



## TEXAS CHIROPRACTIC COLLEGE

- ▣ Dean of the Postgraduate Division

## RISK MANAGEMENT

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FIMA, DCRC, DACAN, CCSP, FICC

## Acupuncture credentials

- ▣ Published two research manuals
- ▣ Taught first Acupuncture course ever offered by a Chiropractic College
- ▣ Educated in Chinese, Japanese, Korean, and Thai acupuncture techniques
- ▣ Court-room testimony on behalf of Chiropractic Boards
- ▣ Dean, Postgraduate Division at Texas Chiropractic College

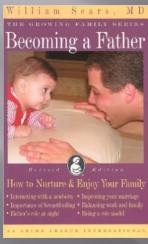
What's the goal ... ?

Risk management is:

- Identifying risks that might exist
- Evaluating those risks

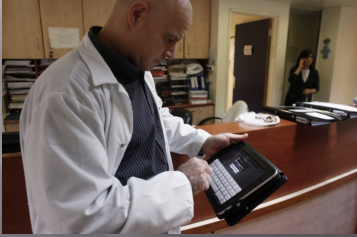
Taking the necessary steps to avoid those risks

The real keys to avoiding litigation start with the doctor/patient relationship



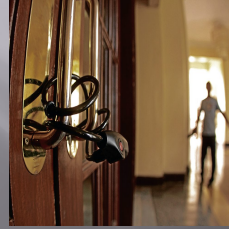
- ▣ TOUCH
- ▣ LOOK
- ▣ MAKE MENTAL CONTACT

### “What you gonna do if they come for you?”



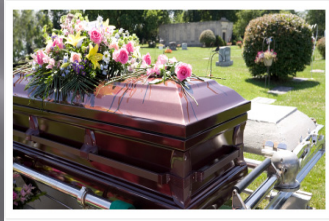
### The party's over

- ▣ It's not that bad
- ▣ It's business ....
- ▣ Don't panic
- ▣ Don't close the doors
  
- ▣ Let's start at the beginning



### Keep things in perspective

A report released from the Institute of Medicine in 1999, indicated that medical errors contribute to the deaths of 44,000 to 98,000 hospitalized patients each year.



### Let's get real

- ▣ Tylenol (acetaminophen) –
  - More than 56,000 ER visits per year
  - 2,600 hospitalizations per year
  - An estimated 456 deaths due to liver failure
  - The LEADING cause for calls to the Poison Control Center: 100,000 instances per year.

### Chiropractic/Acupuncture

- ▣ Close to ZERO
  
- ▣ Acupuncture - 4 “reported” deaths!
- ▣ Chiropractic - 26 “reported” deaths!



### LET'S LOOK AT THE MEDICAL NUMBERS

A research team at Harvard found that 3.7% of those hospitalized (in NY) suffered adverse events with 27.6% of those attributed to negligent care!!!

### Comparison

Ernst's article "Deaths after Chiropractic" attempts to discredit chiropractic.

He alleges 26 deaths in 75 years of Chiropractic practice. If true, that's still less than 1/3 death per year

- Chiropractic: .000000132% death rate
- Medicine: 230,000-280,000 iatrogenic deaths plus 10,000 – 20,000 deaths from medications in the US

### Our friend Ernst

90 fatalities associated with acupuncture

He cites the following dangers:

- 1) Puncturing the lungs – pneumothorax
- 2) Puncturing the heart – cardiac tamponade
- 3) Puncturing a blood vessel
- 4) Injury a vital structure
- 5) Introducing bacteria or viruses



### LAWS THAT IMPACT HEALTH CARE

#### ▫ CRIMINAL LAW

- Defendants are found GUILTY or NOT GUILTY

#### CIVIL LAW

Defendants are found LIABLE

- They pay for financial losses, and/or
- They pay for pain and suffering

The foundation of civil law is TORT LAW

### Torts can be Intentional or Unintentional

- Unintentional Torts: the basis of malpractice suits, i.e. negligence

▫ "The failure to use the degree of care that would be expected of a reasonable and prudent doctor under the same type of circumstances"

▫ De facto – medical negligence or malpractice

▫ The plaintiff must demonstrate

- 1) A legal duty to provide reasonable care
- 2) A breach of duty, i.e. a failure to act
- 3) Injury to another
- 4) Breach of duty must be related to the cause of the injury

### Stated differently: Medical Malpractice contends that ....

- 1) The doctor's conduct did not meet the expected professional standards of care or fell below the standards of care.
- 2) The failure is what actually caused harm to the patient.

