. Headache Questionnaire rated 46.





## The Case Continued...

- **Chiropractor diagnosis:** cervical sprain/strain, segmental dysfunction of cervical region, cervicalgia, general vertigo/dizziness, tension headache.
- **Chiropractor treatment:** 3x/wk for 3wks, 2x/wk for 4wks, 1x/wk for 6 wks. Some cervical neck stretching. Alternating ice and heat to paraspinal muscles 3-4 times a day for 20 minutes. Omega 3's to help with joint flexibility, cardiovascular and musculoskeletal health 1-2 softgels daily.



# The Case Continued....

The patient complied with the chiropractor's recommended treatment plan.

She saw an ad for MegaRed fish oil, and since it was less expensive, she started taking that.

Her 8th visit into the chiropractic office, the chiropractors notes say "doing well, having some nausea and stomach cramps off and on but I think it's related to my menstrual cycle".

3 days later, her husband calls to inform the receptionist that all appointments need to be cancelled.

2 months later, the doctor receives notification he is being sued for breaching the standard of care by recommending supplements that had adverse reactions to the patient's medication list. **Outcome to be determined.**

<https://classactionsreporter.com/megared-omega-3-krill-oil-class-action-lawsuit/>

Let's chat about NEW PATIENT experiences!!



Quick Survey Time!

How many of you use  
written or verbal  
Informed Consent?

How many of you use  
Good Faith Estimates  
(GFEs)?



# What May Have Changed Since Opening the Office?



# HEALTHCARE LAW **UPDATE**

In-Network vs  
Out-of-Network





**WHAT'S NEW?**

Did you review  
your office's  
informed  
consent  
recently?

What about the  
good faith  
estimate, did  
you review that  
recently?



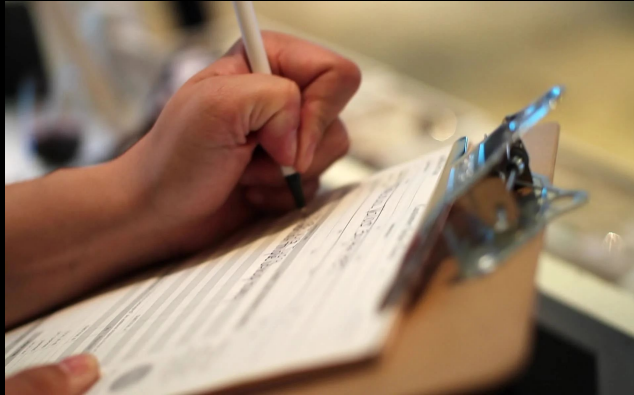
Most offices I work with have not undergone a yearly review process of their documentation, they set it up when they opened, and never updated it since...





# Informed Consent

Electronic OR Paper Form OR Conversation



# Informed Consent- Patient Rights

## Recognizing patients' rights

The underlying principle of consent isn't particularly complicated:

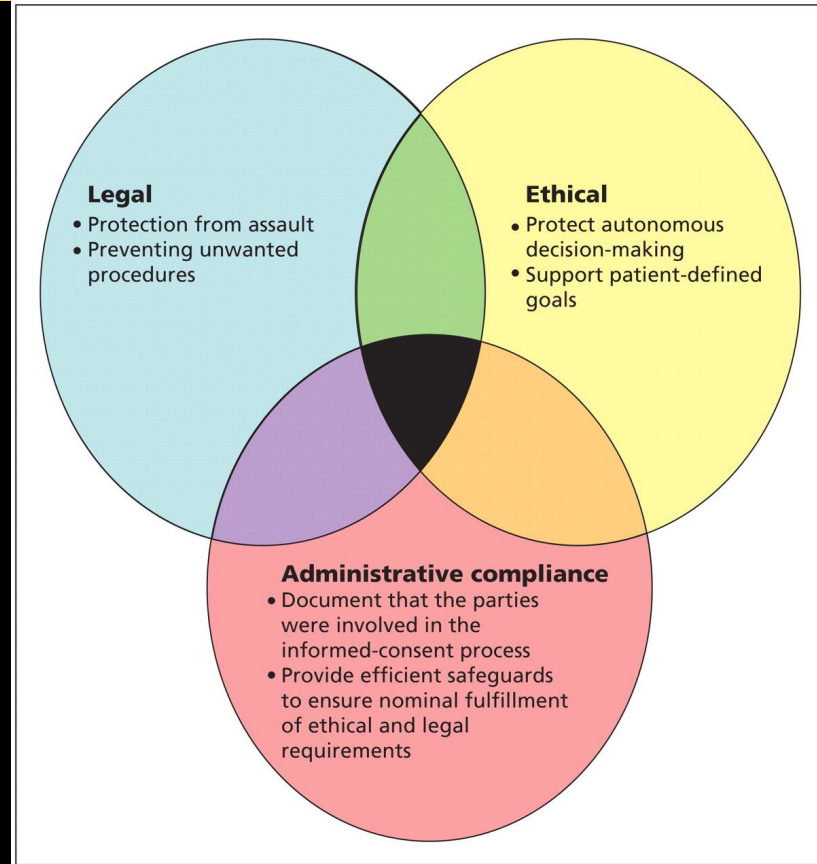
Patients have a right to make an informed, voluntary decision about their care.

That means **they need to know** the nature, risks, and benefits of their options — which includes declining treatment.

- Association of American Medical Colleges

<https://www.aamc.org/news/what-informed-consent-really-means#:~:text=The%20underlying%20pinciple%20of%20consent,options%20%E2%80%94%20which%20includes%20declining%20treatment>. Viewed 1/7/24.

