

# Professional Boundaries for Chiropractors



By.  
Douglas E. Schmidt  
Schmidt Law Firm

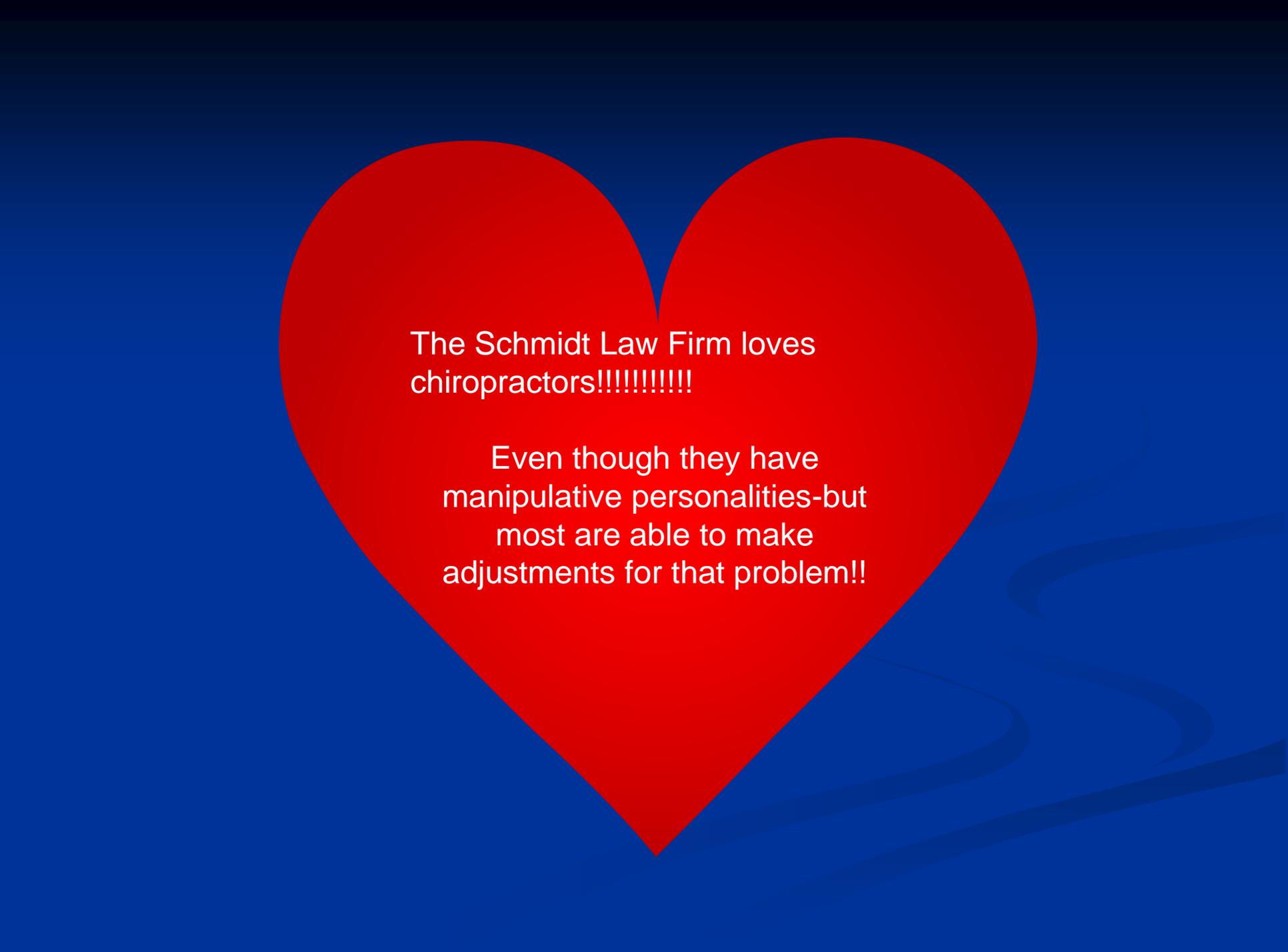
# Professional Boundaries

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The Schmidt Law Firm loves  
chiropractors!!!!!!!!!!!!

Even though they have  
manipulative personalities-but  
most are able to make  
adjustments for that problem!!

