

August 4, 2004

Jaeni Aarden, Executive Director
New Mexico Chiropractic Association
P.O. Box 2110
Albuquerque, NM 87154

Re: Abandonment of a Patient

Dear Ms. Aarden:

As you aware, the Chiropractic profession is subject to the Chiropractic Physicians Practice Act, which is contained in the New Mexico Statutes Annotated in Chapter 61 Article 4. According to Section 10, Subsection (n) of Article 4, a practicing Chiropractor will be guilty of unprofessional conduct if he or she abandons a patient. This statute thus begs the question as to the definition of patient abandonment. Your inquiry is more specific: Has a Chiropractor committed "patient abandonment" when a patient treatment is discontinued due to non-payment of medical bills by the patient?

New Mexico courts have not yet addressed patient abandonment. However, other jurisdictions have, and in 1989, the Court of Appeals of Iowa analyzed a claim of patient abandonment where a medical physician discontinued treatment of a patient for non-payment of medical bills. *Surgical Consultants, P.C. v. Maxine M. Ball*, 447 N.W.2d 676 (Iowa Ct. App. 1989). In that case, the court set forth the rule that patient abandonment occurs where a patient is injured due to non-treatment when that patient requires immediate medical attention due to serious medical problems or is at a critical stage of the patient's treatment and the physician does not provide a list of alternate medical providers or sufficient notice for the patient to procure another physician. The basic facts are, Dr. Foster of Surgical Consultants discontinued follow-up treatment of Ms. Ball when Ms. Ball had not paid in full the bill for a gastric bypass surgery Dr. Foster previously performed for her. The court stated that sutures which became infected and malodorous placed by Dr. Foster in the abdomen of Ms. Ball subsequent to "gastric bypass" surgery did not qualify as a serious medical problem and thus did not impose patient abandonment on Dr. Foster. Moreover, Ms. Ball was seen and treated by two other physicians shortly after Dr. Foster terminated her as a patient, thereby satisfying Dr. Foster's duty to give sufficient notice for Ms. Ball to procure another physician.

Although an Iowa court's ruling is not binding on New Mexico courts, one can look to the Surgical Consultants case for guidance. In fact, the test applied for abandonment of patient analysis, will more than likely be applicable to the other inquiries you stated in your letter. For each inquiry, it would be prudent that a Chiropractor ask himself or herself whether or not the condition of the patient requires immediate medical attention and, if the patient is a current patient, whether the Chiropractor provides sufficient notice for the patient to procure another physician? To apply the theme of this review, any patient or potential patient that has an outstanding

balance with a Chiropractor and has not paid after collection efforts of the Chiropractor, treatment may be refused if the patient does not require immediate medical attention and has the ability to seek treatment from another medical provider.

Of course, the above is stated with the caveat that it does not consider any obligations, requirements, procedures or rules set forth by any chiropractic or medical certifying organization. The above is based on the New Mexico Statutes Annotated and Iowa Appellate Court case law.

Sincerely,

RON BELL & ASSOCIATES, P.C.

The information provided in this letter is not intended to substitute for the advice of your legal counsel and you are encouraged to seek alternate legal opinions.