# Informed Consent: Legal, Ethical, Administrative Compliance



# Informed Consent = Doctor+ Patient Communication

“Informed consent is not just the signing of a form. Informed consent is about a thorough process of communication between patient and provider.”

Aaron Fink, MD

Emory University School of Medicine

<https://www.aamc.org/news/what-informed-consent-really-means#:~:text=The%20underlying%20principle%20of%20consent,options%20%E2%80%94%20which%20includes%20declining%20treatment>. Viewed 1/7/2024

NCMIC- 2017:

**NCMIC Claims Reporting Line: 800-242-4052**

**NCMIC does not have any position regarding informed consent.**

As an insurer, we deal with each insured and the malpractice claim against them on an individual basis.



# NCMIC-2017

**As for the consent form itself, we (NCMIC) have always maintained the policy that we do not review any individual consent forms nor will we draft an informed consent form for doctors to use in their practices.**

Further, we do not endorse any form for use by the chiropractic profession.



# Informed Consent Continued

Doctors need to understand that informed consent is a process.

Verbal or Written form may not be sufficient. Some states require BOTH.



# The Doctor Is Responsible For:

The Doctor is responsible for:

- to make sure that the patient is properly informed
- understands and consents to the treatment to be provided
- it is also within the doctor's discretion as to how the information is communicated and how the consent is obtained.

Responsibilities  
of a  
Doctor





# Informed Consent

A patient has the right to exercise control over his or her body by making an informed decision concerning whether to consent to a particular course of treatment or procedure.

<https://www.ncmic.com/webres/File/Informed%20Consent%20SAMPLE.pdf> viewed 1/7/2024



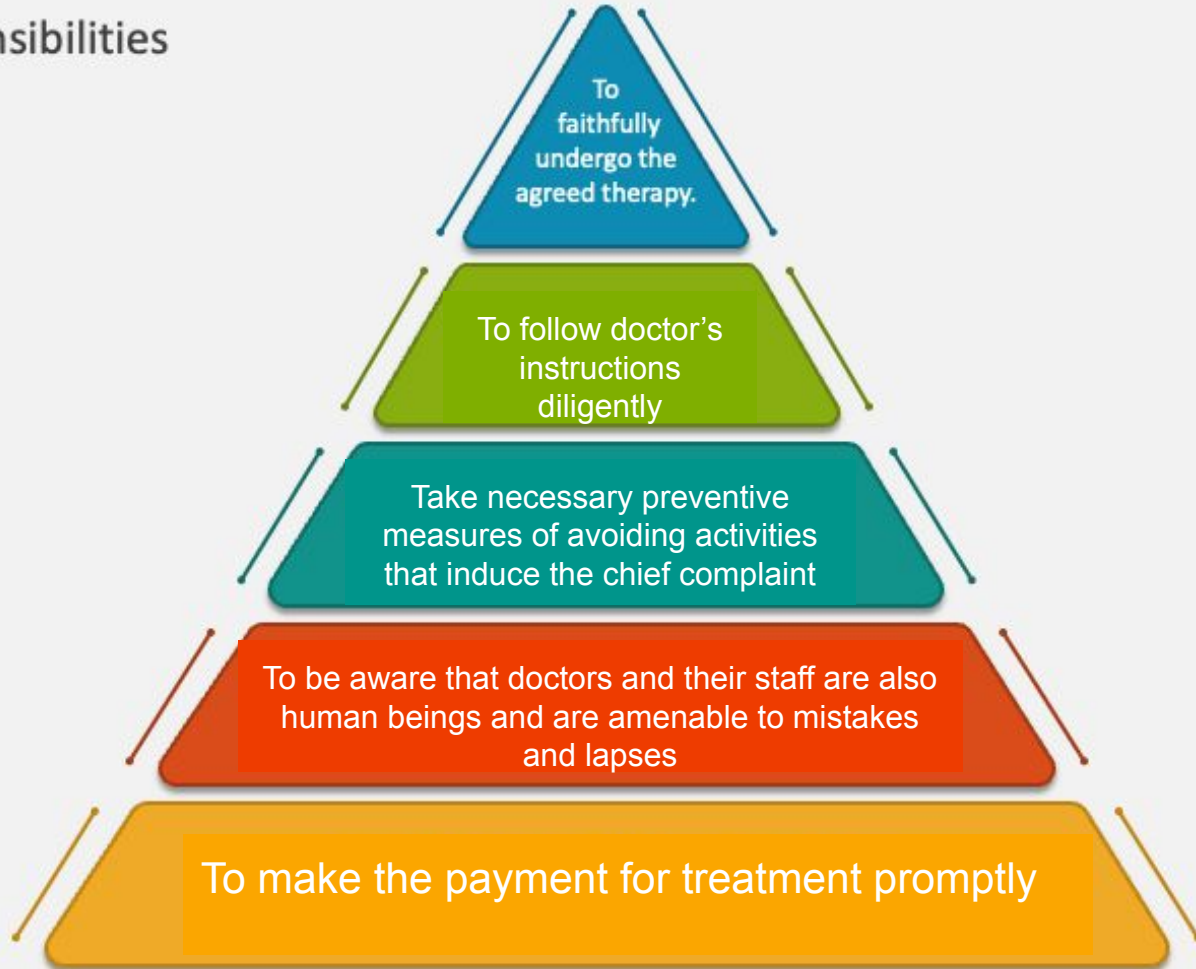
# PATIENT RIGHTS AND RESPONSIBILITIES

## Patient Rights



# PATIENT RIGHTS AND RESPONSIBILITIES

## Patient Responsibilities



# Informed Consent

**For the patient to truly consent it is generally held that they should know and completely understand the following:**

- 1) Nature of the treatment to be rendered;
- 2) All material risks attendant to that treatment;
- 3) The possibility of an occurrence of the aforementioned risks;
- 4 ) Alternative treatment available and the risks attendant to those treatments;
- 5) The consequences of allowing the condition to remain untreated.

