



ASA / NCCAOM Town Hall V Q&A

May 20, 2020, 5pm PDT/8pm EDT

[Video Recording](#)

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INSURANCE PANEL DISCUSSION

American Acupuncture Council and CM&F Group, Inc.

Question: Are Health insurers required to pay for COVID19 testing for healthcare workers to return to work before they can see & treat patients, even if the healthcare worker is symptom free? If yes, what can we quote to our insurer if they say No they will not pay unless we are symptomatic?

Answered by AAC June 2, 2020: This is something that needs to be addressed by each health insurance carrier. The federal government has asked health insurers to not pass on costs including copayments to insureds for COVID19 testing. They are not mandated; therefore, you should always check with your own insurance carrier.

Answered by CM&F Group June 23, 2020: We recommend you discuss this directly with the Health Insurer(s) that you are working with locally.

Question: Will your policy cover claims due to a patient contracting covid-19 in my office?

Answered by AAC June 2, 2020: Our policy provisions have not changed. There is no exclusion. Each claim, as was indicated during the town hall, is addressed on an individual basis, and needs to fall within the terms and conditions of the policy.

Answered by CM&F Group June 23, 2020: CM&F, expects most patient claims alleging professional negligence relating to COVID-19 would be covered. Also, there are no current plans to modify or restrict existing coverage as it relates to COVID-19.

Question: Will our current policy stay the same?

Answered by AAC June 2, 2020: The policy has not changed.

Answered by CM&F Group June 23, 2020: CM&F is seeking to refile the Policy Form to improve client experience and coverage in the coming year, but not in a response to Covid-19 specifically.

Question: Is liability insurance covering the treatment of a COVID-19 infected person?

Answered by AAC June 2, 2020: Most State Executive Orders, CDC Guidelines, and licensing boards restrict an acupuncturist from directly treating active COVID 19 patients.

Answered by CM&F Group June 23, 2020: CM&F's policy covers our clients for their "Professional Services" for what the Acupuncturist is licensed, certified and qualified to perform.

Question: Can Marilyn define JCO guidelines? What is JCO?

Answered by AAC June 2, 2020: JCO is joint commission. The joint commission is a quasi-governmental agency that accredits hospitals and large medical facilities. It looks at personnel, paperwork, and facilities to assure standards are met to receive formal accreditation. This acceptable accreditation allows these facilities to receive federal reimbursement for health services.

Answered by CM&F Group June 23, 2020: CM&F recommends referring to this information if not available yet: <https://www.jointcommission.org/en/covid-19/>.

Question: Can we get written info on cybersecurity insurance?

Answered by AAC June 2, 2020: Cyber liability is included in our AAC malpractice policy. Many people refer to it as data breach. Please feel free to communicate with our customer service team for more detailed information.

Answered by CM&F Group June 23, 2020: Yes, you can go to CM&F's website, which offers some basic information on cyber-attacks and your risk as a small business owner. Coverage is offered by CM&F for entities. You can find information here: <https://www.cmfgroup.com/business-liability-insurance/cyber-liability-data-breach-insurance/>.

Question: Is this cyber security coverage offered as an extension to the professional liability coverage (failure to protect patients' information) or must it be purchased separately?

Answered by AAC June 2, 2020: Cyber liability is already included in the AAC Malpractice policy. There is nothing extra to purchase.

Answered by CM&F Group June 23, 2020: CM&F offers this as a stand-alone coverage to entities, and you can find the information at our website or contact us for more information.

Question: If the patient gives consent by being on the video for telehealth then do they need to sign a form each time?

Answered by AAC June 2, 2020: We still recommend having each patient complete the formal informed consent. An informed consent should always be reviewed with each patient prior to them signing that they understand what they are consenting to. Being on video may accomplish that to a point although you would still need a model release form. It would be our recommendation to continue to utilize AAC traditional informed consent. You do not need a new consent form each time unless there is a new condition that you will be treating.

Answered by CM&F Group June 23, 2020: CM&F recommends you review the information from your Telehealth and EHR vendors for the answer to this question, as well as the patient consent requirements within each jurisdiction with your personal/business attorney.

Question: Do we need to get additional malpractice for telehealth with herbs?

Answered by AAC June 2, 2020: You should always notify your malpractice carrier that you would be working with patients through telehealth. You would also want to make sure that they know what herbs you will be using. You must make sure that the herbs you recommend are within your scope. You would also want to make sure that you are treating patients with telehealth in states that you maintain an active license in good standing.

