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Here's your **NBAC Messenger**, a newsletter offering business tips for your professional practice and personal life ...

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MESSENGER

BUSINESS TIPS FOR YOUR PROFESSIONAL PRACTICE AND PERSONAL LIFE

Key Legal Issues to Consider in Light of COVID-19

By Eric Tubbs



If you're like most chiropractors who are adjusting to the new normal of COVID-19, you might be asking yourself what you could have done to better prepare for COVID-19 practice disruptions.

Or, you may be thinking about what steps you can take to prepare for future interruptions.

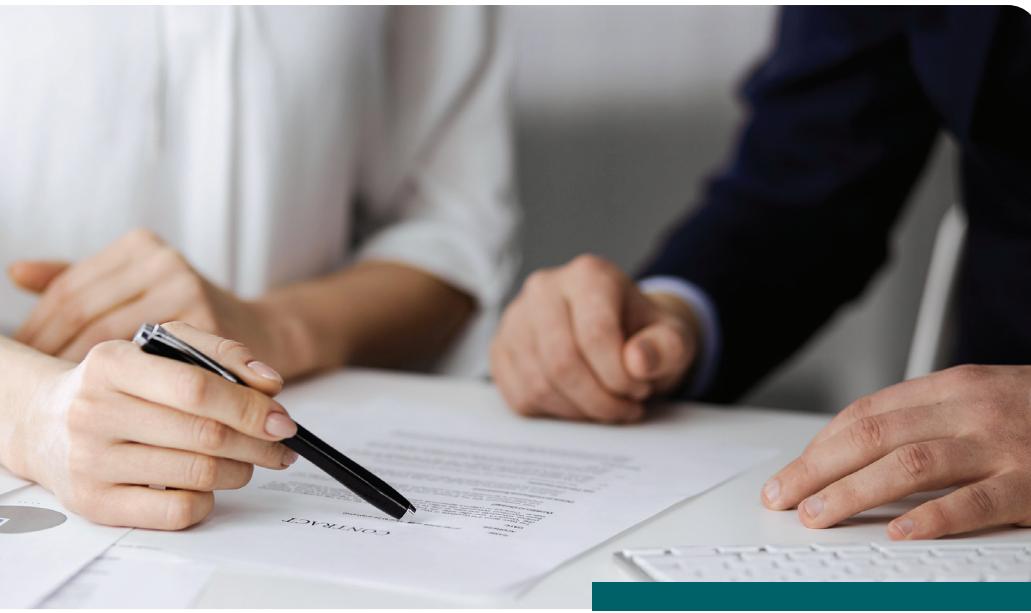
The following strategies may help you prepare for future business disruptions.

Legal Updates

As we saw multiple times during 2020, the COVID-19 pandemic caused a tidal wave of new federal, state and local laws, regulations and actions, often requiring drastic steps with incredibly short notice.

These legal changes substantially affected chiropractic practices and will likely continue to do so. Just because businesses have begun to reopen does not mean that there will not be future legal changes. Additionally, this year's federal and state election results could mean new approaches to dealing with the COVID-19 pandemic. Therefore, it will be critical that practice owners stay apprised of new and proposed laws.

Especially noteworthy is the new



rule proposed by the Centers for Medicare and Medicaid Services on August 3. This rule would temporarily add or make permanent additional services that can be provided by telehealth and covered by Medicare.

Many health insurers have also updated reimbursement timing for telehealth services, which may be reflected in new provider guides or manuals. Providers with specific questions about the impact of the proposed changes on their practices and billing should contact a health care attorney.

Contracts

Contractual issues, such as failure to perform/pay and delayed performance, have been common during the COVID-19 pandemic. Many practices were required to amend or renegotiate several of their existing contracts. Make

sure to apply these lessons not only to your existing contracts, but also when you're negotiating and entering new contracts.

Make sure to pay particular attention to the existence of “force majeure” clauses, as well as provisions relating to resolving disputes, remedies for nonperformance/delayed performance and provisions for terminating a contract. In any event, if future issues arise due to COVID-19 or another event, review all contracts to determine your respective rights and obligations.

Employment

When the Families First Coronavirus Response Act (FFCRA) took effect in April 2020, many employers were closing offices or reducing hours. Employees were also missing time due to sickness, quarantine

requirements or virus-related child care/school closings.

Many provisions of the FFCRA, specifically the paid leave provisions, remain important. They have new implications as employees return to brick-and-mortar locations and their children return to learning with the possibilities of virus flare-ups.

While the FFCRA expires December 31, 2020 (unless Congress extends its provisions), it applies to all public employers and to private employers with fewer than 500 employees. There is an exemption from the family leave requirements of the FFCRA for businesses with fewer than 50 employees that can show certain impacts of the potential leave on the business. Exemption criteria can be found on the Department of Labor website at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#15>. (See answers to Questions 58 and 59.)

This is also a good time to review personnel policies for COVID-19-related issues, such as leave, attendance, pay and safety rules. You may face legal exposure related to wages, leave time or employee claims that they were wrongfully discharged as a result of COVID-19.

Insurance

If a practice maintains business interruption insurance (or

other similar insurance such as business interruption civil authority coverage or business interruption ingress/egress coverage), the policy should be reviewed.

During the COVID-19 pandemic, most insurance carriers are denying these claims, arguing that they are not covered losses. However, it is still worth reviewing the policy if your practice suffered losses that could arguably be considered covered losses. If your practice does not have this type of coverage, consider contacting your broker to discuss if it could be beneficial in the future.

Loans and Banking Relationships

The COVID-19 pandemic likely has caused numerous businesses to default on loan or mortgage payments. Although some banks

are not currently foreclosing on defaults, this does not mean that they will not do so in the future. Additionally, it is typical that banks require small business owners to either be a party to the loan or to guarantee the loan payment. This means a practice owner's personal assets could be at risk in the event of a default.

As a result, if you're in a situation in which the practice is in default or could be in default on loan or mortgage payments, see if you can negotiate with the bank rather than simply defaulting. All parties are better served by a temporary adjustment in the repayment schedule rather than a legal action due to a default on the loan.

For those who have received Paycheck Protection Program (PPP) loans through the Small Business Administration, ensuring that these loans

are forgiven is a key factor in relieving your practice's debt burden. While there is no defined deadline for borrowers to submit a forgiveness application, payments will be required 10 months after the end of the covered period. Therefore, forgiveness applications should be submitted well before this deadline.

This general discussion is not intended to serve as legal advice to be relied upon. If you have any questions or need assistance regarding any legal issues that have arose due to the COVID-19 pandemic, please contact your attorney.

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