## Meet Douglas E. Schmidt

Personal Injury and Wrongful Death Attorney



- ★ Nationally Recognized.
- ★ Over 40+ years' experience in over 6,000 successful cases of Personal Injury and Wrongful Death.
- ★ Honored by satisfied clients who awarded him a 5 star rating for client satisfaction
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*"Douglas E Schmidt is an accomplished litigator representing the victims of injury due to defective products. He has successfully tried cases against many major manufacturers, including cases involving medical appliances, drugs and vaccines, motor vehicles, agricultural, and construction equipment, as well as chemicals."*

- *The William Mitchell Law Review*

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**SCHMIDT  
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**Rule: Chiropractors have a duty to limit their practice to the “practice of chiropractic”.**

**Practice of chiropractic.**

An individual licensed to practice under section 148.06 is authorized to perform chiropractic services, acupuncture, and therapeutic services, and to provide diagnosis and to render opinions pertaining to those services for the purpose of determining a course of action in the best interests of the patient, such as a treatment plan, appropriate referral, or both.

## **Exclusions.**

The practice of chiropractic is not the practice of medicine, surgery, osteopathy, or physical therapy.

# New Statute regarding Scope of Chiropractic Practice

For the purposes of sections [148.01](#) to [148.10](#):

(1) "chiropractic" means the health care discipline that recognizes the innate recuperative power of the body to heal itself without the use of drugs or surgery

-by identifying and caring for vertebral subluxations and other abnormal articulations...

-by emphasizing the relationship between structure and function as coordinated by the nervous system and how that relationship affects the preservation and restoration of health;

**“CHIROPRACTIC SERVICES”** means the evaluation and facilitation of structural, biomechanical, and neurological function and integrity through the use of adjustment, manipulation, mobilization, or other procedures accomplished by manual or mechanical forces applied to bones or joints and their related soft tissues for correction of vertebral subluxation, other abnormal articulations, neurological disturbances, structural alterations, or biomechanical alterations, and includes, but is not limited to, manual therapy and mechanical therapy as defined in section 146.23;

“**ABNORMAL ARTICULATION**” means the condition of opposing bony joint surfaces and their related soft tissues that do not function normally, including subluxation, fixation, adhesion, degeneration, deformity, dislocation, or other pathology that results in pain or disturbances within the nervous system, results in postural alteration, inhibits motion, allows excessive motion, alters direction of motion, or results in loss of axial loading efficiency, or a combination of these;

## DIAGNOSIS/DIAGNOSTIC SERVICES:

4) "diagnosis" means the physical, clinical, and laboratory examination of the patient, and the use of diagnostic services for diagnostic purposes within the scope of the practice of chiropractic described in sections 148.01 to 148.10;

(5) "diagnostic services" means clinical, physical, laboratory, and other diagnostic measures, including diagnostic imaging that may be necessary to determine the presence or absence of a condition, deficiency, deformity, abnormality, or disease as a basis for evaluation of a health concern, diagnosis, differential diagnosis, treatment, further examination, or referral;

# GENERAL RULE:

- Chiropractic Doctors should always perform an examination necessary to identify medical conditions outside of the scope of chiropractic and refer those patients in need of treatment for conditions such as diabetes, hypertension, cancer, etc.
- That is true even though chiropractic therapy may be an important and useful adjunct to conventional medical treatment.
- Note: Cauda equina!!!

## THERAPEUTIC SERVICES:

(6) "therapeutic services" means rehabilitative therapy as defined in Minnesota Rules, part 2500.0100, subpart 11, and all of the therapeutic, rehabilitative, and preventive sciences and procedures for which the licensee was subject to examination under section 148.06.

When provided, therapeutic services must be performed within a practice where the primary focus is the provision of chiropractic services, to prepare the patient for chiropractic services, or to complement the provision of chiropractic services. The administration of therapeutic services is the responsibility of the treating chiropractor and must be rendered under the direct supervision of qualified staff;

## ACUPUNCTURE:

(7) "acupuncture" means a modality of treating abnormal physical conditions by stimulating various points of the body or interruption of the cutaneous integrity by needle insertion to secure a reflex relief of the symptoms by nerve stimulation as utilized as an adjunct to chiropractic adjustment. Acupuncture may not be used as an independent therapy or separately from chiropractic services. Acupuncture is permitted under section 148.01 only after registration with the board which requires completion of a board-approved course of study and successful completion of a board-approved national examination on acupuncture. Renewal of registration shall require completion of board-approved continuing education requirements in acupuncture. The restrictions of section 147B.02, subdivision 2, apply to individuals registered to perform acupuncture under this section; and

“ANIMAL CHIROPRACTIC diagnosis and treatment” means treatment that includes identifying and resolving vertebral subluxation complexes, spinal manipulation, and manipulation of the extremity articulations of nonhuman vertebrates.

