

1023.9 PROFESSIONAL NEGLIGENCE: CHIROPRACTOR DETERMINING TREATABILITY BY CHIROPRACTIC MEANS

A chiropractor is required to use the degree of care, skill, and judgment which is exercised by a reasonable chiropractor under like or similar circumstances. A chiropractor who fails to conform to this standard is negligent. The burden is on the (plaintiff) to prove that (chiropractor) was negligent.

A chiropractor may only treat a patient within the scope of chiropractic knowledge and training. If the patient has a problem which is treatable through chiropractic means, the chiropractor may provide chiropractic treatment to the patient. However, the chiropractor may not provide chiropractic treatment when a reasonable chiropractor would be aware that the patient's condition will not be responsive to chiropractic treatment. A chiropractor's decision to treat or to stop treatment must be tested according to chiropractic standards.

(Give the following if the claim relates to the duty to inform or refer: If the patient's condition is outside the scope of chiropractic treatment, a chiropractor must inform the patient that the condition presented is not treatable through chiropractic means. The chiropractor does not have the duty to refer the patient to a medical doctor.)

Expert witnesses have testified concerning the standard of care applicable to chiropractors. The reason for this is because the degree of care, skill, and judgment which a reasonable chiropractor would exercise is not a matter within the common knowledge of laypersons. This standard is within the special knowledge of experts and can only be established by testimony of experts. Therefore, you may not speculate or guess what the standard of care, skill, and judgment is in deciding this case but rather must attempt to determine it from the expert testimony that you heard during this trial.

COMMENT

This instruction and comment were approved in 1997. The comment was updated in 1999.

Kerkman v. Hintz, 142 Wis.2d 404, 418 N.W.2d 795 (1988); Murphy v. Nordhagen, 222 Wis.2d 574, 588 N.W.2d 96 (Ct. App. 1998). In Kerkman, the court explained the duties of a chiropractor in the following way:

In summary, we hold that a chiropractor has a duty to (1) determine whether the patient presents a problem which is treatable through chiropractic means; (2) refrain from further chiropractic treatment when a reasonable chiropractor should be aware that the patient's condition will not be responsive to further treatment; and (3) if the ailment presented is outside the scope of chiropractic care, inform the patient that the ailment is not treatable through chiropractic means. In determining whether a chiropractor breaches these duties, the chiropractor is held to that degree of care, diligence, judgment, and skill which is exercised by a reasonable chiropractor under like or similar circumstances.