

Is Referral Safe?

Referrals between medical practitioners and allied health professionals, and allied health professionals and one another, are common. Whilst clinically a referral may be a prudent action on the practitioner's part, in some circumstances that may not be the end of their liability.

YOUR DUTY

As a registered chiropractor, it is incumbent on you to provide professional and compassionate care for your patients not only within your own field of expertise but sometimes addressing other areas of your patient's health.

As set out in the CAA's policies, at all times it is important for you to continuously assess your patient's responses to treatment. Where indicated, either through worsening or stagnating symptoms or the emergence of a new condition or symptom, it is your professional responsibility to refer your patient to another practitioner, be it general practitioner, specialist or other allied health practitioner utilising another modality.

In very limited circumstances, however, you may bear responsibility for the actions or omission of that other health professional.

THE EXTENT OF LIABILITY

It is not true to say that just because you have referred your patient to another health practitioner and that practitioner has caused some injury or insult to the patient, you are automatically deemed responsible because of that referral.

There are circumstances, however, where you may bear some responsibility. A referral may be held negligent if the referring practitioner knew or ought to have known that the treatment performed by the practitioner to whom they referred is substandard, inappropriate or otherwise non-professional.

REFERRAL BY A GENERAL PRACTITIONER TO A CHIROPRACTOR

The issue of a general practitioner's referral was considered by the NSW Court of Appeal in 2002 - *McGroder v Maguire*.

In that case, the injured person, Maguire, suffered a work-related neck injury in April 1990 and notwithstanding receiving care from an orthopaedic surgeon and a neurosurgeon, he consulted a general practitioner of his employer, Dr McGroder, in 1992 because he suffered tingling and paraesthesia in his left arm.

Dr McGroder wrote a referral to a local chiropractor, which mentioned the work-related incident in 1990 and stated that Maguire had had pains radiating into the arms but no neurological deficit.

Maguire attended on the chiropractor in June 1992 and underwent a "violent" manipulation of his neck and back, following which Maguire's neck and back condition deteriorated markedly, leading to a cervical discectomy and fusion. Maguire sued Dr McGroder for his referral, and the chiropractor for his negligent treatment.

In relation to the chiropractor, the trial judge accepted Maguire's version as to how the treatment was performed, as opposed to the chiropractor's version. Both the chiropractor and the expert chiropractor giving evidence on his behalf conceded that if manipulations were carried out in this matter, they were not in accordance with proper chiropractic practice. Hence, it was ruled that the chiropractor had been negligent..

In relation to Dr McGroder's part to play, the facts against Dr McGroder's favour were as follows:

- He did not carry out a physical examination of Maguire
- In all likelihood Dr McGroder did not refer to Maguire's medical records kept by his employer. Such records would have displayed the neurosurgeon's previous reference to left-sided brachialgia with radiating pain to his arm and an x-ray report which reported osteophytic impingement on the C5/6 foramina bilaterally which, along with the numbness in Mr Maguire's arms and pins and needles in his fingers, indicated nerve root irritation in his cervical spine.
- The expert orthopaedic surgeon and neurosurgeon held that, as Maguire's history and presentation indicated nerve root irritation in his cervical spine, it was not acceptable medical practice to refer him to a chiropractor.
- Whilst it was accepted that whether he was negligent or not should be tested against the standard of care owed by other persons professing to have his special skill, there was no expert report tendered on his behalf by a general practitioner. The expert chiropractor was not qualified to deal with that question.
- His argument that it was reasonable for him to rely on the experience and competence of the chiropractor to provide appropriate treatment was not accepted by the Court.

By way of interest, the neurosurgeon stated that if a patient has pain radiating into the arm or leg or around the thoracic cage, this is an indication that the nerve root is entrapped in its exit foramen and that the nerve is probably inflamed, swollen or jammed in. If one manipulates the neck, the nerve which is normally free to move to and fro in the intervertebral foramen can be torn or permanently damaged by overstretching. The neurosurgeon also advised that chiropractic practice in manipulating patients who have arm pain and leg pain is a dangerous practice.

THE LESSON

It is arguable that this case can be distinguished from other general situations of referral in that the Court found that Dr McGroder did not take heed of available medical records, did not conduct a physical examination of Maguire and made the statement there was no neurological deficit in the referral letter when there were indications to the contrary. This, coupled with the omission of a favourable expert report by a general practitioner on his behalf, certainly led to Dr McGroder's downfall.

However, this case also highlights the misunderstanding that is sometimes demonstrated against chiropractic practice. Dr McGroder raised the issue of this bias towards chiropractors (as arguably displayed by the neurosurgeon) but the Court felt that to address this issue so that it could take on board a demonstrated bias in its decisions, something more than a stringently critical expression of opinion would be required.

A challenge for the future, no doubt.

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