- A doctor is negligent while acting in his or her professional capacity, the term is medical negligence or malpractice.
- Being named in a lawsuit does not mean that wrongdoing has occurred.
- Injury does NOT necessarily indicate that someone was at fault

### Intentional Torts

- This involves a conscious decision to either commit an act or omit an act ...
  - Examples include things like defamation, assault, false imprisonment
    - 1) making a false statement about someone; you or your staff
    - 2) locking a door, restraining them with traction
    - 3) performing a procedure after a patient says "NO"

### What do you do if you are placed on notice

- 1) Immediately call your malpractice carrier
- 2) Be sure that your complete file on the patient is secured
- 3) You may discuss with your staff: but don't keep notes
- 4) DO NOT:
  - Alter your records in any way
  - Call the patient, the patient's attorney, other DC's that you may want to have as experts
  - Write things down - or post on any social media
- 4) DO: Follow your attorney's instruction
- 5 Relax - it's business

### What's are common mistakes

- Stupid is as stupid does
  - "Your stylist cut my ear!!"
- How about three free treatments?
- Your office staff is your first defense - **TRAIN YOUR STAFF**

### Board Violations (from CA Board)

- 1. Insurance Fraud (double billing, up coding, services not rendered, and excessive treatment)
- 2. Unlicensed practices (expiration, renewing)
- 3. Sexual Misconduct
- 4. Excessive Treatment
- 5. Drugs/Alcohol
- 6. Conviction of a crime
- 7. False advertising
- 8. Practicing beyond scope of practice
- 9. Payment for referrals
- 10. Negligence/incompetence/failure to release patient records

### Malpractice allegations

- In general - the most common allegations in cases of malpractice are:
  - Herniated discs
  - Cerebrovascular accidents
  - Misdiagnosis
  - Aggravation of pre-existing conditions
  - Failure to refer
  - Vicarious liability: --- up to 10%  
(Vicarious liability is a legal doctrine that assigns liability for an injury to a person who did not cause the injury but who has a particular legal relationship to the person who did act negligently. It is also referred to as imputed Negligence.)

### Malpractice allegations in acupuncture

- Internal organ injury: pneumothorax, cardiac tamponade
- Blood vessel injury: deep vein thrombophlebitis
- Nerve injury: Peroneal nerve palsy (foot drop), Median nerve palsy
- Infection
- CNS injury
- Infections

### Laws and Regulations Governing Chiropractic Medicine

- **Use of Acupuncture:** 38-7; 64B2-17.003
- 100 hour Board Approved Course - pass exam
- Notify Board of Chiropractic Medicine of your Certification and that you have passed the examination administered by the Department of Health
- Regarding acupuncture coverage - make sure you notify your malpractice company and provide them with your certification/ documentation to use acupuncture in your state
- As an example, NCMIC excludes coverage under the DC's policy but will add the coverage with an endorsement when documentation is received verifying they are legal to practice acupuncture

### Acupuncture - Board Definition

- Acupuncture is defined as a modality of diagnosing and treating physical conditions by stimulating various points on the body or interruption of the cutaneous (skin's) integrity by insertion of a needle to secure a reflex relief of the symptoms by nerve stimulation.
- Dry needling - is acupuncture!

### Meridian Therapy

- Stimulation of points
  - Needling
  - Non-needling
- Physical therapy procedures: heat, cold
- Psychotherapy
- Herbalism

### State Law does NOT allow acupuncture to be used in the treatment of:

- |                |                    |
|----------------|--------------------|
| ▫ Cancer       | ▫ Hansen's Disease |
| ▫ Leukemia     | ▫ Hookworm Disease |
| ▫ Tuberculosis | ▫ Malaria          |
| ▫ Syphilis     | ▫ Rabies           |
| ▫ Gonorrhea    | ▫ Typhoid Fever    |
| ▫ Hepatitis    | ▫ Typhus Fever     |
| ▫ Anthrax      | ▫ AIDS             |
| ▫ Diphtheria   |                    |

### Board Required Procedures

- 1) Non-disposable needles MUST be sterilized
- 2) Needles must be individually packaged
- 3) Destroy following patient dismissal or place in permanent file
- 4) Use only non-corrosive needles
- 5) Use generally acceptable cleansing agents

### ESSENTIAL ELEMENTS IN AVOIDING MALPRACTICE

PRACTICE ETHICALLY

DOCUMENT

MANAGE YOUR RISKS

## THE BASICS

- Keep your license up to date
- Always practice within your scope of practice
- License your facility with your state board if required
- Be certain that you always comply with state and local ordinances
- Pay all appropriate taxes and fees

## WARNING SIGNS

- Patient posing questions to your staff, but not to you
- Your records are not legible or are obliterated
- Your records are not dated or signed
- No records of informed consent
- Your records do not accurately reflect what took place
- Your staff/you don't record phone calls
- Lots of blank spaces
- You only chart the Abnormal
- "Same as before," "same as before," "SAME as before."