Answered by CM&F Group June 23, 2020: CM&F's policy Acupuncturists for what the provider is licensed, trained, and qualified to perform within the jurisdiction(s) in which they offer services to patients. This would include the use of medicinal herbs for patients.

Question: On telemedicine, can you show patients where to place ear seeds (after mailing them some seeds) and count that as a unit of acupuncture for insurance purposes?

Answered by AAC June 2, 2020: We may need more information but on the surface it appears that would be something licensing boards would prohibit.

Answered by CM&F Group June 23, 2020: CM&F defers the answer to this question to your Medical Coding and Billing Provider.

Question: Are there any mask standards that we must meet for safety and insurance coverage purposes? By face mask standards I mean are we covered by insurance if we work in a homemade mask? Or is there a requirement for a certain grade of mask? For patients?

Answered by AAC June 2, 2020: You should always follow your state department of health and the CDC guidelines for healthcare providers to maintain compliance.

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney.

Question: Are the malpractice companies giving a break on our rates for those who are not able to practice and are in states that have been closed for 2 months now (like what the car insurance companies are doing)? Does American Acupuncture Council or CMF cover the incidence of COVID-19 transmission happening at my practice?

Answered by AAC June 2, 2020: Having been the leading malpractice provider for acupuncturists for over 30 years, we have always been committed to supporting the entire acupuncture profession. In this time of need, we have made many accommodations to help our insureds.

Answered by CM&F Group June 23, 2020: CM&F will do as much as possible to assist clients that demonstrate an adverse impact on their work due to Covid-19. Please contact us for more information and we will do our best to help, but we do not have a "set" answer as we craft a strategy based on your specific situation.

Question: As a new practitioner, literally passed exams, and licensed by Mar 20, then unable to begin a practice, attempting to maneuver which state I am allowed to practice in, look for work, or open an office. I am concerned that the stipulations exist that No new patients would not allow us new practitioners to practice, as every patient would be a new patient to a new practice. Or if I began working for someone, the patients would be new to me. Can you offer guidance to this?

Answered by AAC June 2, 2020: Marilyn, on behalf of AAC, has assisted thousands of acupuncturists get started over the years and continues to do so through this pandemic. Call her directly on her personal cell phone at 714-420-2895.

Answered by CM&F Group June 23, 2020: CM&F refers Acupuncturists to their professional and licensing organizations as well as the state/federal laws that relate to licensing and telemedicine. This is a question of "established" patients and relates to laws as well as how the health insurer will treat the option of care. You can also direct your questions to Michael too.

Question: Has the AAC or any other carriers developed any additional waivers in case a patient develops COVID and feels the acupuncture office is at fault? Any protections for us as a profession?

Answered by AAC June 2, 2020: Yes, AAC has developed an informed consent for your patients as well as safety guidelines for your practice. You can get this information from our website <https://acupuncturecouncil.com/> or by contacting AAC directly 800-838-0383.

Answered by CM&F Group June 23, 2020: For CM&F, we expect most patient claims alleging professional negligence relating to COVID-19 would be covered. Also, there are no current plans to modify or restrict existing coverage as it relates to COVID-19. If you have questions about Employees contracting you should direct your concerns to your Workers Compensation insurance company.

Question: Can the panelists please provide a detailed list of what we need to document with each patient regarding our COVID safety protocols?

Answered by AAC June 2, 2020: As indicated on another question, AAC has the paperwork available on our website or through our customer service team.

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney.

Question: Does AAC malpractice policy include protection for telehealth liability?

Answered by AAC June 2, 2020: Yes, AAC covers telehealth. Please let the customer service team know that you will be utilizing this.

Answered by CM&F Group June 23, 2020: CM&F refers to our friends at AAC.

Question: Liability: we need help with how to protect ourselves regarding having carpeted surfaces in our treatment rooms. There is no real guidance, no real product, to disinfect carpeting. How therefore do we protect ourselves in terms of Liability? Do we have language added to our Consent Form to include "not responsible for any potential transmission of viruses, bacteria due to carpeted surfaces"? We need clear liability guidance on this.

Answered by AAC June 2, 2020: Check OSHA guidelines and EPA products list for appropriate disinfectants.

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney. This should be a focus of reviewing reopening checklists and concerns there, which could include OSHA in addition to several other governmental entities.

Question: What forms should be signed each time before an appointment? COVID consent only? Pre-screening only? Combination of both?