# Informed Consent follows local, state, federal laws!

Even though the principles stated in informed consent have been generally well accepted throughout the country-

Specific state statutes or state case law often further define the necessary elements to establish informed consent.

**U.S. CONSTITUTION & FEDERAL  
LAWS**

**STATE CONSTITUTIONS & STATE  
LAWS**

**LOCAL LAWS**

<https://www.ncmic.com/webres/File/Informed%20Consent%20SAMPLE.pdf>  
viewed 1/7/2024

# National Chiropractic Council

## How implementing informed consent procedures can protect you and your practice.

Many chiropractors find the idea of discussing the **informed consent** to be intimidating, but instead, think of it as an opportunity to have an open discussion with your patients and build their trust in you as a professional.

Certain states require chiropractors to **get written informed consent** from patients prior to treatment. Others including California, require both written **and verbal consent**.

<https://chiropracticcouncil.com/informed-consent/> viewed 1/7/2024.

Last updated: 2023 National Chiropractic Council | Sitemap | Designed and Marketed by Blackwood Industries

# National Chiropractic Council

“Besides being in compliance with your state licensing board, getting informed consent can also protect you in the case of a claim.

While chiropractic care is generally very safe, even the most careful and conscientious practitioner will have some patients who do not respond well to chiropractic care.

**Certain risks such as fractured ribs, even if adjustments are done properly are a real possibility.”**

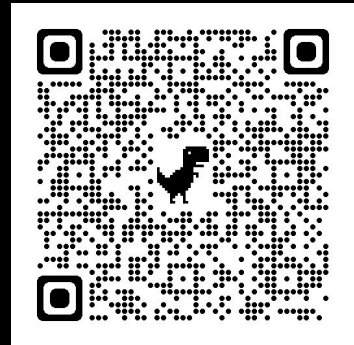
<https://chiropracticcouncil.com/informed-consent/> viewed 1/7/2024.

Last updated: 2023 National Chiropractic Council | Sitemap | Designed and Marketed by Blackwood Industries

## FLCB on Informed Consent (2013)

Evidence that the patient was informed of any material risk relative to a proposed treatment / procedure and consented to receive this treatment / procedure.

[https://fclb.org/files/publications/1638890926\\_model-recordkeeping-statute-and-regs.pdf](https://fclb.org/files/publications/1638890926_model-recordkeeping-statute-and-regs.pdf) last viewed 1/7/24





Maine - MRS 32 Ch 9: Chiropractors

Ch 21: Maine Health Security Act



# New Hampshire Informed Consent | Updated 2024



- (a) The diagnosis, when known;
  - (b) The nature and purpose of recommended interventions;
  - (c) The burdens, risks, and expected benefits of all options, including forgoing treatment.
- III. Document the informed consent conversation and the patient's or surrogate's decision in the medical record in some manner. When the patient or surrogate has provided specific written consent, the consent form shall be included in the record.

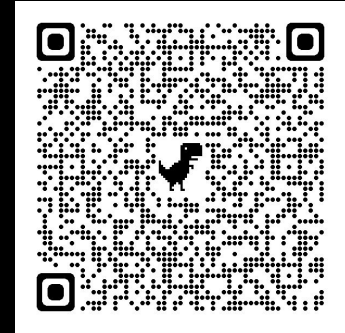
# Massachusetts Informed Consent



Massachusetts:

- Expires in a year
- Details out what is to be documented in the consent form!

## Chiropractic Care has Side Effects- Does your office let the patient know?




Headache, Fatigue, Local Soreness, Broken Rib(s), VAD, Stroke, Stiffness, etc.

Here is an example of a drug-supplement checker!





# Chiropractic Care has Side Effects- Does your office let the patient know?



**Chiropractors Treat Pain  
Without the Use of Opioids**

# 42x

A 2021 study of Medicare recipients receiving long-term care for chronic low back pain showed adverse drug effects were **42 times higher** for patients who initially chose Opioid Analgesic Therapy (OAT) compared to those who chose Spinal Manipulative Therapy (SMT).

Whedon, James M. DC, MSc; Kizhakkeveetil, Anupama BAMS, (Ayurveda), MAOM, LAc, PhDa; Toler, Andrew WJ MSc; MacKenzie, Todd A. PhDb; Lurie, Jon D. MD, MSc; Hurwitz, Eric L. DC, MS, PhDa; Bezdjian, Serena PhDa; Bangash, Mariam; Upton, Sarah DCA; Rossi, Daniela; Haldean, Scott DC, MD, PhDa Initial Choice of Spinal Manipulative Therapy for Treatment of Chronic Low Back Pain Leads to Reduced Long-term Risk of Adverse Drug Events Among Older Medicare Beneficiaries. SPINE, April 19, 2021 - Volume Publish Ahead of Print - Issue - doi: 10.1097/BRS.0000000000004078

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The Profession is sharing the PROs of care!

AND WE SHOULD BE!!