Animal chiropractic diagnosis and treatment does not include:

- (i) performing surgery;
- (ii) dispensing or administering of medications; or
- (iii) performing traditional veterinary care and diagnosis.

# GENERAL RULE

- Rehabilitative Services are those which are performed within a practice where the primary focus is the provision of chiropractic services.
- Diagnostic Services are those done to determine the presence of any “condition, deficiency, deformity, abnormality or disease” as the basis for
  - chiropractic treatment performed within a practice where the primary focus is the provision of chiropractic services,  
OR
  - a referral to another health care provider for care within that other specialty.

# DUTY TO REFER:

- The Minnesota Statute references the issue of “appropriate referral” but does not squarely address the issue of the duty of the Chiropractic Doctor to refer.
- This issue is addressed by the Code of Ethics of the American Chiropractic Association (ACA) which established a duty of referral:

*Doctors of Chiropractic should willingly consult unseat the talents of other healthcare professionals when such consultation would benefit their patients or when the patient's express a desire for such consultation.*

*... Doctors of Chiropractic should incorporate and cooperate with other healthcare professionals for two to to protect and enhance the health of the public...*

# CONDITIONS DISAGNOSED BY CHIROPRACTORS:

- Spinal subluxation/joint dysfunction 88.9%
- Hyperlordosis of cervical or lumbar spine 86.5%
- Hypolordosis of cervical and lumbar spine 83.2%
- Extremity subluxation/joint dysfunction 83.0%
- Kyphosis of the thoracic spine 80.9%
- Sprain of any Joint 78.5%
- Headaches 70.1%
- Myofasciitis 69.8%

# CONDITIONS DISAGNOSED BY CHIROPRACTORS (CONTD):

- Muscle strain/tear 69.7%
- Radiculitis or radiculopathy 65.5%
- Intervertebral disc syndrome 61.4%
- Tendinopath 58.6%
- Carpal or tarsal tunnel syndrome 55.9%
- TMJ syndrome 54.8%
- Bursitis or synovitis 54.2%
- Osteoarthritis/ degenerative joint disease 52.7%
- Structural scoliosis 52.3%

# CONDITIONS CO-MANAGED WITH OTHER HEALTH PROFESSIONALS

- Rheumatoid/inflammatory arthritis 78.5%
- Osteoporosis 71.8%
- Asthma/emphysema/COPD 71.4%
- Pregnancy related condition 70.8%
- Fibromyalgia 70.5%
- Concussions/head injury 70.0%
- ALS/MS/Parkinson's 7.0%
- Hypertension/hypo tension 67.4%
- Diabetes 66.3%
- Spinal stenosis sick to 5.5% in fertility 64.4%

# CONDITIONS CO-MANAGED WITH OTHER HEALTH PROFESSIONALS (CONT'D)

- Cranial nerve disorder 63.2%
- Hiatal hernia/esophageal reflux 62.6%
- Colitis or diverticulitis 60.8%
- Vertigo/loss of equilibrium 60.7%
- Menopause. 59.9%
- Allergies, 59.7%
- Childhood respiratory/your infections 59.4%
- Eye, ear, nose, throat disorder 58.8%
- Sleep disorder 58.0%
- Immune dysfunction 57.9%

# CONDITIONS CO-MANAGED WITH OTHER HEALTH PROFESSIONALS (CONT'D)

- Obesity 57.6%
- Menstrual disorder/PMS 56.3%
- Incontinence 56.0%
- Thyroid disorder 55.3%
- Sinus condition 55.2%,
- Peripheral neuritis, neuralgia, neuropathy, 54.8%
- Congenital/developmental anomaly 53.4%
- Respiratory infection 53.0%
- Kidney or urinary tract dysfunction 52.4%
- Nutritional disorder 51.5%

# CONDITIONS MOST FREQUENTLY MISSED

The conditions most frequently missed are as follows:

- Concussions/Traumatic Brain Injuries.
- Headaches (Cervicogenic or Concussion related).
- Myofasciitis-Myofascial Pain Syndrome.
- Facet Joint Injuries.

