

Manage Liability When Making CAM Referrals

A physician generally is not liable merely for referral to a specialist, but there are some exceptions.

BY DOUG BRUNK
San Diego Bureau

LA JOLLA, CALIF. — When you refer a patient to a provider of complementary and alternative medicine, keep in mind five liability management strategies, David M. Eisenberg, M.D., advised at a meeting on natural supplements in evidence-based practice sponsored by the Scripps Clinic.

The strategies, which he developed in collaboration with Michael H. Cohen, J.D. (*Ann. Intern. Med.* 2002;136:596-603), include the following:

1. Determine the clinical risk level. Decide whether to:

▶ Recommend yet continue to monitor the therapy.

▶ Tolerate, provide caution, and closely monitor safety.

▶ Avoid and actively discourage the therapy.

2. Document the literature supporting the therapeutic choice.

"It's very important to put this in the

chart," said Dr. Eisenberg, an internist who directs the division for research and education in complementary and integrative medical therapies at the Osher Institute, Harvard Medical School, Boston.

"By the way, that is also true when we're using a novel or experimental drug with an inpatient. This is the same approach."

If treatment with a certain herb is recommended, "document the choice of herb, any recommendation regarding product or brand, and any discussion regarding therapeutic dose, and associated uncertainties regarding use of the herb," he said.

He also makes it a practice to keep a backup file of articles supporting the discussion or recommendation. "You could say this is a bit too conservative, like have suspenders and a belt," he said at the meeting, cosponsored by the University of California, San Diego. "But I think this is the best advice."

3. Continue conventional monitoring. "A lot of times we recommend something or

accept that a patient is going to do something, and then we don't monitor or follow up," Dr. Eisenberg said. "Undue reliance on CAM may lead to a charge that the patient was dissuaded from necessary conventional medical care."

He added that maintaining conventional treatment "helps demonstrate that the physician has followed the standard of care, even if CAM is included."

4. Provide adequate informed consent. Describe the risks and benefits of using the CAM therapy and of delaying or deferring the conventional therapy, and spell out potential adverse interactions.

That is a lot to consider, but such information would be helpful "in the eyes of the law if something went wrong," he said. "You have to ask yourself, could I really defend this action or recommendation?"

Also, clear communication with the patient has been shown to reduce the risk of being sued for malpractice. "Inadequate informed consent is also a theory for malpractice liability in and of itself," Dr. Eisenberg said.

5. Familiarize yourself with providers to whom you refer. Ask yourself, would I refer a friend to this person?

"If the answer is 'I'm not sure,' then get some help in making the correct referral," he advised.

Understand any regulations regarding the use of CAM therapies by your relevant state regulatory board.

"You have to check the regulations and scope of practice," he said. "From a conservative legal standpoint, referring to somebody who does not own a license to treat a patient is risky business. Don't do it."

He pointed out that, in general, a physician is not liable merely for making a referral to a specialist.

But he cited three exceptions to the general rule:

▶ The referral led to delay or deferral of necessary medical treatment. "Do your day job first," he said.

▶ The referring provider knew or should have known that the referred-to provider was incompetent.

▶ The referred-to provider is considered to be the physician's agent, either because state law requires supervision or an extended form of consultation, or there is a "joint treatment" agreement between the physician and the CAM provider, Dr. Eisenberg said. ■

IOM Calls on Alternative Care To Meet Conventional Rules

BY MARY ELLEN SCHNEIDER
Senior Writer

WASHINGTON — Complementary and alternative therapies should be held to the same standards as conventional treatments, according to a new report from the Institute of Medicine.

"Complementary and alternative medicine [CAM] use is widespread and here to stay," Stuart Bondurant, M.D., said at the institute's press briefing. "The same rules should apply for testing of effectiveness and safety regardless of the origin."

Already, the use of CAM therapies in the United States is widespread and amounts to \$27 billion a year in out-of-pocket costs by consumers, a figure that is comparable with the projected out-of-pocket expenditures for all U.S. physician services, the report said. In 1997, the total number of visits to CAM providers (629 million) outpaced the total number of visits to all primary care physicians (386 million), according to a survey from that year.

But despite the increases in the use of CAM services, few patients disclose their use of CAM therapies to their physicians. Less than 40% of CAM users told their physicians about their use of alternative therapies, according to surveys in 1990 and 1997.

The IOM committee defined CAM broadly as encompassing "health systems, modalities, and practices and their accompanying theories and beliefs, other than those intrinsic to the dominant health system of a particular society or culture in a given historical period." The committee's definition also states that CAM includes re-

sources that patients perceive as being associated with positive health outcomes.

While the same principles should be used in evaluating conventional and alternative treatments, some new methods may have to be devised for CAM therapies, said Dr. Bondurant, interim executive vice president and executive dean of Georgetown University Medical Center in Washington. Randomized controlled trials may not be appropriate for all CAM treatments. However, other designs include preference trials that include randomized and nonrandomized arms, observational and cohort studies, case-control studies, and studies of bundles of therapies.

Licensing boards and accrediting and certifying organizations should set competency standards for the use of conventional medicine and CAM, the committee said.

CAM practitioners also have a role to play by being trained as researchers. This would help ensure that research reflects the ways CAM therapies are used, the report said. CAM practitioners should also work to develop practice guidelines for CAM therapies, the report said.

"The intent of the report is not to medicalize or co-opt CAM but to sustain the existing forms of validated CAM therapies whether integrated into conventional practices or continuing as freestanding approaches," Dr. Bondurant said. "The committee urged that great care be taken to test CAM therapies in the ways that they are actually used." ■

The IOM report is available online at <http://national-academies.org>.



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