

Excerpts from

Arthur Holmes'

Malpractice as Applied to Chiropractors

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Holmes' book is a fascinating document in the annals of the philosophy of chiropractic. It represents the legal question. Tom Morris, from the 1st wave of chiropractic philosophers, endorsed this book written by his law partner. The book doesn't so much break new philosophic ground but it shows the legal practicalities as to how philosophy should be used in practice. Philosophy was, after all, one of the core legal reasons why chiropractic was viewed as separate and distinct from allopathic medicine. Just how the legal realities helped to shape the philosophy of chiropractic is a question that has been written about from all angles. And it will continue to be so. In 1924, Holmes lays out the law. Chiropractors should not mix chiropractic with other allopathic modalities.

“Chiropractic is now a science unto itself. It is separate and distinct from allopathic medicine and from osteopathy, or any other form or system of healing. It has its own particular methods of ascertaining the cause of disease, and its own particular means of eliminating the cause and allowing innate to restore me patient to health. Its strides the past twenty-five years have been marvelous and it has overcome me opposition and hatred of several other health sciences, some of which still persist in their efforts to belittle Chiropractic. However, the results count and there are now in the United States millions of satisfied Chiropractic patients who recognize Chiropractic as the most simple and still the most efficient system in the science of health which exists today. Many Chiropractors realize the wonderful thing which they have in the form of a science. They realize that so far as the health science is concerned, it is the best of any so far devised or thought out.”
(p. 7)

“A further mention must be made at this time of the Chiropractors who use the prefix “Doctor” or “Dr.” Some Chiropractors use this with the word “Doctor” and some without. Some claim the right to use the prefix because it means learned in Chiropractic. Many, however, claim that the prefix “Dr.” is used to imitate or ape the M. D. or allopath physician. It is to be hoped that they do not use it for the purpose of gaining patients or their confidence. If they do they run grave risks.

There are in the world many ignorant men and women who imagine the word “Doctor” or “Dr.” means an allopathic physician or surgeon who prescribes drugs and medicines. If such a person were to come to the office of a Chiropractor with “Doctor” on the front of it and would employ the Chiropractor under the misunderstanding, that the Chiropractor was an allopathic physician and surgeon, then the Chiropractor would be bound to possess and use the same degree of learning and skill possessed by an allopathic physician. Inasmuch as they differ widely in learning and skill, the Chiropractor could not qualify and a conviction of malpractice would be simple and certain.

If any of you readers use the word “Doctor” or the prefix “Dr.”, understand that the patient may testify on the stand that you used the term “Doctor” and that he supposed by that term, that you were a regular all around Doctor, or allopathic physician. Such evidence supported by the evidence of your advertisements, would carry the case to the jury, who, if they felt sorry for the patient or hostile to yourself, might render you liable in damages.

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It may be added here that there are two acts which make a jury furious, like a bull seeing a red flag; one is a lie and the other is deception.

Even the answer that such a title means only "learned" and that the title of "Doctor of Chiropractic" was conferred on you at your school does not change the matter. In the eyes of the jury a doctor is a doctor. For instance, one Chiropractor tried to explain that he used "Dr." in front of his name because he had a degree of Doctor of Philosophy. How far would that get with a jury? If your science is superior to allopathic medicine, then make your science distinctive. Call yourself a Chiropractor..." (p. 27)

"The real good Chiropractor sells his patient the philosophy of Chiropractic and explains thoroughly how nature cures, how all he does is to eliminate the cause, etc., and when the patient thoroughly understands the idea and the philosophy of Chiropractic, he doesn't need any "promise to cure" in order to make him take adjustments. But there are many Chiropractors who are either lazy or don't know how to sell the philosophy of Chiropractic, and who say to the patient, "If you give me three months, I will get you well," or the statement, "It will take six months to cure you." In fact, one Chiropractor went so far as to say to a man who had lumbago, "You lie down here with it, and when I get through with this adjustment, you will get up without it." Now all of you Chiropractors who are acquainted with adjusting patients with lumbago know that in many cases the patient may feel a little bit worse after the first adjustment than he did before, although he will get good after-effects from the adjustment. And that is exactly what happened in this case. These Chiropractors who tell their patients how long it takes to cure them, or that they will cure them, do that solely to procure patients and that is wrong, and they let themselves open to a malpractice suit which may cost them a lot of money." (p. 39)