But- when these potential patients come in- are we discussing the risks??

Headache, Fatigue, Local Soreness, Broken Rib(s), VAD, Stroke, Stiffness, Sleepy, etc.



AMERICAN  
CHIROPRACTIC  
ASSOCIATION

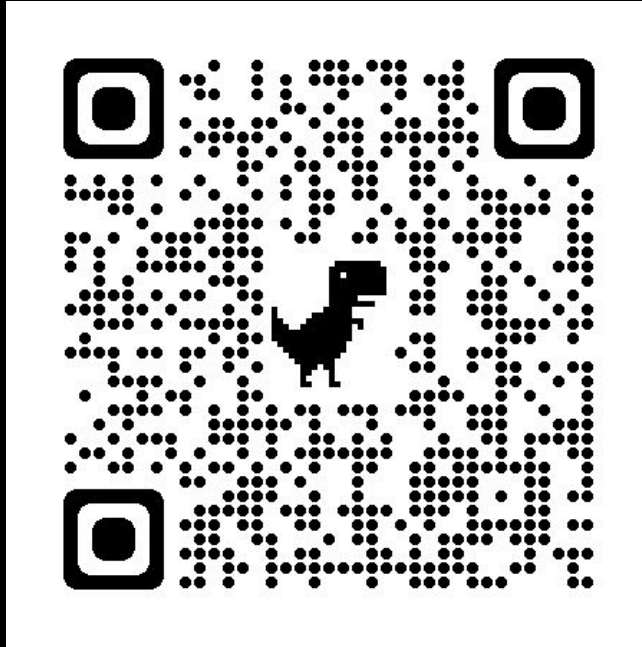
Your hands-on partner™  
www.HandsDownBetter.org

# Update Informed Consent When



# ACA Informed Consent Resources

**Thank you for being an MCA attendee!**



**Informed Consent Resources**



## Monday Take-Aways

### \*Informed Consent

- When was it last updated?
- Is it a conversation?
- Does the patient really understand the risks?

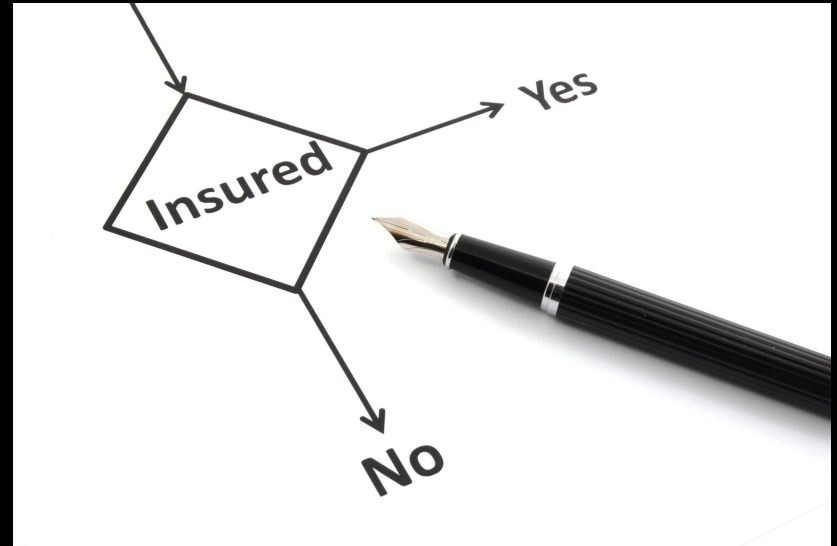


*You don't need*  
*a new year to make*  
**A CHANGE.**  
**ALL YOU NEED**  
*is Monday!*