## **Rule: You can lose your license if:**

### **Grounds for Revocation of Licensure (Minnesota Statutes 148.10):**

1. False Advertising;
2. Fraud;
3. Practice under false name;
4. Conviction of Crime of Moral Turpitude;
5. Habitual drug or alcohol usage;
6. Inability to practice with reasonable skill and safety;
7. **Improper management of health records;**
8. Revealing privileged patient information;
9. Failing to keep written chiropractic records justifying the course of treatment (Records must be retained for 7 years-Xray 4 years);

10. Exploitation of a patient for financial gain;
11. Delegating professional responsibilities to an unqualified person;
12. Unprofessional conduct, defined as including:
  - a. gross ignorance or incompetence;
  - b. conduct which is “sexual” or “**may reasonably be interpreted by the patient as sexual**”;
  - c. performing unnecessary services;
  - d. charging an unconscionable fee or for services not rendered;
  - e. dishonest or misleading fee collection practices;
  - f. fraud regarding Medicare, Medicaid or state medical assistance;
  - g. advertising to accept payment in full, giving the impression of eliminating the need for payment of a deductible.

## RECORD KEEPING (Minnesota Statutes 148.107):

All of the following should be contained in the patient record:

1. A description of
  - (a) past conditions and trauma,
  - (b) past treatment received,
  - (c) current treatment being received from other health care providers, and a description of the patient's
  - (d) current condition including onset and description of (e) trauma if trauma occurred.
2. Examinations performed to determine a preliminary or final diagnosis based on indicated diagnostic tests, with a record of findings of each test performed.
3. A diagnosis supported by documented subjective and objective findings, or clearly qualified as an opinion.
4. A treatment plan that describes the procedures and treatment used for the conditions identified, including approximate frequency of care.

5. Daily notes documenting current subjective complaints as described by the patient, any change in objective findings if noted during that visit, a listing of all procedures provided during that visit, and all information that is exchanged that will affect that patient's treatment.
6. A description by the chiropractor or written by the patient each time an incident occurs that results in an aggravation of the patient's condition or a new developing condition.
7. Results of re-examinations that are performed to evaluate significant changes in a patient's condition, including tests that were positive or deviated from results used to indicate normal findings.
8. When symbols or abbreviations are used, a key that explains their meanings must accompany each file when requested in writing by a patient or third party.
9. Documentation that family history has been evaluated.

## Rule: Complete Assessment & Diagnosis, Using Proper ICD Codes, Is Required.

- Prior medical and chiropractic history (patient and family) is often ignored;
- Complete assessment includes documentation of ROM, muscles spasm, and myofascial trigger points (with muscular location);.
- Many conditions and symptoms are frequently omitted (all of the ICD Codes should be used);
- The use of the catch-all “sprain/strain” diagnosis simply asks for trouble!!! (That sends a message to the insurance company that this is only a very minor injury/condition!)
- Head injuries, concussions, abrasions, seat-belt trauma are very frequently missed.

The typical whiplash injury should include all of the following diagnostic codes:

- Acute traumatic injury of the cervical ligaments
- Acute traumatic cervical hypermobility/laxity
- Acute traumatic cervical muscle spasm
- Acute traumatic cervical facet injury
- Acute traumatic reversal of the cervical curve
- Acute traumatic cervical segmental dysfunction
- Acute traumatic cervical myalgia and myositis
- Acute traumatic cervical sprain/strain injury

Add whatever the Xrays and/or MRI show as a new condition, such as:

- Traumatic cervical compression fracture
- Traumatic cervical disc herniation

. In cases of pre-existing degeneration, use this code:

- Acute traumatic aggravation of degenerative disc disease

In chronicity cases, the assessment codes should be adjusted to change the terminology from **acute to chronic**.

# Too Many Chiropractors Overlook Concussion Injuries!!!

-A proper history is absolutely necessary to rule in or rule out concussion injuries! The Rivermead Concussion Questionnaire should be used as a diagnostic tool for the assessment of concussion injuries.

-The following diagnostic codes apply:

Concussion without loss of consciousness

Concussion/Brief Loss of Consciousness

Concussion/Moderate Loss of Consciousness

Traumatic Brain Injury

Acute post-traumatic headache

Nausea/Vomiting

Memory loss

Dizzy/Lightheaded

Positional Vertigo

Post traumatic visual disturbances

Tinnitus

Sleep Disturbance

Hyper somnolence

Fatigue/Lethargy/Tired

**CONCUSSION INJURIES** are most certainly within the scope of **Chiropractic practice**- and should not be ignored.

1. Minn. Stat. 148.01 expressly states that “chiropractic” includes “the relationship between structure and function as coordinated by the nervous system”.
2. The “nervous system” starts with the brain and its relationship with the remainder of the body.
3. This is a very close relationship, perhaps without clear boundary, between the symptoms of a whiplash injury and those of a Concussion or Mild Traumatic Brain Injury.