Answered by AAC June 2, 2020: Both.

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney.

Question: How would documentation be handled for a shared clinic space, e.g., two practitioners seeing patients in the same clinic room at different days/times? Does each practitioner need a protocol or need it be a shared protocol?

Answered by AAC June 2, 2020: You would do a shared protocol that both of you establish and follow. Each of you need to make sure that you keep proper patient documentation.

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney.

Question: As an acupuncturist, am I liable if a patient contracts COVID-19 in my office, either from me or from another patient? If I am following current cleaning guidelines and distancing except for diagnosis and treatment, does that change liability?

Answered by AAC June 2, 2020: All those procedures will limit your liability. Most states at this moment have not offered immunity to healthcare offices.

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney. Truly, CM&F (and most insurance companies agree) that a determination of liability and how a claim plays out is completely dependent on the individualized circumstances.

Question: Must we also get clients to sign a COVID liability waiver with each in person?

Answered by AAC June 2, 2020: Yes

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney. There are great resources for reopening your offices, and we also defer you to those. CM&F can also send you additional resources if you contact us.

Question: Do we have to be tested before reopening?

Answered by AAC June 2, 2020: Check with your State Department of Health for guidance here.

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney. There are great resources for reopening your

offices, and we also defer you to those. CM&F can also send you additional resources if you contact us.

Question: MD visits do not document disinfection of clinic, or other safety protocols in their chart notes? I do not understand why we must write it in the chart. I do not understand what is recommended here.

Answered by AAC June 2, 2020: What was recommended was to document your policies and procedures into a notebook. This does not need to be in each patient's personal file but does need to be documented for the office site.

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney. There are great resources for reopening your offices, and we also defer you to those. CM&F can also send you additional resources if you contact us. Overall, the references are not to differentiate between requirements of MDs versus Acupuncturists or any other providers, but simply a recommendation to document your protocols to protect yourself from liability (malpractice or other areas of liability).

Question: How does this all pertain to herbal medicine? Obviously, you cannot make claims but what if you have a new patient who strictly wants herbal treatment for COVID-19?

Answered by AAC June 2, 2020: You must be in compliance with your licensing board. We are not aware of any licensing boards that are allowing direct treatment of the virus at this point in time.

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney.

Question: Is it in our legal right to turn down a new or current patient who may have one or any of the symptoms of COVID-19?

Answered by AAC June 2, 2020: Yes

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney. There are great resources for reopening your offices, and we also defer you to those. CM&F can also send you additional resources if you contact us.

Question: Do I have to measure everyone's temperature?

Answered by AAC June 2, 2020: It is the recommendation that CDC has put out for healthcare providers.

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney. There are great resources for reopening your offices, and we also defer you to those. CM&F can also send you additional resources if you contact us.

Question: Please clarify when we are talking about a liability form, are we talking about a consent for care or a separate liability form? Thank you.

Answered by AAC June 2, 2020: We are talking about an informed consent however, there is an additional consent to treat during this pandemic. AAC has made these forms available on its website.

Answered by CM&F Group June 23, 2020: CM&F is unsure of this question, but please do not hesitate to contact William Sullivan at CM&F Group to discuss further.

Question: Can I treat out of state patients with herb using telemedicine?

Answered by AAC June 2, 2020: Only if you are licensed in both states.

Answered by CM&F Group June 23, 2020: CM&F refers Acupuncturists to their professional and licensing organizations as well as the state/federal laws that relate to licensing and telemedicine.

Question: Is doing an email prescreen to each patient that is coming into the clinic, questioning about symptoms in an email form a breach of HIPAA?

Answered by AAC June 2, 2020: Email correspondence with patients should be through an encrypted email service to avoid any liability or HIPAA breach.

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county), and their personal attorney.

Question: What liability and ethical issues arise if some practitioners in a suite of offices with shared common areas follow CDC infection control and regulations and others do not?

Answered by AAC June 2, 2020: Everyone needs to follow CDC guidelines. If it is not being followed everyone becomes at risk.

Answered by CM&F Group June 23, 2020: CM&F refers clients to the recommendations of the CDC as well as their federal/state/local health departments and agencies, as well as your professional organizations, for the answer to these questions.

Question: I work as an IC as part of a chiropractic practice. There are also 4 massage therapists as part of this group. I am the only one having patients sign a waiver. How does this work regarding my liability insurance if someone says they contracted COVID 19 from my practice?

