

## Part 4 – The Attorney General’s Inadequate Representation of Chiropractors

*“[T]he Attorney General attempted to portray petitioner (Dr. Sinaiko) as a ‘quack’ using ‘unproven’ and ‘dubious’ treatments that were not ‘generally-accepted’ by the medical community. He suggested that any practice method that is not generally accepted falls outside the standard of practice.”*

(Sinaiko v. Superior Court (Medical Bd. of Cal.) (2004) 122 Cal.App.4<sup>th</sup> 1133, 1138)

The Sinaiko case involved the revocation of an MD’s license by the medical board. The initial action against his license was prompted primarily by his treatment of a child with ADHD by alternative means rather than Ritalin. The spokesman for the Attorney General’s Office (AG) quoted above was Mr. Terrazas. Mr. Terrazas participated in directing the Board of Chiropractic Examiner’s (BCE) opposition to the practice rights sought in the *Tain* (2005) case.

Mr. Terrazas is with the AG’s Division of Licensing and Medical Quality. The allied health boards are ordinarily advised and represented by deputies from a different section of the AG’s Office. Why is the BCE being represented by attorneys within the “**medical quality**” division of the AG’s Office? I leave that question for you to ponder.

I will presently focus on two examples of specific misconduct by deputies with the AG’s Office while acting as the attorney for the BCE. It should also be noted, however, that since 1943 the AG’s Office has published 26 opinions relating to the interpretation of the Chiropractic Act without once considering the entire act as approved by the voters in 1922 and without ever addressing section 16 of the act which requires the act to be interpreted so as to avoid “discrimination against any particular (pre-1922) school of chiropractic, or any other treatment”.<sup>1</sup>

### **AG Attacked BCE’s Own Scope Rule**

The *Tain* court upheld the BCE’s present (1991) scope of chiropractic practice rule (Rule 302) as consistent with the definition of the scope of practice in the 1938 *Fowler* abortion case and the adoption of the *Fowler* definition in the 1963 *Crees* decision. (Dr. Fowler denied performing an abortion and claimed he only removed a dead fetus from the womb.)

The *Tain* (2005) plaintiffs agreed that chiropractors are not authorized to perform abortions (or remove dead fetuses) **and did not assert any of the specific rights claimed by the *Crees* plaintiffs.** They did, however, vigorously challenge the broad limitations placed upon the practice rights of chiropractors in *Fowler/Crees* because, among other things, those cases went beyond what was necessary to the particular decisions in those cases. (Lawyers refer to unnecessary rulings or discussions in cases as “dicta” – **not** binding precedent.)

As a minor prong of their case, the *Crees* plaintiffs argued that the 1954 version of the BCE’s scope of practice rule (Rule 302) supported the practice rights they were claiming; including, for example, the right to possess and use allopathic drugs “as an aid to the practice of chiropractic ....”

The *Crees* plaintiffs sued both the chiropractic board and the medical board. The deputy AGs representing those boards should have responded in basically one of three ways to the claim that the

rights sought by the *Crees* plaintiffs were supported by the **1954 Rule 302**: 1) The rule did not support the asserted rights and it was therefore unnecessary to rule on the validity of the rule itself (my position), 2) The rule did not support the asserted rights but the rule itself was valid, or 3) the rule supported the asserted rights and was invalid to that extent.

Not too surprisingly, the Deputy AG representing the medical board took a fourth course and asserted that the rule itself was invalid in its entirety. The Deputy AG acting as the attorney for the BCE joined his colleague in expressly seeking a ruling that the BCE's 1954 Rule 302 was invalid in its entirety - the *Crees* court agreed. In effect, the BCE's attorney made a preemptive strike at his own client and at the heart of the chiropractic profession – practice rights. The profession has still not recovered from this preemptive strike. “With friends like that you don't need enemies.”

### **BCE's Attorney Misquotes Case Law**

The 1913 Medical Practice Act (1913 MPA) prohibited drugless practitioners from “severing or penetrating any of the tissues of human beings.” On the other hand the Chiropractic Act prohibits chiropractors from “practicing surgery”. Nevertheless, the current BCE Rule 302 specifically precludes chiropractors from “practicing surgery or severing or penetrating tissues....”

The *Tain* plaintiffs argued that the prohibition against performing “surgery” does not preclude the use of needles for diagnostic or therapeutic purposes (with elective training to be defined by the BCE). They named the California Acupuncture Board as a co-defendant in their case and sought a ruling that the provision of the Acupuncture Licensing Law authorizing MD/DO's, dentists and podiatrists, but not chiropractors, to use acupuncture needles denies chiropractors equal protection of law. (The trial court disagreed and this equal protection issue was not taken up to the Court of Appeal.)

The *Tain* plaintiffs looked, in part, to the 1916 case of *People v. Chong* to explain the change in language to “practice surgery” in the 1922 Chiropractic Act. The *Chong* court interpreted the word ‘sever’ to mean “a severance by cutting” and stated:

“[u]nder one form of certificate the holders thereof (physicians and **surgeons**), as provided in the act (1913 MPA), may not only prescribe and use drugs, but may also sever and penetrate **with a knife** the tissues of human beings. The holders of other certificates are **drugless practitioners**, and they may not prescribe or use drugs, nor may they **operate with a knife or in that way sever or penetrate the tissues of human beings....**” (That is, severing or penetrating with a knife would constitute “surgery”; thus the altered language used in the 1922 Chiropractic Act. Emphasis added - see fn. 1. )

The Deputy AG representing the acupuncture board addressed the *Chong* case in writing and stated: “The (*Chong*) court interpreted the word ‘sever’ to mean severance by cutting, however the court also stated in regards to drugless practitioners that they may **‘not operate with a knife or in any way sever or penetrate the tissues of human beings’**. (My emphasis) Obviously, the 1913 act was meant to prohibit the severing (or cutting with a knife) and any other form of penetration of a human being.” (underlining emphasis by AG)

The AG's misquotation changing “in **that** way” to “in **any** way” significantly distorted the *Chong* court's meaning and was the basis for the AG's argument that the limitation against practicing surgery includes puncturing with a needle.

California Rules of Professional Conduct provide that an attorney “shall not intentionally misquote to a tribunal the language of a book, statute or decision.” [Rule 5-200(C)] Even so, the Deputy AGs acting as the attorneys for the BCE did not hesitate to join their colleague’s unprofessional conduct by incorporating the misquoted language from the *Chong* case into the BCE’s opposition to the *Tain* plaintiffs’ case. Again, “with friends like that you don’t need enemies.”

In preparation for the *Tain* case, especially with regard to the provision requiring non-discrimination between pre-1922 “schools of chiropractic”, I extensively reviewed the pre-1922 schools of chiropractic thought and I will briefly address my findings in subsequent articles.

---

<sup>1</sup> *You may review prior articles, court records and information with respect to the BCE’s 1954 version of Rule 302, etc. at [www.prescott-law.com](http://www.prescott-law.com). You may also contact David Prescott through the Prescott Group (888)989-0855.*