**The symptoms of a concussion were outlined previously. The symptoms of a “whiplash” injury of the cervical spine include the following:**

- Headache
- Sleep disturbance
- Blurry vision
- Ringing in the ears
- Reduced concentration
- Poor memory
- Depression

Note: Chronic pain produces depression

Note: Severe headaches produce visual problems, nausea, light headedness, dizziness, reduced cognition.

# The Rivermead Post-Concussion Symptoms Questionnaire\*

After a head injury or accident some people experience symptoms which can cause worry or nuisance. We would like to know if you now suffer from any of the symptoms given below. As many of these symptoms occur normally, we would like you to compare yourself now with before the accident. For each one, please circle the number closest to your answer.

- 0 = Not experienced at all
- 1 = No more of a problem
- 2 = A mild problem
- 3 = A moderate problem
- 4 = A severe problem

Compared with before the accident, do you now (i.e., over the last 24 hours) suffer from:

Now Following Accident Headaches.....	0	1	2	3	4
Feelings of Dizziness.....	0	1	2	3	4
Nausea and/or Vomiting.....	0	1	2	3	4
Noise Sensitivity, easily upset by loud noise.....	0	1	2	3	4
Sleep Disturbance.....	0	1	2	3	4

Fatigue, tiring more easily.....	0	1	2	3	4
Being Irritable, easily angered.....	0	1	2	3	4
Feeling Depressed or Tearful.....	0	1	2	3	4
Feeling Frustrated or Impatient.....	0	1	2	3	4
Forgetfulness, poor memory.....	0	1	2	3	4
Poor Concentration.....	0	1	2	3	4
Taking Longer to Think.....	0	1	2	3	4
Blurred Vision.....	0	1	2	3	4
Light Sensitivity, Easily upset by bright light.....	0	1	2	3	4
Double Vision.....	0	1	2	3	4
Restlessness .....	0	1	2	3	4

# HEADACHE DISABILITY INDEX

Patient Name \_\_\_\_\_ Date \_\_\_\_\_

**INSTRUCTIONS: Please CIRCLE the correct response:**

1. I have headache: (1) 1 per month (2) more than 1 but less than 4 per month (3) more than one per week

2. My headache is: (1) mild (2) moderate (3) severe

**Please read carefully: The purpose of the scale is to identify difficulties that you may be experiencing because of your headache. Please**

check off “YES”, “SOMETIMES”, or “NO” to each item. Answer each question as it pertains to your headache only.

**YES    SOMETIMES    NO**

\_\_\_\_\_ E1. Because of my headaches I feel handicapped.

\_\_\_\_\_ F2. Because of my headaches I feel restricted in performing my routine daily activities.

\_\_\_\_\_ E3. No one understands the effect my headaches have on my life.

\_\_\_\_\_ F4. I restrict my recreational activities (eg, sports, hobbies) because of my headaches.

\_\_\_\_\_ E5. My headaches make me angry.

\_\_\_\_\_ E6. Sometimes I feel that I am going to lose control because of my headaches.

\_\_\_\_\_ F7. Because of my headaches I am less likely to socialize.

\_\_\_\_\_ E8. My spouse (significant other), or family and friends have no idea what I am going through because of my headaches.

\_\_\_\_\_ E9. My headaches are so bad that I feel that I am going to go insane.

\_\_\_\_\_ E10. My outlook on the world is affected by my headaches.

\_\_\_\_\_ E11. I am afraid to go outside when I feel that a headaches is starting.

\_\_\_\_\_ E12. I feel desperate because of my headaches.

\_\_\_\_\_ F13. I am concerned that I am paying penalties at work or at home because of my headaches.

\_\_\_\_\_ E14. My headaches place stress on my relationships with family or friends.

\_\_\_\_\_ F15. I avoid being around people when I have a headache.

\_\_\_\_\_ F16. I believe my headaches are making it difficult for me to achieve my goals in life.

\_\_\_\_\_ F17. I am unable to think clearly because of my headaches.

\_\_\_\_\_ F18. I get tense (eg, muscle tension) because of my headaches.

\_\_\_\_\_ F19. I do not enjoy social gatherings because of my headaches.

\_\_\_\_\_ E20. I feel irritable because of my headaches.