"The last warning advice to all Chiropractors should be, "No matter how much you believe in your science or how confident that you can benefit your patient, do not make the mistake of promising your patient something which you may not be able to fulfill, probably because of causes beyond your control." The only excuse for such a promise is that the Chiropractor wishes to procure the patient, feeling confident he can benefit the patient. However, that should not be considered. You don't need patients that bad and if you explain the Art, Science and Philosophy of Chiropractic clearly enough to your patient he will sell himself, and upon his recovery, you as a Chiropractor and Chiropractic as a science, will get the credit." (p. 41)

"CHAPTER VI: LIABILITY FROM MIXING OTHER SCIENCES WITH CHIROPRACTIC

The most common special contract is that contract made by the mixers. A mixer is a practitioner who in his practice mixes Chiropractic and parts of allopathic medicine in varying degrees. Some use a very small part of Chiropractic, some only using the name and a large part of allopathic medicine, including massage, medicine, baths, dietetics and orificial surgery, while others use a large part of Chiropractic and only a small part of allopathic medicine.

Of course, the fundamentals of the Art, Science and Philosophy of Chiropractic and the theory of allopathic medicine are diametrically opposed to each other; and it may be difficult to conceive how they can conscientiously practice two opposite systems at the same time, but they do.

When the writer uses the word "mixer," he uses it because the word concretely sets forth what that class of practitioners do who mix two diametrically opposed sciences, and without intention of saying anything derogatory to any person or class, although the writer is at a loss to understand their reasoning. The writer instead takes pleasure in showing a mixer the advantages of using Chiropractic adjustments solely. If the mixers understood correctly the Art, Science and Philosophy of Chiropractic and reasoned the matter out correctly they would see the financial advantage to themselves and the professional advantage to the Science of using Chiropractic adjustments solely. (p. 70)

"Chiropractic is a recognized school of healing with its own Art, Science and Philosophy of disease, which is separate and distinct from the theory of disease of the allopathic physician. It is as a theory complete unto itself and capable of being bounded and identified." (p. 71)

About as far as a Chiropractor can go with respect to diet thoroughly the Art, Science and Philosophy of Chiropractic to the patient, especially the Philosophy of Chiropractic with regard to

digestion, the relation of the normal flow of impulses of innate intelligence to normal digestion, the inadvisability of over-eating, and over-drinking, the theory that innate will advise the body through the appetite what foods are best for the body. This in reality is merely teaching the philosophy of Chiropractic to the patient and letting him select his own diet. That is very much different from advising this patient to eat certain foods for breakfast, others for lunch, etc. The first is squarely within the philosophy of Chiropractic because it is the philosophy. The second, telling the patient what foods to eat, is squarely outside the philosophy, different foods acting different on each different person. My advice to the Chiropractor is not to prescribe diet for two reasons, first, the liability of malpractice, second, the probability that if you do get results, the patient eight times out of ten will give more credit to the diet than to the adjustment of Chiropractic." (p. 83)

"When any Chiropractor who has his profession at heart thinks over the proposition he will readily see that no matter what is to be said for the good points of dietetics or allopathic medicine, that the aim of every good Chiropractor would be to keep Chiropractic on the basis of a separate and distinct profession; in other words, an Art, Science and Philosophy in which everything is done for a specific purpose at a specific place in a specific way with a specific source of force to produce a specific result." (p. 85)

"Second, there is the Chiropractor who does not particularly love Chiropractic, who doesn't know its philosophy, who never did make a rattling good success of Chiropractic and who buys an electric vibrator because he thinks it will give him something more to sell. This fellow Mr. Straight Chiropractor, you and I can't reach. He doesn't care about Chiropractic and he hasn't got sense enough to know that the patient who gives the credit for his cure from pneumonia to violet rays instead of Chiropractic adjustments it not a particularly good advertisement for Chiropractic. I suspect the straight Chiropractor must fight this kind of mixer to avoid twenty-five cent adjustments.