In the Office



## In the office

- Keep your facilities looking clean AND professional
  - If things are dirty and unkempt - patients notice - A dirty facility may leave the patient with the PERCEPTION that you aren't professional
- Always immediately update changes of address with your board
- Keep your CME hours and specialty hours up-to-date
- Register your facility if required

## Train your staff

- This is the patient's first contact .... Be sure it's a fabulous first impression!
- Be sure your staff is aware of HIPPA regulations
- Be sure your staff is ALWAYS positive ....and up-beat
- Train your staff in phone call etiquette and in message taking; have a friend call your office!!
- Staff represent your first line of defense --- all negative comments need to be brought to you PRIOR to you seeing the patient
- Do NOT allow your staff to ever offer health care advice
- BE PROACTIVE - NOT REACTIVE



### Which office would you be visiting? Dress for success!!!



WHAT'S UP?



### Privacy



- Why are you here Mrs. Smith?
- Be sure to speak up so everyone can hear?

### ETHICS - Values and judgments

- INFORMED CONSENT
  - Everyone has a right to decide what they want you to do to their body
  - As per the Council of Colleges of Acupuncture and Oriental Medicine, Informed Consent should contain five salient elements:
    - 1) the working diagnosis
    - 2) the proposed procedure (e.g., acupuncture) and goals of therapy
    - 3) risks and consequences ---- NOT EVERY SIDE EFFECT .... The rule of thumb is to disclose risks which occur more than 1% of the time for a set procedure
    - 4) alternative treatments
    - 5) the risks of NOT being treated .... And alternatives
  - Consent should be written, (but may be oral) in the language of the patient
    - Signed is best - but oral approvals should be documented

### HIPPA

- Established in 1996: A major goal of the Privacy Rule is to assure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing. Given that the health care marketplace is diverse, the Rule is designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed.
- Penalties range from \$100 to \$50,000 per violation on up to \$1,500,000 per calendar year.
- Those who knowingly disclose private information for personal gain may have the opportunity to spend up to 10 years imprisoned.

### Practice in an Ethical fashion



- Avoid: abject stupidity!

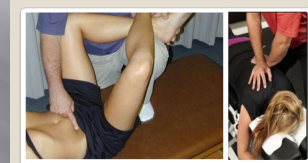
### SEXUAL MISCONDUCT

- Verbal
  - You're really looking good today
  - You look 'hot'
  - So what do you like to do in the bedroom that brought on your low back pain?
  - I'll be at Joe's Bar and Grill Saturday night, just in case you're not busy
- Visual
  - Suggestive gestures, touches
  - Kissing or fondling
  - Physical acts that could be interpreted to be of a sexual nature

### Sexual Misconduct CAN include the employer

- ▣ Case in point ....
  - Female alleges affair with her treating DC
  - Sues treating DC AND the owner of the practice (another DC) based on negligent supervision and negligent retention
  - Both consumed alcohol after hours AT the clinic and sometimes with patients after hours!
  - Treating DC made comments about her underwear and exchanged personal texts during treatment phase
  - Staff and doctors allegedly engaged in crude language, often sexual
  - The owner was responsible for the atmosphere of "fun"
  - Employer lucked out on this one!

### Here's where ST 26 is ...



For that matter, all those complains could be due to our body's musculoskeletal structure misalignment especially the spine wherein the hands-on spinal manipulation of chiropractic care can help your body restore its proper function.

### Be careful

- ▣ He touched my breast
- ▣ He touched my buttocks
- ▣ He had me wear a gown
- ▣ He didn't have a CA present
- ▣ The door was closed
- ▣ He said he liked my underwear
- ▣ He said he liked my outfit
- ▣ He said
- ▣ He said .....

