

Part 7: California Practice Rights Lawsuit

As indicated in Part 6, attorney Edwin Grauke and I presently represent one “straight” chiropractor, two musculoskeletal practitioners and two “mixers” in a lawsuit challenging a “scope of practice” rule adopted by the California Board of Chiropractic Examiners in 1991 (Rule 302). The Chiropractic Board, the CCE and the California Acupuncture Board are the named defendants. We seek, among other things, to have Rule 302 declared inconsistent with the intent of the Chiropractic Act and therefore invalid and unenforceable.

In the past chiropractors have asked the courts to interpret the Chiropractic Act according to how they, individually, would like it to be interpreted. The courts simply do not have the right to do that. We seek to have the court interpret the 1922 Chiropractic Act and subsequent amendments according to the “original intent” of the California voters and as required by principles of constitutional law.

The original intent must be determined from the language of the act; the historical evidence touched upon in Part 6; the historical evidence of pre-1922 case and statutory law; the cultural context in 1922 and the rule of interpretation stated in section 16 of the Act itself: **this act shall not be “construed so as to discriminate against any particular school of chiropractic, or any other treatment....”** No prior court has ever been presented with the required evidence, nor has section 16 ever been brought up. As a result, the California courts, and the Chiropractic Board, have misconstrued the intent of the Chiropractic Act. We seek to correct that misconstruction and will briefly outline ten key points (arguments) raised in the pending case; more details may be obtained at www.promedlaw.com.

Ten Key Points

One: We seek to have the court recognize that the chiropractic paradigm of the innate, intelligent, self-organizing and self-regulating capacity of the body is of fundamental importance to not only chiropractors but to the California patient population and to society at large. Further, that this paradigm has been unconstitutionally discriminated against by orthodox medicine and, unfortunately, by some groups within the chiropractic community itself - including, but not necessarily limited to, the CCE.

Two: The right of chiropractors to practice within their respective paradigms is a fundamental right that calls for strong (strict) constitutional protection by the courts so as to assure chiropractors a level playing field in both the market place of ideas and in the health care market itself.

Three: We argue that each person in our society has a constitutional right to choose his or her own form of lawful health care and that in order to support that right chiropractors must be allowed to practice in accordance with the original intent of the California voters.

Four: Prior to 1922, the United States Supreme Court specifically recognized that the various states have the right to establish reasonable minimum education and training requirements for anybody seeking to practice any healing art. **We agree!**

Five: The original intent of the 1922 Chiropractic Act was to grant chiropractors the same basic practice rights as those granted to “drugless practitioners” under the 1913 Medical Act.

The drugless practitioners were authorized to “**treat diseases, injuries, deformities, or other physical or mental conditions**”. Drugless practitioners were precluded from using allopathic drugs or performing operative surgery with a knife. The same limitation was applied to chiropractors by the 1922 Act and they were also precluded from performing obstetrics. That means that chiropractors were, as of 1922, authorized to use the whole naturopathic materia medica, including herbs, nutrition, homeopathics, etc. (However, reasonable education and training can now be required by the Chiropractic Board before these things can be practiced by any particular licensee. See Points 6 - 8.)

Six: The Chiropractic Act was amended in 1948 to increase the prescribed chiropractic curriculum from 2400 hours to 4000 hours, with up to 17% of the hours in electives. The elective provision was changed to a required 15% in 1976 and the Board has the right to establish reasonable education and training standards for such electives.

The chiropractic colleges have never offered electives and we contend that electives must be offered and that they can be used to increase the practice rights of chiropractors and to allow for a certain degree of specialization within the basic curriculum. That is, different schools must be approved to offer different elective hours; those wishing to focus on elective adjustive techniques should be authorized to do so, those wishing to add elective herbal medicine, etc. should be approved to do so.

Due to the prior failure to offer electives, we argue that practicing chiropractors must presently be allowed to complete electives and to derive additional, appropriate, practice rights.

Seven: It is not the function of the court, the CCE or the schools to establish the standards for such elective education and training. The Chiropractic Board must establish the standards - with input from all interested parties. Therefore, we seek to have the court order the Chiropractic Board to define a reasonable elective curriculum and the practice rights that may be reasonably acquired by completing such education and training.

Eight: In addition, we seek to have the court order the Chiropractic Board to administer examinations covering the prescribed electives. We also seek to have the court declare that the Board, based upon the successful completion of the elective training and examination processes, has the right to certify such specialties as the Board deems appropriate. (The Board could consider existing diplomate program requirements in this certification process.)

Nine: The State’s power to approve chiropractic schools and colleges has, in effect, been turned over to the CCE. This violates a provision of the California Constitution that prohibits any power established by initiative being placed in the hands of any private person or organization. Therefore, we seek to have the court return the final approval power for chiropractic colleges, and the elective education and training, back to the Chiropractic Board. We do not seek to eliminate the role of the CCE, merely to place primary responsibility in the hands of the Board.

Ten: MDs, DOs, dentists and podiatrists can, upon completion of course work prescribed by their respective Boards, use acupuncture needles without being separately licensed by the California Acupuncture Board. We contend that it is a denial of equal protection of the law to not grant chiropractors a similar right.

Equally important, the California Constitution provides that the Legislature cannot take any rights away from somebody who obtained them through the initiative process. Assuming chiropractors

are authorized to use needles then the legislature cannot make it illegal for them to do so by any other provision of law; such as the Acupuncture Law. Obviously, this constitutional limitation on legislative power has very broad significance once clearly, and specifically, applied to the benefit of chiropractors. The acupuncture example is an excellent opportunity to drive this point home.

We will bring you up to date next month as to the developments in this case.

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