

## Part 1 – Introduction

*This act shall not be “construed so as to discriminate against any particular school of chiropractic, or any other treatment....” (Sec. 16 of the California Chiropractic Act.)*

*“The mainstream in chiropractic today (1986), leaders and all,...adhere to a **cowardly restrictive concept of practice as a technic rather than an alternative science** of healing of the entire human body....” (Ralph Martin, D.C., one-time Chairman of Board of LACC and co-founder of the ACA Council on Diagnosis and Internal Disorders) (See, Keating & Phillips, *A History of LACC*, pp. 218-219)*

It has been some time since I last reported to you on the status of the California practice rights lawsuit handled by me and Edwin Grauke, JD, DC. First let me review the parameters of that action. (*Tain v. State Board of Chiropractic Examiners* (BCE) – details are available at [www.prescott-training.com](http://www.prescott-training.com).)

The five (*Tain*) plaintiffs included “straights” and “mixers”. Laurence Tain, the first named plaintiff, is a former Chairman of the Board of Regents of LACC. Each plaintiff did, however, **strongly** support the prohibition about discrimination by mixers against straights, or visa versa.

In essence, the *Tain* plaintiffs asserted that under the terms and provisions of the 1922 California Chiropractic Initiative Act chiropractors were granted the right to use all forms of diagnosis and treatment except the performance of surgery or obstetrics or the use of allopathic drugs. More particularly, we asserted the right to use all substances within the natural (naturopathic) materia medica and argued that the prohibition against performing “surgery” did not preclude the use of needles for diagnostic or therapeutic purposes (with elective training to be defined by the chiropractic board). We also asserted that the Board has the right to further define the 15% of the curriculum in electives and the rights attendant thereon. The 15% elective provision was added by amendments to the chiropractic act in 1976/78. It has been ignored by the Board and the schools.

The plaintiffs also asserted that chiropractors have a fundamental constitutional right to fully develop their basic paradigm(s) and to incorporate therein advances in the basic and clinical sciences. Further, that the presently defined scope of practice denies them equal protection of the law. In addition, we asserted that the limitation placed upon the practice rights of chiropractors under the existing BCE scope of practice rule interferes with the **patient’s right to choose**.

The BCE argued that even if the plaintiffs assertions were correct chiropractors are stuck with the definition of the chiropractic scope of practice in the 1938 (abortion) case of *People v. Fowler* and the reiteration of that definition in the 1963 *Crees* case. The trial court first rejected this argument and then reversed itself and accepted the *Fowler/Crees* cases as controlling precedent. The First District Court of Appeal accepted the BCE’s position and the California Supreme Court denied review. The Supreme Court only reviews about 1 in 20 civil cases.

The importance of the *Fowler* case extends across the country. The *Crees* court indicated that the reasoning in the 1938 *Fowler* case had, by 1963, been cited with approval in cases from Kansas,

Wisconsin, Idaho, Nebraska, Washington, Iowa, Louisiana and Massachusetts. That list could probably be extended as of this time.

### **An Error in Judgment**

Any attorney worth his or her salt knows that judges are not ready to really “hear” facts or legal arguments that they consider outside what is presently acceptable within the larger community; even if those arguments are logically and legally flawless. How long did it take for women to have their constitutional rights recognized?

I took this case with a small stipend from the Prescott Group with full awareness of the proposition stated in the preceding paragraph. Grauke and I thought, however, that the times were “ripe” for the case to be heard because of the emerging attention being paid to “alternative medicine”. (We thought we would earn a large private attorney general fee for winning the case. We did not – so be it.)

In addition, we thought the facts and arguments were very compelling and difficult for the court to reject. Actually, as will be explained in subsequent articles, the court did not reject our arguments. The court simply circumvented them by misconstruing the case as presented.

Grauke and I have over 50 years experience practicing law and between us we have presented over 35 appeals to the courts of California and Texas. Although we have seen prior courts misconstrue the facts and arguments presented to them, at no time have either one of us personally experienced such blatant distortion of a case as was done by the *Tain* appellate court. We now know what it is like to be the first lawyers to raise constitutional arguments on behalf of a discriminated against minority.

I will review the courts handling of the *Tain* case in greater detail in subsequent articles and the briefs, etc. will be available on the above-cited web site. However, it is imperative to presently recognize that because the court ignored the facts and arguments presented to it, rather than ruling against them, the issues presented remain open.

### **Back to Basics**

The foregoing “error in judgment” was not that alternative medicine is not a topic ripe for full judicial consideration. Rather, it related to the perceived role of chiropractors in relationship to both allopathy and alternative medicine. It is imperative for Chiropractors to fully understand the roots of their profession and for the profession to recognize and be able to articulate the essential differences between traditional chiropractic and allopathic medicine.

I estimate that I have spent over 1500 hours looking into the differences between the allopathic and chiropractic paradigms. I will share some of that information in the upcoming issues. I will address the following aspects of early chiropractic: neural regulation; physiological therapeutics and the natural material medica; and reflex therapeutics. I will also address the greatly narrowed focus reflected in the musculoskeletal paradigm.

In closing let’s turn to Harris Coulter’s four volume (2500 plus pages) history of Western medicine: *Divided Legacy*. Coulter extensively addresses varying historical attitudes towards empiricism and vitalism versus various forms of rationalistic medicine and he compares the law of

contraries (allopathic drugs) and the law of similars (homeopathic remedies). I will address these issues in future articles.

On pages 613-614 of Volume II of the *Divided Legacy* Coulter indicates that Magendie (1783-1855), Virchow (1821-1902), and Bernard (1813-1878) objected to the doctrines of "Empiricism" and "vitalism" and asserted that the foundation of physiology, pathology and therapeutics is to be found in **"the ebb and flow either of nervous force or of atoms and corpuscles."**

Allopaths have focused on the atomic and molecular (drug) aspects; at the cellular and cell membranes levels. Alternative practitioners, especially chiropractors, have focused on the neural aspects. Society deserves the benefits of both aspects and your rights within the neural (regulatory) domain deserve constitutional protection. The courts will not be ready to really "hear" such claims until they have been fully developed, claimed and defended.

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