The Chiropractor who loves Chiropractic knows that both his success as a Chiropractor and the quick advancement of Chiropractic as a science depends upon the patient giving Chiropractic the credit instead of the violet ray, sulphur bath, dietetics, etc. He can reason it out or knows from experience that if he gives the patient a sulphur bath and at the same time an adjustment that the patient will give the credit of recovery to the sulphur bath instead of the adjustment. Which do you want, Mr. Chiropractor? Do you want to be regarded as a professional man with a wonderful science which gets marvelous results or do you want to be known as a man who gives very good baths which tone you up and gets results, or further be known as a good "rubbin" doctor.

Well, the Chiropractor who loves Chiropractic wouldn't do a thing outside of Chiropractic for anything because he wants Chiropractic to get the credit for the recovery. He wants to place Chiropractic on the plane of a science.

But the fellow who doesn't love Chiropractic, doesn't care." (p. 87)

"Now, if after all this you still feel an overwhelming desire to prescribe diet or medicine without regard to liability for malpractice or injury to the profession, then I still advise to you, refer them to a physician and if you will not do that the only way you can lessen the risk at all is to explain that the prescription of drugs or diet is no part of your profession, but that they must rely upon the advice of a physician or such home remedies as they may choose themselves, to avoid constipation, exposure, etc., until Chiropractic adjustments allow a normal flow of innate intelligence to the different organs which will make them function normally." (p. 84)

"ADVICE ON DIET

If you teach the philosophy of Chiropractic to your patient you will tell him how the innate intelligence will cause the stomach, etc., to function normally provided the flow of innate to the stomach is normal, in which case the stomach could digest normal foods, innate as a general rule advising which foods to eat." (p. 88)

"That if an impingement of nerves from a sixth dorsal subluxated vertebra allows only a deficient flow of innate to the stomach, the stomach will not function normally and probably be unable to digest normal foods until the adjustments allow a normal flow of innate to the stomach and that the only limitation on the foods to eat is to be determined by the patient himself, which is the foods he can digest.

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That innate has made an allowance for digesting normal foods but not for digesting abnormal foods, or over-eating or over drinking, and that those things must be settled by the patient.

Now take the other side. The Chiropractor instead of explaining the philosophy of Chiropractic to the patient in relation to digestion does this: He prepares a dietetic chart and says to the patient: For breakfast eat 1/2 Grape Fruit, 1/2 dish oatmeal with cream, 2 slices of ham or bacon with eggs, toast, 3 slices, one cup hot milk.

This is what is called prescribing diet. The chemistry of digestion is still in darkness. What you prescribe for Jones may be wrong for Smith. At best it is a guess and the Chiropractic philosophy of allowing innate to select her diet is to the writer's mind the best and soundest principle.

In the first illustration you have kept squarely within the philosophy of Chiropractic from a malpractice standpoint. In the second illustration you have prescribed diet and gone outside of Chiropractic philosophy, and all in some measure inconsistent with it. Then you are no longer protected by the Chiropractic rule but come under the Allopathic rule.

Now then, take postures and exercises. It is the Chiropractor's duty to teach the philosophy of Chiropractic to his patient. Certain postures and lack of certain exercises or other things may cause subluxations of the vertebrae and it is his duty to explain those things to his patient and warn him against them and all that is within the philosophy of Chiropractic.

But on the other hand it is no part of his philosophy to tell the patient to take a cold bath every morning to increase circulation..." (p. 89)