### CONSENT is NOT a defense

- Great meeting you here - your back seems better after your treatment this morning!
- ▣ YOU MAY date a patient if you've waited a minimum of one (1) year after they've been discharged



### Other ethical considerations

#### SOCIAL MEDIA

- ▣ Don't friend patients
- ▣ Don't violate privacy rules
- ▣ Avoid political comments
- ▣ YOU are held to a higher standard.
- ▣ YOU are a physician

#### ON-LINE POSTS

- ▣ Be careful with your advertising
- ▣ Be sure you understand your state board rules
- ▣ Avoid sexual misconduct online
- ▣ DON'T offer medical advice
- ▣ Be careful when posting articles
- ▣ Be sure your web-site is professional

### The goal of your exam is to arrive at an appropriate working diagnosis AND to DOCUMENT everything

- ▣ Even if you treat using 'Five Element Theory,' you are still obligated to perform a complete physical exam
  - 1) Patient completes basic information form (possibly on-line)
  - 2) Elements of a good exam include family history and current and past patient history. Work related events and exercise; activities of daily living may be significant.
  - 3) Follow SOAP format
  - 4) Don't be shy about writing things down
  - 5) When performing acupuncture you may want to incorporate elements of the Oriental exam



### If it isn't written down – it didn't happen!

“Good, comprehensive, routine record entries are not only vital to minimizing your risk of having problems with insurance companies, attorneys, peer review committees, and the Board of Chiropractic Medicine, but they also facilitate good communication with insurance companies and other third party payers.”

### A simple rule of thumb:

FOR EVERY AREA THAT YOU ADJUST, YOU NEED:

SYMPTOMS

CLINICAL FINDINGS

DIAGNOSIS

### ELEMENTS OF THE EXAM AND HISTORY

- Initial history – may be done on line – certainly prior to you first seeing patient
- First time you see patient: BP, Pulse, Respiration, temperature, height, weight, medications, secondary complaints
- Past history, family history, current complaint: R/O underlying systemic issues. Elucidate the mechanism of onset, the symptoms, prior care, and ADL (including occupational issues) that may be contributory
- Physical Exam – (lab or imaging when justified) and Working Diagnosis
- SOAP (subjective, objective, assessment and plans)
- LISTEN – LISTEN – LISTEN
- EHR – Electronic health records – be sure to append

### INFORMED CONSENT

- Can only take place after the exam, the working diagnosis and you've laid out the treatment plans
- Remember – Risk Managements means minimizing risks!
- Important elements
  - Your working diagnosis
  - The objective of your treatment – what your treatment consists of
  - Risks and consequences of not getting the treatment
  - Discuss alternative treatments
  - Discuss the prognosis if no treatment takes place

### Elements of the patient visit

- If EHR – be sure to supplement
- Review – notate changes or lack of changes – since initial visit
- DOCUMENT – treatment given – response to treatment
- Be sure to note clinical progress
- Use SOAP notes

### Forms that are required

- Informed consent – if verbal – be sure to document. Also document if you give patient home instructions, brochures or have them view videos
- Initial history form
- Exam forms
- Any ancillary reports, e.g. imaging reports
- Reports from other practitioners
- Your working diagnosis
- Day-to-day entries

### Acupuncture Documentation

- ▣ Be certain to document:
  - Penetration depth and angle of insertion
  - Number of needles inserted and removed
  - E.A. Stimulation protocol
  - Disinfectant used
  - Any adverse reactions

### KEEP YOUR RECORDS

- ▣ For at least four (4) years from the date of the patient's last appointment. Required by Florida law.
- ▣ For liability purposes, seven (7) years is recommended for adult patients and at least eight (8) years for pediatric patients.
- ▣ Records may NOT be altered – however there may be times when they need to be corrected

### Medical Records

- ▣ 1) Do you need to have?
  - A) records of drugs dispensed by other practitioners
  - B) hospitalizations
  - C) a key for all abbreviations
  - D) reports of consultations with others
  - E) all of the above

### True or False

- All entries in the medical records must be DATED.

### Just in case you forgot something

Late entries into the medical records are permitted. Be sure to properly date and sign any additions.

### This is worth repeating!

- ▣ The treating physician must be identified in the records by initials and/or printed name.

### This is just standard operating procedure

- Daily records should be in SOAP note format.
- **DOCUMENTATION**
  - Contradictions, inconsistencies and gaps are difficult to defend
  - "If it isn't written down .....it wasn't done."
  - Electronic documentation captures the date and time! So ... have policies for late entries.
  - Have policies for unauthorized viewing of the records.