Answered by AAC June 2, 2020: When you are in a shared environment, there is always additional risks. You need to make sure that your specific patients sign the waiver and you keep everything up to date according to CDC guidelines.

Answered by CM&F Group June 23, 2020: Your liability stems from your own actions (or the entity that you own/operate) and the presumption that there is a standard of care which is breached by you (or someone you are responsible for). Therefore, the liability in this situation may rely upon the requirements of the Chiropractic Practice rather than you personally as a 1099 Independent Contractor.

Question: How do we handle documentation around treating higher risk patients - like someone with diabetes - during this time? Many of us treat people undergoing chemo, etc.

Answered by AAC June 2, 2020: You should do your prescreening, get informed consent, and document as you would under normal conditions.

Answered by CM&F Group June 23, 2020: CM&F recommends following the highest standards for patient documentation.

Question: Can I do telemedicine herb consultation for a patient living in New York if I am only licensed in Arizona?

Answered by AAC June 2, 2020: No

Answered by CM&F Group June 23, 2020: CM&F recommends referring to your professional and licensing organizations as well as your personal attorney to seek input on your scope of practice for such services, especially when looking across state lines.

Question: We are also being required to wear masks, yet on most of the medical / surgical style mask packaging now there is a warning that they do not protect in any way from COVID 19. Is this a concern in terms of liability?

Answered by AAC June 2, 2020: You should be utilizing surgical masks that are at least equivalent to N95.

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their professional organizations as well as the different layers of governmental healthcare agencies (e.g. federal/state/county).

Question: Do you recommend we record telehealth consultations for protection from liability or is it safer not to record, in terms of hacking?

Answered by AAC June 2, 2020: They could be recorded, and they need to be encrypted and stored per HIPAA requirements.

Answered by CM&F Group June 23, 2020: CM&F defers to the Telehealth and EHR platforms that provide these services; however, documentation is critical for clarity (and evidence) at the time of a lawsuit.

Question: One of the webinars I attended stated that the patient must initiate a telehealth appointment, that we cannot ask them. is this true?

Answered by AAC June 2, 2020: You can keep in touch with your patients and let them know your availability through telehealth. They do need to request an appointment with you.

Answered by CM&F Group June 23, 2020: CM&F defers to the Telehealth and EHR platform as they should have recommendations for proper protocols under the varying scenarios, such as this.

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Question: When we cannot use acupuncture due to the risk, instead giving herbs; Will it be covered by insurance now in such specific time?

Answered by CM&F Group June 23, 2020: CM&F's policy Acupuncturists for what the provider is licensed, trained, and qualified to perform within the jurisdiction(s) in which they offer services to patients. This would include the use of medicinal herbs for patients.

Question: I did not get name of Mr. Sullivan's malpractice insurance company. Please spell it or show it on slide.

Answered by CM&F Group June 23, 2020: Mr. Sullivan's company is CM&F Group, Inc. You can find a direct link to their page here for ASA Members: <https://www.cmfgroup.com/about-cmf/cmf-partners/asa-members-acupuncturists-malpractice-insurance/>.

Question: What do the panelists think regarding an acupuncturist being sued for COVID, even if the patient signs a waiver?

Answered by CM&F Group June 23, 2020: CM&F, expects most patient claims alleging professional negligence relating to COVID-19 would be covered. Also, there are no current plans to modify or restrict existing coverage as it relates to COVID-19. You can also refer to reopening information and checklists and those materials.

Question: If a patient signs forms electronically, not using special software, looks like a picture, is this considered a valid signature?

Answered by CM&F Group June 23, 2020: CM&F refers practitioners to their business and legal advisors.

Question: What about non-compete agreements in light of COVID-19? If someone has been let go from a practice and has to set up shop 10-12 miles from the old clinic in order to make a living (because no one is hiring!), will the non-compete for distance still be enforceable?

Answered by CM&F Group June 23, 2020: Refer to your personal or employment attorney. Non-Competes are difficult to enforce in many situations, and Covid-19 may provide another hurdle for enforcement. At the end of the day, common sense should rule the day and common decency to assist others in keeping their heads above water in a turbulent time versus snuffing out competition in the market.

Question: Are there really lawsuits recently filed against acupuncture providers for potential transmission of COVID? Wondering what the biggest risks are right now with reopening.

Answered by CM&F Group June 23, 2020: Insurance companies are preparing for an uptick of liability lawsuits for practitioners across the healthcare landscape, whether an Acupuncturist or another healthcare professional.