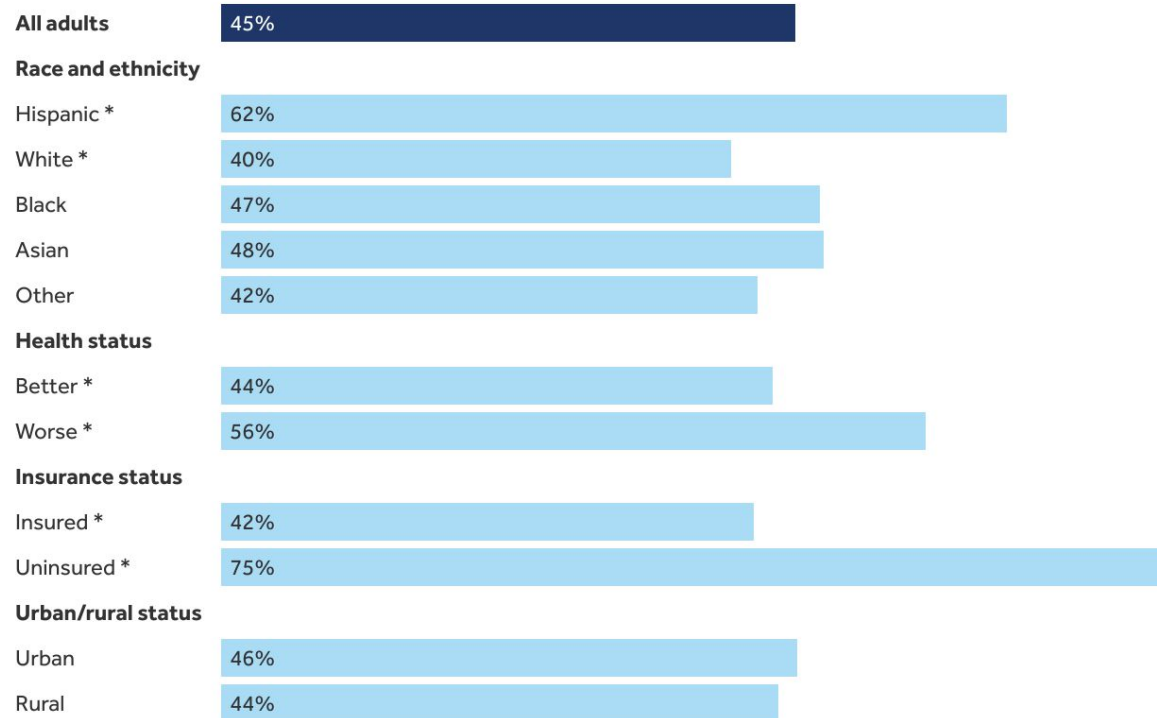


**Good Faith Estimates!**

Survey Time!! Are Good Faith Estimates (GFEs):

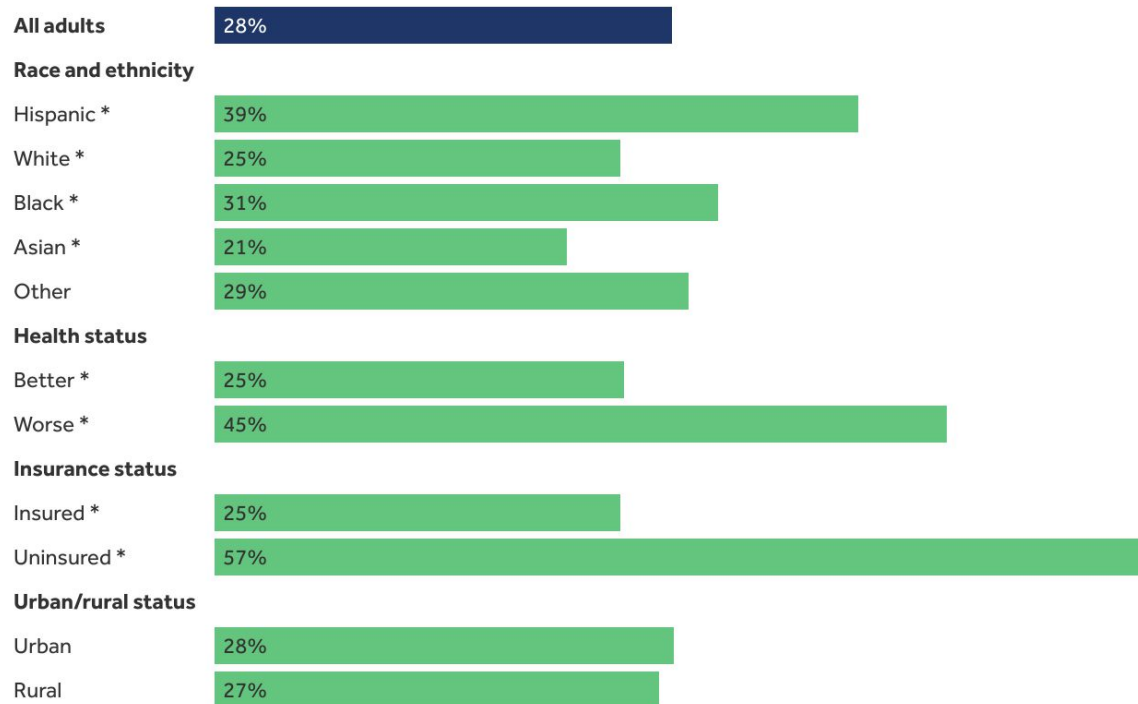


## Percent of adults who worry about their ability to pay medical bills if they get sick or have an accident, by selected demographics, 2022



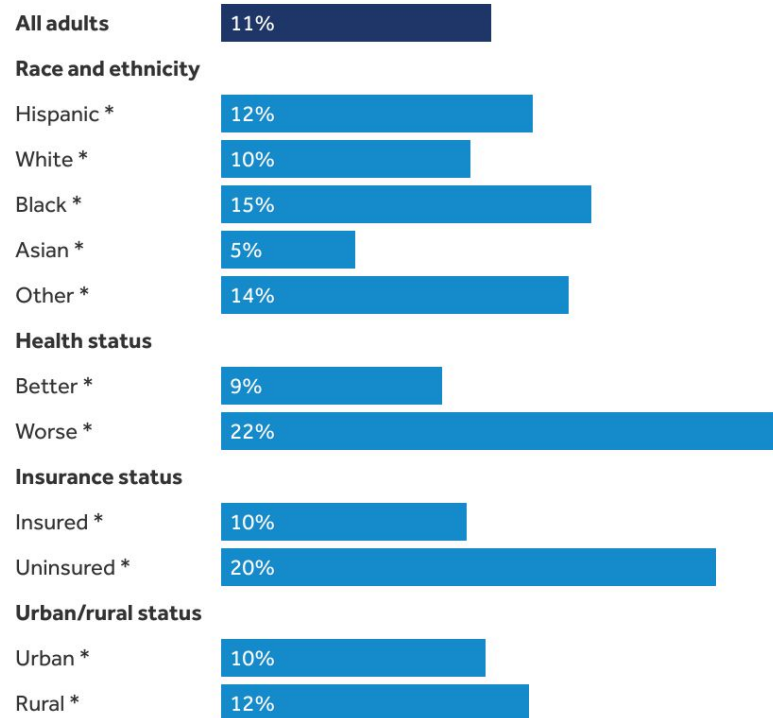
Note: \*Estimate for this group is statistically different from the estimates for all other groups within the same outcome ( $p < 0.05$ ). Hispanic could be any race, but all other groups are non-Hispanic. "Other" groups people of any race or ethnicity not otherwise stated due to small sample sizes.

