



# CLIENT NEWSLETTER



THE LAW OFFICE OF RICKY D. GREEN, PLLC

December 17, 2012



*From all of us at The Law Office of Ricky D. Green, we wish you a happy holiday season! Thank you for subscribing to our newsletter. Please feel free to call or email us if you have any questions.*

## **Chiropractor Duty To Disclose (Texas Supreme Court decision decided November 30, 2012)**

The Texas Supreme Court held In *Felton v. Lovett*, decided November 30, 2012, that a chiropractor has the duty to disclose the risk of stroke and vertebral artery dissection (VAD) to a patient when performing cervical manipulations. In this case, Aaron Felton was a patient of Brock Lovett, a chiropractor. Felton sought treatment for neck pain from Lovett. Lovett obtained a history, x-rayed Felton's cervical spine, and on two occasions, manipulated his neck. When the treatments did not provide relief, Lovett performed a more forceful manipulation on Felton's third visit. Felton immediately began experiencing blurred vision, nausea, and dizziness. Lovett called an ambulance, which took Felton to the hospital, where doctors determined that he had suffered a stroke resulting from a vertebral artery dissection.



The court said that Lovett was well aware of the risk of stroke from chiropractic neck manipulation because Lovett read an article on the subject the previous morning. Lovett also had a previous patient who suffered a stroke.

The trial court found that Lovett was liable for the injuries to Felton, and awarded Felton \$742,701.90 in damages.

Lovett appealed to the court of appeals, and the court of appeals found that Lovett did not owe a duty to disclose the risks of cervical manipulation since VAD was not inherent in manipulation. The court of appeals focused on the fact that Lovett had other conditions that contributed to the VAD/stroke which were unknown to Lovett, so Lovett did not have a duty to disclose the risks.

### THE LAW OFFICE OF RICKY D. GREEN, PLLC

9600 ESCARPMENT BLVD.,  
SUITE 745-52  
AUSTIN, TEXAS 78749

PHONE  
(512) 280-0055  
(866) 853-9407

FAX  
(512) 280-0071

[RICKY@RICKYDGREEN.COM](mailto:RICKY@RICKYDGREEN.COM)  
[QUESTIONS@RICKYDGREEN.COM](mailto:QUESTIONS@RICKYDGREEN.COM)  
[WWW.RICKYDGREEN.COM](http://WWW.RICKYDGREEN.COM)

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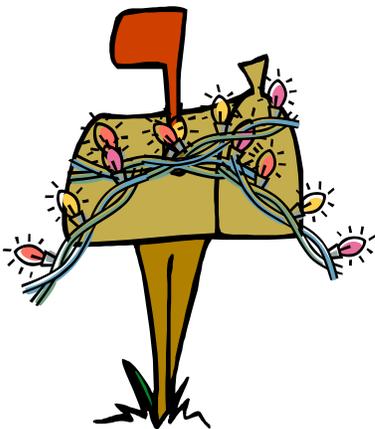


The Texas Supreme Court rejected the court of appeals' decision when it wrote: "The court of appeals concluded that because, by the undisputed evidence, Felton's injury would not have occurred but for his own physical condition—an unhealthy vertebral artery—the risk could not have been inherent in Lovett's treatment. But this ignores the evidence that Felton's injury also would not have occurred but for Lovett's treatment, that chiropractic neck manipulation can result in vertebral artery dissection and does so in a significant number of cases, and that dissection and stroke are known risks of chiropractic treatment that should be disclosed. Felton's injury occurred during treatment, as a direct result of treatment. The same kind of injury may occur in other patients undergoing the same kind of treatment. The risk that a patient will not respond well to treatment is clearly one that inheres in the treatment. And as the evidence indicated, and the jury found, the possibility of vertebral artery dissection and stroke is precisely the kind of information a reasonable patient would be expected to want to know before deciding whether to risk such severe consequences in order to alleviate neck pain."

The Texas Supreme Court reversed the court of appeals judgment and remanded the case back to the court of appeals for further findings consistent with the Supreme Court's decision.

### **Chiropractor Scope Of Practice (Austin Court of Appeals decision decided July 6, 2012)**

The Austin Court of Appeals considered in *Texas Board of Chiropractic Examiners v. Texas Medical Association*, decided July 6, 2012, a lawsuit brought by the Texas Medical Association against the Texas Board of Chiropractic Examiners regarding whether rules appropriately allowed chiropractors to conduct needle electromyography (EMG) and manipulation under anesthesia (MUA). The court of appeals discussed various provisions of the Texas Constitution, prior court decisions, statutes and historical contexts to find that (1) the Texas Board of Chiropractor Examiners exceeded its authority when it made rules to allow chiropractors to perform needle EMG, (2) manipulation under anesthesia is not in the scope of practice of chiropractors, (3) the rule that allows chiropractors to make certain diagnosis regarding the biomechanical condition of the spine or musculoskeletal system is appropriate, (4) and the rule that allows chiropractors to diagnose a subluxation of the spine or musculoskeletal system is appropriate.



**QUESTIONS? COMMENTS?** Have questions or comments about any of the stories in the newsletter or general questions about a workers' compensation matter? Drop us a line at [questions@rickydgreen.com](mailto:questions@rickydgreen.com), or give us a call at (512) 280-0055. We look forward to handling all of your workers' compensation needs.

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