

Part 8: California Practice Rights Lawsuit

In this article I will address three significant events that have already occurred in the California Practice Rights case. I will also address what is expected to happen next and the past and future funding for this case. Edwin Grauke and I are litigating this practice rights action and we have formed a non-profit lawfirm named Veritas Justice Institute (**VJI**) to do so. If you are interested in finding out more about the goals and objectives of **VJI** please visit our website at www.promedlaw.com.

Round One

Medical Board Backs Off: If you look at the complaint on the website you will note that we are presently dealing with the Second Amended Complaint. That means that the complaint has been previously amended (altered). This is not the time or place for an extended discussion of the changes to the complaint, or the reason therefor, but one element is presently worth pointing out.

The California Medical Board has for at least 60 years insisted on the right to participate in cases addressing the practice rights of chiropractors. Therefore, the Medical Board was named as a defendant in the original action. To my great surprise, the Medical Board objected to being named as a party to the lawsuit and asserted that it should not have to participate in the case. Arguably, the Medical Board should never have been a party to any lawsuit involving the practice rights of chiropractors. Therefore, when the Medical Board sought to withdraw from the case, **VJI** immediately agreed, dismissed that "Board" and filed an amended complaint.

Round Two

ASSIGNMENT TO ONE JUDGE: The defendants in the Second Amended Complaint are the State Board of Chiropractic Examiners, the Acupuncture Board and the C.C.E.. The two state agencies are both represented by different attorneys from the California Attorney General's Office. The C.C.E. has not actively participated in the case thus far and we are presently attempting to work out an amicable settlement with the C.C.E..

The San Francisco Court ordinarily uses a system whereby each time you go to court about some pre-trial matter you are appearing before a different judge. This makes it very difficult to get to the meat of the case in that the defendants can keep trying to hide behind the same "smoke screen" in front of different judges. The way around this is to get the case assigned to a single judge for all purposes so that the judge keeps becoming more familiar with the case as different legal motions are presented to him or her. This is particularly important in a case, such as this, where there are complicated legal questions to be resolved.

Therefore, the plaintiffs filed a motion to be assigned to a single judge. The California Attorney General's Office strongly opposed the motion and avidly sought to avoid having the case assigned to a single judge. **VJI Won its motion and the case is now assigned to Judge Charlene Padovani Mitchell for all purposes.**

Round Three

VJI Wins Again: The plaintiffs have raised 12 primary claims and legal theories to support those claims in the pending action. The California Attorney General's Office, on behalf of the Chiropractic Board and the Acupuncture Board, filed 57 pages of law & argument to get the plaintiffs, in effect, thrown out of court (demurrers). **VJI** filed 33 pages of law & argument in opposition to the demurrers of the two state agencies. Judge Mitchell, on October 29, 2003, overruled each of the state agency's demurrers. **That is, VJI won on all issues.**

Next Round

Although the Attorney General's Office has been defeated as to all matters thus far ruled upon they are not about to give up. In fact, the Attorney General's perspective on the practice rights of chiropractors has, over the past 60 years, been a major source of the diminution of those rights. In fact, **VJI** has specifically alleged in this action that the AG's Office has, over that period of time and to the present, discriminated against chiropractors. The battle is joined. Neither side is likely to back off and the case as to the defendants represented by the AG's Office will have to be won in open court.

The AG's Office has now filed another motion (motion for summary judgment or summary adjudication) in their continuing effort to avoid this case being heard on the merits. That motion is presently set for hearing on January 28, 2004. The plaintiffs expect to file a cross-motion and **VJI** expects the respective motions to be heard together sometime around the end of March or early April.

The essence of the AG's position on behalf of the state agencies is that even if the Rule 302 adopted in 1991 is wrong it is consistent with prior case law going back to the 1930s and the Rule should not, therefore, be changed – again, even if wrong. They are relying upon a legal doctrine called stare decises which espouses that there is a high value to certainty in the law which **sometimes** exceeds the interest in “getting it right”.

Suffice it to say, **VJI** strongly disagrees with the AG's position and will, in its cross-motion, argue that Rule 302, and the prior case law upon which it is based, are wrong and inconsistent with other applicable case law. **VJI's** will argue that although Rule 302 sets the floor for the chiropractor's rights, it is not consistent with the original intent of the Chiropractic Act and the other case law just referenced. (**VJI** seeks to raise the ceiling. For more details, see www.promedlaw.com > “medical articles” > “Counsel in Dissent 8”) Further, **VJI** will argue that the public policy rationale underlying the doctrine of stare decises simply does not apply to this case. (I will spare you the details.) I will report further on the outcome of these motions when ruled upon by Judge Mitchell.

Funding

As I have previously stressed, this case is brought by five individual chiropractors. This was done intentionally so that all sides of the “mixer/straight” debate would be presented and the litigation would not focus on just the perspective of one side or the other. Therefore, **VJI** has not received any funding from any chiropractic school or association. The litigation has, thus far, been 95% funded by the Prescott Group. That “Group” has spent a large sum of money on this case for the benefit of all chiropractors. The Prescott Group has agreed to continue underwriting the case until at least May, 2004. A large sum of money is needed to fully litigate this case. **VJI** will continue to look primarily to grassroots funding and your support will be especially needed downstream. I hope to use the pages of

this publication to solicit your financial support after the pending motions for summary judgment have been ruled upon.

As previously indicated, one of my own primary interests in pursuing this litigation is to seek recognition of the right of chiropractors to fully develop the paradigm of the innate, intelligent, purposeful self-organizing and self-regulating capacity of the body. I will, therefore, discuss these matters further in subsequent articles.

*David Prescott is a former prosecutor, law school dean, professor of constitutional law, and a trial attorney with over 30 years experience. He is also a 1989 Cum Laude graduate of Cleveland Chiropractic College. You may contact him through **The Prescott Group** (888)989-0855.*