## Percent of adults who delayed or did not get health or dental care due to cost, by selected demographics, 2022



Note: \*Estimate for this group is statistically different from the estimates for all others ( $p < 0.05$ ). Hispanic could be any race. All other groups are non-Hispanic. "Other" groups people of any race or ethnicity not stated due to small sample sizes. This chart includes adults reporting not getting or delaying medical, mental health, or dental care due to cost and those reporting not getting, delaying, skipping, or taking fewer prescription drugs due to cost.

## Percent of adults reporting that they or a family member had difficulty paying medical bills, by selected demographics, 2022



Note: \*Estimate for this group is statistically different from the estimates for all other groups within the same outcome ( $p < 0.05$ ). Hispanic could be any race, but all other groups are non-Hispanic. "Other" groups people of any race or ethnicity not otherwise stated due to small sample sizes.

# Good Faith Estimates (GFEs)

**Applies to anyone who is**

- **UNINSURED** or
- **Elects NOT TO USE** insurance.

GFEs are a necessary step before informed consent

# New Patient Calls in to Schedule: When is GFE Due?

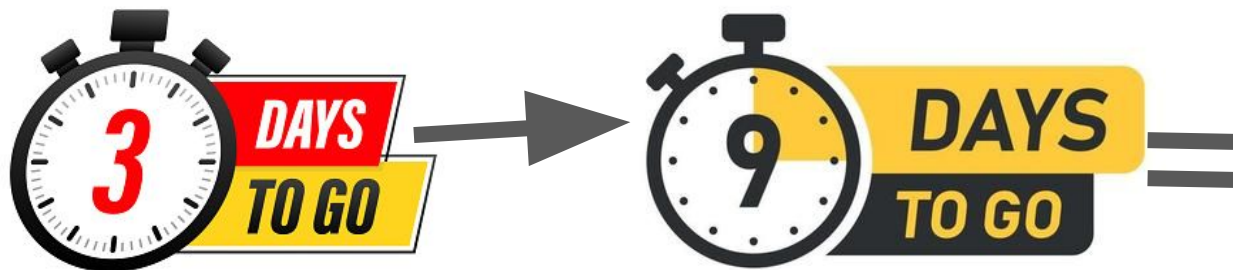
When patient schedules care **0-2 business days in advance**  
they **are NOT entitled** to get a **good faith estimate**.





## New Patient Calls in to Schedule: When is GFE Due?

- When patient schedules care **3-9 business days in advance** they get the **estimate within 1 business day**.



## New Patient Calls in to Schedule: When is GFE Due?

- When patient schedules care **10 or more business days in advance** they should get the **estimate within 3 business days**.



=



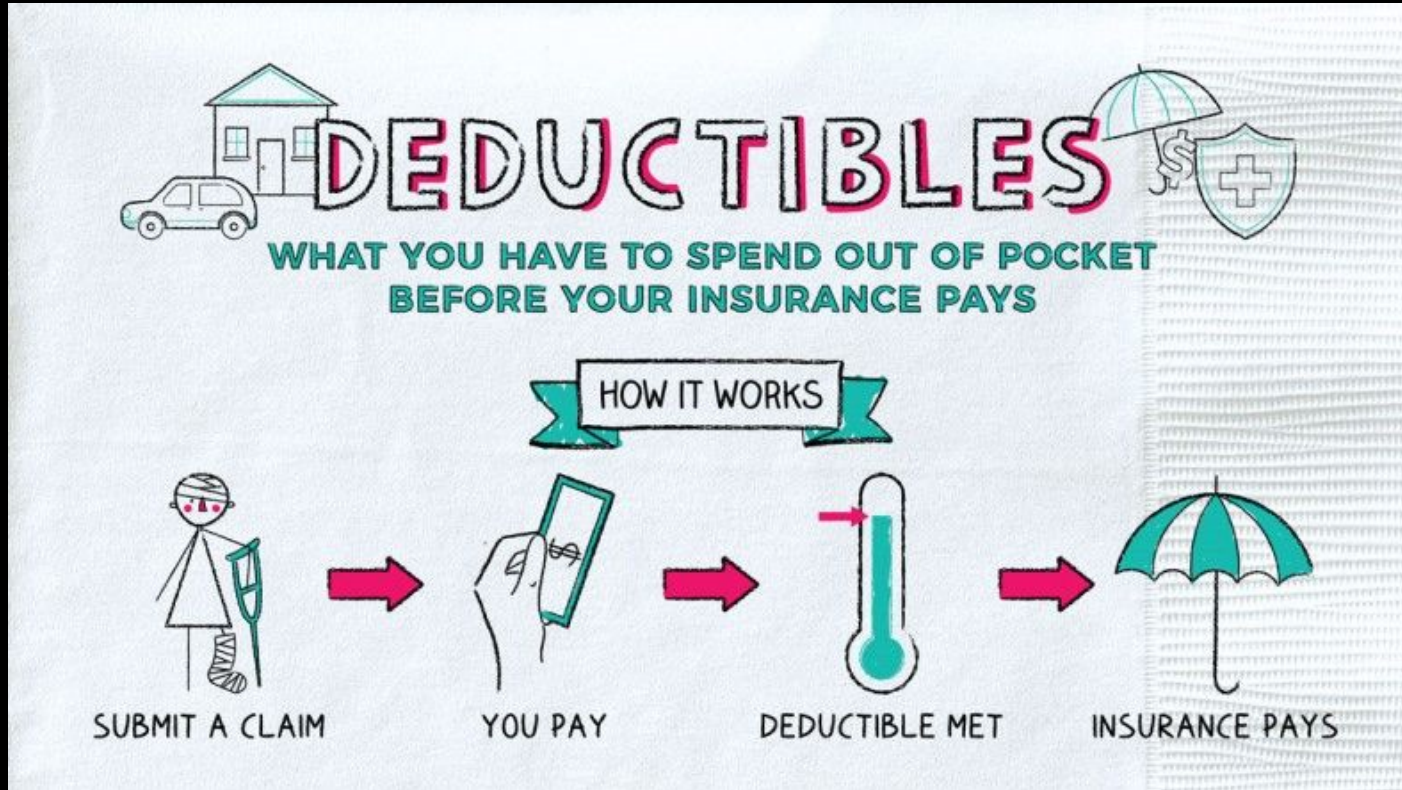
# What is in Good Faith Estimate (GFE)?

