



RISK MANAGEMENT

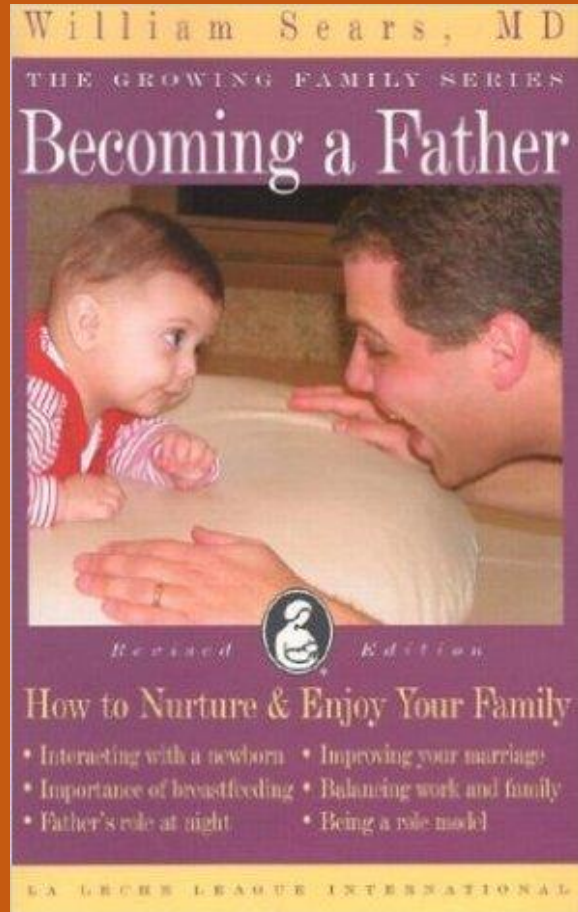
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Acupuncture credentials

- *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
- Texas Chiropractic College

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

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) 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 visits?
- Your office staff is your first defense – TRAIN YOUR STAFF

What are the common allegations

- In general – the most common allegations in cases of malpractice in general are:
 - Herniated discs
 - Cerebrovascular accidents
 - Misdiagnosis
 - Aggravating 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.)

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.

MeridianTherapy

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

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
- Be certain that you always comply with state and local ordinances
- Pay all appropriate taxes and fees

Manage your RISKS

- Types of risks
 - Civil Liability
 - 1) Negligence – no intention: requires four elements
 - Didn't protect patient from normal risks
 - Didn't exercise a reasonable standard of care
 - There must be a causal connection between the breach and the resulting injury
 - There must be actual physical or mental injury resulting from the negligence
 - 2) Intentional Torts, e.g. assault
 - Criminal Liability
 - Practicing outside your scope, sexual contact, fraudulent billing
 - Professional Disciplinary (Licensure) Action

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

I'm sure your files
are in here
someplace!



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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

- 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 positiveand up-beat
 - Train your staff in phone call etiquette and in message taking
 - 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 your problem today?



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: object 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

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

“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.”

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
- Your working diagnosis
- Day-to-day entries

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

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

Out of office issues



Issues specifically pertaining to acupuncture

Be sure you can explain acupuncture 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

It will just be one “stick”



Acupuncture Procedures

Ways to stimulate points

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



Cupping

UGH!!



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
- Hemorrhage or hematomas including the CNS
- Infections (primarily hepatitis)

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 ½ cun lateral to the
lower border of the SP of 3rd 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 injury have been reported: Be cautious with GV (DU) 15 - between SP of C7 and T1; 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

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
- A patient who is immune-suppressed MAY be more prone to infections

Bleeding and bruising

Be careful with the following:

- Needling of the scalp
- Needling of the ear
- Patients on Blood thinners or anti-coagulants
- When needling any acupuncture point over or next to major blood vessels e.g. Lu 9
- Oh yes – did someone say - Cupping?



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

1. 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
2. Fainting - .027% actually faint
3. Take caution with children or the aged
4. Be careful with debilitated patients
5. LIMIT the number of needles
6. Needle disposal

What if the needle gets stuck

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.”

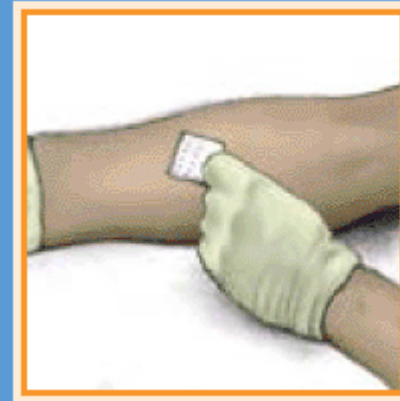
Staphylococcus aureus

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.



Other considerations

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 needlestick 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.

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THE
END