\_\_\_\_\_ F21. I avoid traveling because of my headaches.

\_\_\_\_\_ E22. My headaches make me feel confused.

\_\_\_\_\_ E23. My headaches make me feel frustrated.

\_\_\_\_\_ F24. I find it difficult to read because of my headaches.

\_\_\_\_\_ F25. I find it difficult to focus my attention away from my headaches and on other things.

# ASSIGNMENTS/LETTERS OF PROTECTION/UCC LIENS:

- Letters of Protection: Letters of Protection are the age-old and time-tested method of collecting a Chiropractors bill by allowing for payment from any settlement or recovery collecting a Chiropractors bill by allowing for payment from any settlement or recovery of the patients injury claim. If there is a valid letter of protection in place, lawyers are required to protect the provider's interests, assuming that there is a health care bill that is not in dispute. Letters of protection do create a potential conflict of interest for the attorney and, accordingly, lawyers cannot ethically agree to a letter of protection unless the attorney has fully explained the potential conflict of interest to the client.

# ASSIGNMENTS/LETTERS OF PROTECTION/UCC LIENS (CONTD):

- Assignments: The Minnesota Supreme Court has held that an assignment of the patient's claim does allow the assignee to "step into the legal shoes of the assignor", giving the assignor the rights that the assignee had prior to the assignment. See *Medical Scanning Consultants, P.A. v. Metropolitan Prop. & Cas. Co.* However, if the No Fault insurance policy contains a "non-assignment" clause, your assignment may not be valid against that particular No Fault insurer. See *Physicians Neck & Back v. Allied Ins. Co.* (Note, there are many complications involved in bringing your claim to arbitration, including problems with "claim splitting.")

# ASSIGNMENTS/LETTERS OF PROTECTION/UCC LIENS (CONTD):

UCC (Uniform Commercial Code) Liens: Minnesota Statute 336.9-309 provides for a security interest created by an assignment of a “health care insurance receivable”. Security interest created by an assignment of a “health care insurance receivable”. Again, the assignment is subject to all of the limitations discussed above and may not guarantee payment. All of the technical requirements for creating, perfecting and enforcing the security interest must be followed. Even then, the existence of a UCC lien does not automatically guarantee payment.

# MARKETING PRACTICES-

## Minn. Stat. 65.B54

- a licensed health care provider shall not initiate direct contact, in person, over the telephone, or by other electronic means with any person who has personally suffered an injury arising out of the maintenance or use of the automobile for the purpose of influencing that person to receive treatment or purchase any good or item from the licensee or anyone associated with the licensee.
- Note: the statute is violated either via direct contact or indirect contact using any third party (cappers, runners, or steerers)

# ADVERTISING RESTRICTIONS:

- Minn Stat 65B.54 places the following restrictions on all advertising literature
- must clearly and conspicuously contain the word “ADVERTISEMENT”;
- must clearly and conspicuously contain the name of the licensee (chiropractor, lawyer, etc.);
- cannot initiate any follow-up contacts.

NOTE: Does not prohibit the following:

- general advertising that does not target a specific perspective patient;
- contacts with friends, relatives or social contacts;
- contacts with prior clients.

# Advertisements for “Restoration of Lost Vitality/Virility” (Minnesota Statutes 617.28)

- Anti-“Cherry Picking law” (Minnesota Statute 256B.0664) states that
- if a provider does not participate in the medical assistance program, the general assistance medical care program, and Minnesota care program, that provider then may not received payment from the Minnesota workers compensation program, health insurance plans for state employees or public employees.
- Medicare Overcharge Law (Minnesota Statute 62J.25(d): P. It is said providers may not charge or collect from a Medicare beneficiary any amount in excess of the Medicare approved amount for any Medicare covered service provided.

# THANK YOU FOR ATTENDING!!!

## THE SCHMIDT LAW FIRM GUARANTEE

1. First Consultation with a Lawyer-Free! (Let us evaluate your case and give you our advice as to your legal rights- totally free!!!)
2. No fee until you collect!!! (We will handle your case on a contingent fee arrangement.)
3. We will provide Personal Injury Services with a Personal Touch.
4. We will return your call within 24 hours- or make a donation to your favorite charity if we don't.

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The Schmidt Law Firm- 13911 Ridgedale Drive, Minnetonka, MN 55305-  
952-473-4530- [www.schmidtlaw.org](http://www.schmidtlaw.org)- [schmidtlaw@visi.com](mailto:schmidtlaw@visi.com)