GFE is the expected cost of care for service(s) to be provided

- The exam cost
- The treatment cost(s) broken down by therapy provided
- **There is up to a \$400 difference allowed** from estimate to actual service rendered.



Although **NOT** required for insured patients to obtain a GFE at this time\*  
- it is a great courtesy to notify them of out of pocket estimated costs



\*Unless patient waiving insurance coverage and paying cash rates- a GFE applies in this scenario



# Helping Your Patients Understand Insurance

## Stage 1: Paying the Deductible

## Stage 2: Cost Sharing with Copay or Coinsurance

## Stage 3: 100% Insurance Coverage

Party Responsible for Payment



100%

### Copay

The patient pays a set dollar amount according to their insurance plan  
Example: \$25

### Coinsurance

The patient pays a set percentage of your contracted rate according to your fee schedule  
Example: 30%

0%

INSURANCE

0%

The insurance company pays the balance of your contracted rate according to the fee schedule

The insurance company pays the remaining percentage of your contracted rate according to the fee schedule

100%

Gate 1: Meeting the Deductible

Gate 2: Meeting the Out of Pocket Max



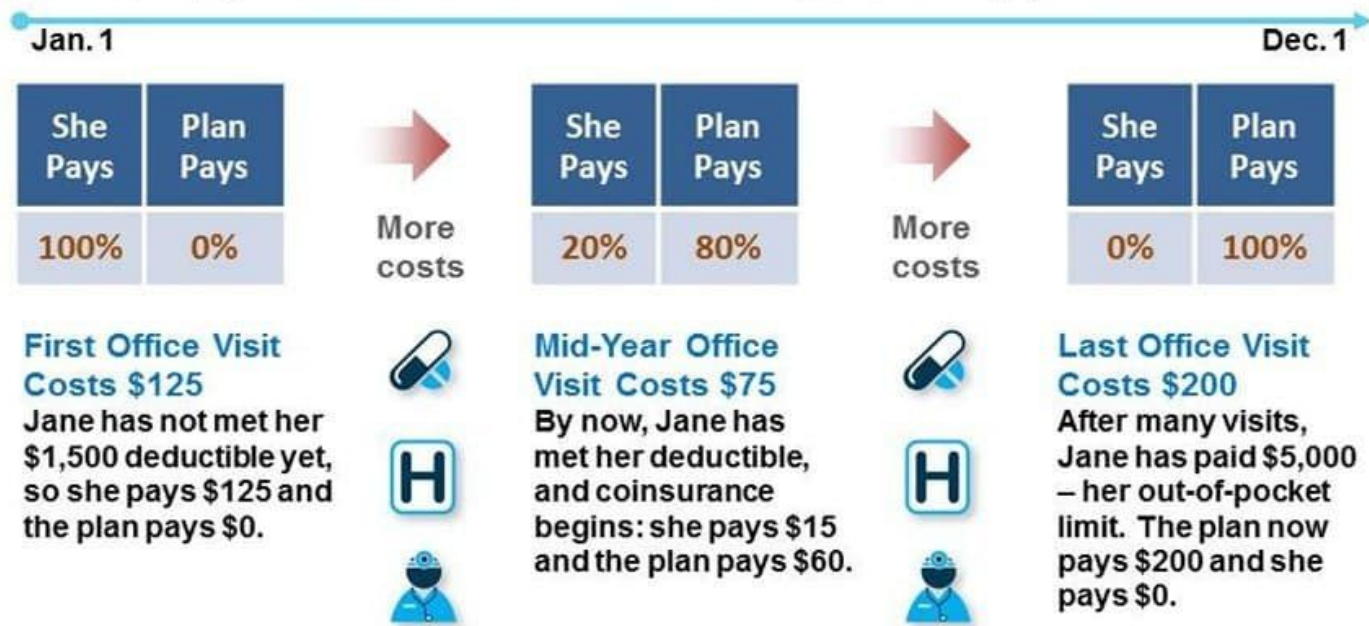




# How You and Your Insurer Share Costs

## Example: Jane's Health Insurance Plan

Deductible \$1,500 • Coinsurance 20% • Out-of-Pocket Limit \$5,000



Illustrative Example Only. Actual Coverage will be based on Allowable Charges

# Let's Dig into the No Surprises ACT (NSA) 2022

The No Surprises Act (NSA) protects U.S. healthcare consumers from surprise medical billing.