### Write legibly



### Out of office Issues



### Issues specifically pertaining to acupuncture



### Explain what you're doing

- Be sure you can explain how acupuncture works to your patients
- Be sure your staff understands acupuncture
- The more a patient understands, the more receptive they will be
- Gear your discussions to include evidence-based information in conjunction with a little of the Oriental basis for acupuncture

### Acupuncture Procedures

#### WAYS TO STIMULATE POINTS

- Needling
- Electrical
- Finger pressure
- Moxibustion
- Cupping
- Laser
- Magnets



## Cupping

Looks like an  
Olympic  
swimmer!!



## Allegations involving Acupuncture

- In general: "43 "significant" events were reported giving a rate of 14 per 10,000."
- White in 2004 reported a serious risk percentage of only .55 per 10,000 individual patients
- In general - all cases had cleared within one week, except for one incident of pain that lasted two weeks and one of sensory symptoms that lasted several weeks.
- As a general rule - acupuncture is extremely safe
- A total of 2135 minor events were reported
  - Bleeding, aggravation of symptoms
  - Others include: pain at the sites of insertion, tiredness, fainting, and vomiting

## Significant events associated with acupuncture

- Lao et al performed a study from 1965-1999 and reported just 202 incidents
- Pneumothorax (as of 2015, 4 deaths had been reported).
- Cardio-vascular lesions (tamponade - CV 17)
- Hemorrhage or hematomas including the CNS
- Deep Vein Thrombophlebitis: Anterior Compartment Syndrome of the lower leg (GB 34, ST 36)
- Nerve Injury - Foot Drop (GB 34, BL 39, BL 40); Median Nerve Palsy (PC 6, PC 7)
- Infections (primarily hepatitis), abscess, Osteomyelitis,

## A review of the serious and minor complications associated with acupuncture

- 1) A 64 year-old healthy male was admitted with shortness of breath
- 2) An 82-year old female with COPD was admitted with severe shortness of breath
- 3) A 66 year-old male being treated for chronic back pain experienced a severe sharp pain stabbing from his central chest through to his back. He also experienced shortness of breath
- 4) Following acupuncture a 54-year old female complained of sudden weakness on the entire left side of her body
- 5) Penetration of the Stomach Cavity after acupuncture
- 6) Case reported in The American Chiropractor Magazine

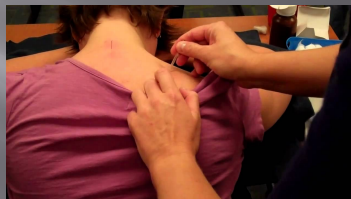
## Points to be careful with: pneumothorax

GB 21- midway between C7 and the highest point of the shoulder

BL 13 - 1 1/2 cun lateral to the lower border of the SP of 3<sup>rd</sup> thoracic

SI 9 - 1 cun superior to the posterior axillary fold

Be careful with tall thin individuals, or patients with COPD, and with smokers



## Accidental injury to other organs

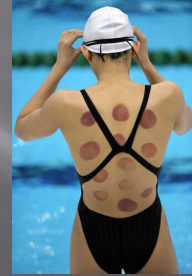
- Central Nervous system injuries have been reported: Be cautious with GV (DU) 15 - Just below first cervical; and GV 16 - just below the EOP
- Heart injuries have been reported
- Before inserting needles, be certain that the body's internal organs are NOT enlarged
- Problems happen when things are not normal (e.g. COPD, mastectomy, enlarged internal organs).

## Infections

- Local or systemic
- The most common – scabs form at the site of needle insertion if a patient is on cortisone – wait 30 days
- Failure to wash your hands OR to wear gloves could create a situation where you cross-infect a patient. Worse yet - PERCEPTION
- A patient who is immune-suppressed MAY be more prone to infections

## Bleeding and bruising

- Be careful with the following:
- Needling of the ear
  - Patients on blood thinners or anti-coagulants
  - Over or next to major blood vessels e.g. Lu 9
  - Cupping
  - Needling the scalp



## MOXIBUSTION

- Mugwort – *Artemisia vulgaris*
- Concerns are:
  - burns
  - allergic reactions
  - bruises
  - cellulitis
- Take care around sensitive areas of the body such as the face and hair line. Also be careful of falling ashes.