-Went into effect on January 1, 2022

Requires healthcare providers to follow several billing guidelines to prevent patients from receiving unexpected medical bills for out-of-network services.

<https://chirotouch.com/resources/article/chiropractic-billing-complying-with-the-no-surprises-act/#:~:text=The%20newly%20enacted%20No%20Surprises,causing%20financial%20harm%20to%20patients.>



# NSA applies to Chiropractors

## No Surprises Act and Chiropractic Billing

NSA protects patients who seek non-emergency services from healthcare providers-INCLUDING CHIROPRACTORS, so you must adhere to policies outlined in the federal bill when a patient visits your practice.

Non-emergency services you may offer at your practice include chiropractic treatment, treatment provided with medical equipment, and lab or imaging services.

<https://chirotouch.com/resources/article/chiropractic-billing-complying-with-the-no-surprises-act/#:~:text=The%20newly%20enacted%20No%20Surprises,causing%20financial%20harm%20to%20patients.>

Yes, You



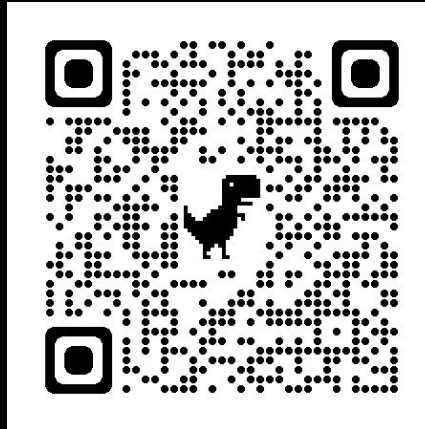
# Avoid a \$10,000 fine

If your practice does not adhere to NSA guidelines or bills more than the in-network amount to patients, the U.S. Department of Health and Human Services (HHS) may fine you up to \$10,000 per violation.

<https://chirotouch.com/resources/article/chiropractic-billing-complying-with-the-no-surprises-act/#:~:text=The%20newly%20enacted%20No%20Surprises,causing%20financial%20harm%20to%20patients>.

**For Additional Amazing Resources on No Surprise Act and Billing Compliance-**

**Please visit this QR CODE to KMC University!**



# In Network or Out Of Network Allowed Amounts

CMS sheet to health insurance payers about providing in and out of network covered services can be found here:



<https://www.cms.gov/files/document/transparency-coverage-8-steps-508.pdf>





**5-15% is the  
maximum for time  
of service discount.**



# Cash Practice? Stay Up to Date on Compliance!

Providing a Superbill for patient's to submit to their insurance?

Consider an additional form to clearly explain the financial policy expectations.



# GFEs Should Include

Your clinic information

Patient Information

Itemized Treatments with Estimated Cost per Service

If a DMPO Like CHUSA

is used, is it active/expired?



**GOOD  
FAITH  
ESTIMATE**

# What if it's an ALL CASH Practice?!

**\*\*IF YOU DO NOT TAKE INSURANCE IN YOUR PRACTICE-  
GFEs ARE REQUIRED FOR ALL PATIENTS\*\***

(they are not insured or electing NOT to use their insurance)



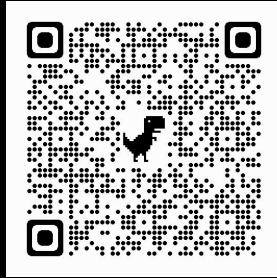
# Monday Take-Aways: GFEs

- Provided to NON INSURED
- Provided if ELECTING TO NOT USE INSURANCE
- If scheduling within 2 business days- **GFE is not required!!**
- Scheduling 3+ days out- verbal and written GFE recommended
- Scheduled 3-9 days out- GFE within 1 business day
- Scheduled 10+ days out- GFE within 3 business days

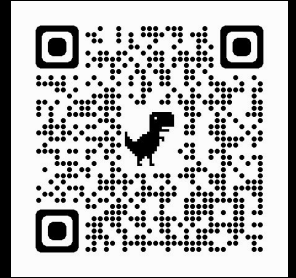


# Additional Resources:

**ACA No Surprise Act:**



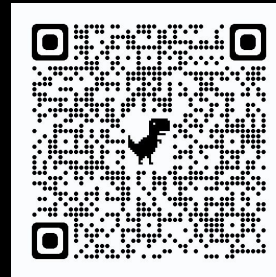
**ACA Informed Consent:**



**KMC University:**



**HHS.Gov:**



**CHUSA:**





Thank you LifeLynx for sponsoring the MCA 2024 Conference

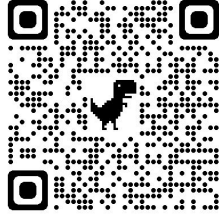
Be sure to check out their booth!



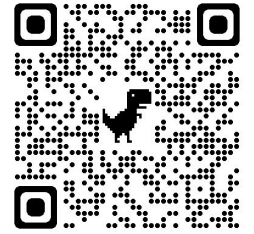
**Chiropractic's newest option for exit strategy  
and long term partnership**

# Thank You MCA MEMBERS for supporting MCA this year!

Crystal Zagwyn LinkedIn:



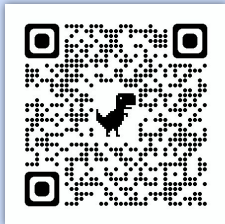
Expert Witness Group:



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Students have **FREE** membership



**Join the MCA**