## Pain and Needle sensation

- Poor needle insertion technique plays a part  
There may be some discomfort if alcohol is still on the skin  
De qi or Tae chi sensation  
Avoid needling directly into a nerve  
Caffeine may attenuate the individual's perception of pain – however it may also heighten anxiety which is associated with increased perception of pain



## Other considerations

- Be careful when needling points that lie over or next to major blood vessels e.g., LU 9, ST 9, ST 12, ST 13, ST 42, SP 11, HT 1, LV 12
- Fainting - .027% actually faint
- Take caution with children or the aged
- Be careful with debilitated patients
- LIMIT the number of needles
- Needle disposal

## What if the needle gets stuck



## If you don't have a hammer

You have several options:

- insert a second needle, a third needle, a fourth needle!!!
- Stimulate the tip of the needle with low volt current
- Insert the needle deeper
- Massage
- Do nothing - Wait!

## What if the needle breaks off

Hopefully you'll avoid this lucky event; however the risk is minimal



## Failure to remove needles

You could always try charging the patient a little extra if they take your needles home with them



## Contraindications to acupuncture

- ❑ Patients who have been on steroids (wait 30 days)
- ❑ Patients on blood thinners or anticoagulants (hemophiliacs)
- ❑ LI 4, SP6, the big toe, abdomen or low back during pregnancy
- ❑ Patients on recreational drugs or intoxicated patients
- ❑ LV 3 - may trigger an epileptic seizure
- ❑ LI 4 - may trigger syncope
- ❑ No electrical stimulation if patients have a pacemaker
- ❑ Be cautious with young children under 6
- ❑ Skin that is currently inflamed OR has an active lesion
- ❑ The NIH says not to "give injections" if the skin is burned, hardened, inflamed, swollen or damaged
- ❑ **BE SURE NOT TO MASK AN UNDERLYING SYSTEMIC COMPLAINT**

## Skin preparation

NIH - "Since the skin is the body's first defense against infections, it must be cleansed thoroughly before a needle is inserted."

Staphylococcus aureus  
Streptococcus pyogenes  
Coryneform bacteria

Guidelines (NIH, CDC, and WHO)

1. The skin must be clean - follow clean needle technique
2. Practitioner's hands must be clean
3. Standard practice is to use 70% isopropyl alcohol swabs: a five second application is 82-91% effective against microbes
4. However - the CDC (2002) stated that unless the skin was dirty or contaminated - alcohol, soap and water, or chemical agents were of no significant value in preventing infection.



- ❑ Hepatitis A - the concern here is contaminated blood on the practitioner's hand.
- ❑ Hepatitis B - this is a blood-borne pathogen - it is spread by way of contact with blood and body fluids. Acupuncturists have a risk of exposure to HBV if not vaccinated. There's a 6-30% rate of transmission after a single needle stick exposure to a HBV-infected patient. It remains active on the skin for about a week.
- ❑ **OSHA requires all employers to offer HBV vaccination to personnel performing invasive procedures or those cleaning contaminated equipment.**

## HUMAN IMMUNODEFICIENCY DISEASE (HIV)

To date there are NO confirmed cases of HIV transmission following an accidental needle stick.

One case has been reported in Thailand.

## Biomedical Waste Permits – you may need one

- A chiropractor that generates more than 25 pounds of biomedical waste during each 30-day period is required by the Florida Statute to apply for a permit from the Department of Health.
- Doctors generating some but less than 25 pounds during each 30-day period are entitled to apply for an exemption from permitting.
- Fines: up to \$2500.00 ... Paul Lambert, FCA General Counsel

## What you need to do ....

- If you generate less than 25 pounds during each 30-day period:
  - Keep a log that specifies what you are generating

## Biomedical Waste Generator Permit

The image shows a form titled "Department of Health Application for Biomedical Waste Generator Permit/Exemption". The form includes fields for Name, Address, City, State, Zip, and Phone. It also has sections for "Generator Information" and "Exemption Information". The form is numbered "BHW-1000-001" and "Page 1 of 1".

## Biomedical Waste Log

The image shows a "BIOMEDICAL WASTE RECEIPT LOG" form. It has a header section for "FACILITY INFORMATION" and "RECEIPT INFORMATION". Below that is a table with columns for "DATE", "DESCRIPTION", "QUANTITY", "GENERATOR", and "RECEIVER". The table has 10 rows for data entry.

## Bottom Line

- According to Mr. Lambert,
  - If more than 25 pounds of biomedical waste in 30-day period AND holds a permit then .... They will be inspected every year.
  - If less than 25 pounds of biomedical waste in any 30-day period, AND is exempt from permitting .... They will be inspected once every three years.

