

Part 1: Review/Update - Paradigms, Statutory Intent, Constitutional Rights

It has been several months since I updated you on the California practice rights lawsuit. A lot of water has gone under the bridge since then. I will touch upon these matters here and will address them further in subsequent articles. First, a short review. (Prior articles published in this journal about this lawsuit may be reviewed at [www.promedlaw.com/medical articles.htm](http://www.promedlaw.com/medical%20articles.htm).)

Original Intent - Chiropractic Act

The California Chiropractic (Initiative) Act was enacted in 1922 due to the combined effort of straights, mixers and a small group of naturopaths licensed under a 1909 statute. The naturopathic group included Charles Cale, the founder of L.A.C.C.. Dr. Cale first became licensed as D.C. in 1929.

Dr. T.F. Ratledge (a “super-straight”) founded what is now Cleveland Chiropractic College (L.A.) in 1911. Dr. Ratledge took a case to the California Supreme Court in 1916 arguing that chiropractors did not need, and should not be required to meet, the educational requirements established for persons seeking to practice as drugless practitioners under the 1913 California Medical Practice Act. He lost and the Supreme Court held that chiropractors must meet those requirements.

Dr. Ratledge’s loss before the Supreme Court resulted in a major push to establish a separate California chiropractic law and a separate board. B.J. Palmer threw his weight behind the efforts of Dr. Cale (a “mixer”) and encouraged the straights, mixers and naturopaths to work together. However, B.J. was less than kind to Dr. Ratledge in the process and called him a “has-been, a once-runner, a cold-potato”. In subsequent articles I will show that Dr. Ratledge reeked his revenge on the “mixers” in the 1930s and in so doing, created, **in part**, the problems sought to be remedied in the present case.

The plaintiffs (complainants) in the pending case include one straight, two musculoskeletal practitioners and two mixers. They, like the promoters of the 1922 Act, seek to protect the practice rights of all chiropractors and to have the present court construe the 1922 Act, and subsequent amendments, according to their **original intent**. They have also asserted the central importance of the basic chiropractic paradigm(s).

Parallel Paradigms

The Santa Fe Institute, a leading think tank dealing with chaos theory, etc., recently published “*Thinking about Biology*” in which the authors assert that biology (we add - medicine) must be thought about at three levels of analyses; *macro*, *meso* and *micro*. Plaintiffs contend that 1) “Universal Intelligence” is a philosophically defensible *macro* level concept; 2) “Innate Intelligence” is a *meso* level theoretically defensible assertion as to “life’s” capacity for self-organization and self-regulation; and 3) these *macro-meso* concepts give rise to testable hypotheses related to the concepts of homeostasis and dynamic regulation. The plaintiffs have strenuously argued in this case that chiropractor’s rights to such a paradigm(s) (and the variations thereof between straights and mixers) must be granted constitutional protection.

Intent of Chiropractic Initiative

The plaintiffs assert that the vote in favor of the 1922 California Chiropractic Initiative Act was, with two primary exceptions, intended to grant chiropractors essentially the same scope of practice as drugless practitioners under the 1913 Medical Practice Act. The first exception was that drugless practitioners were authorized to practice obstetrics and Chiropractors were not. Second, drugless practitioners were specifically precluded from “severing or penetrating tissues” (except the umbilical cord). This limitation was specifically changed as to chiropractors by the 1922 Act. Rather than being precluded from “severing or penetrating” tissues, chiropractors were only precluded from performing “surgery”. Plaintiffs contend that chiropractors were granted the right to use all forms of treatment except allopathic drugs or **operative** surgery.

The Chiropractic Board adopted a rule (Rule 302 – challenged in the pending action) in 1991 which limits chiropractors to performing adjustments and additional treatments that are a direct adjunct to the adjustment. Rule 302 also specifically precludes the use of homeopathic remedies for any purpose. In addition, under Rule 302(a)(4)(A), chiropractors are specifically precluded from “severing or penetrating tissues”. That means a chiropractor with 4800 hours of education and training cannot draw blood, or inject say vitamins, but a medical technician with 20 hours of training may be directed to do either; or even to inject drugs.

Of course, all practitioners (MD, DO, DC) must receive adequate training in order to perform specific treatments. Therefore, plaintiffs assert that although chiropractors are authorized to treat human ailments and conditions by the use and/or injection of vitamins, or other natural substances, they must have previously met, or hereafter must meet, reasonable training standards before actually doing so. Amendments to the Chiropractic Act in 1948 and 1976 provided chiropractors with the opportunity to achieve such objectives by authorizing (and plaintiffs contend requiring) 15% of the prescribed 4500 hour chiropractic curriculum to be in “**electives**”. The Board, the schools and the C.C.E. have each ignored these elective provisions. The plaintiffs seek to have the elective provisions properly construed so as to authorize/require the Board to establish reasonable standards for those individual chiropractors seeking to practice within the full scope of practice originally intended by the Chiropractic Act as amended.

In addition, the plaintiffs also seek to have the C.C.E.’s regulatory power over the California chiropractic educational process declared unconstitutional on the grounds that the California Constitution prohibits any right, power or duty created by initiative being granted to any private corporation. The C.C.E. has agreed to be bound by the ultimate outcome on this issue as litigated between the remaining parties; the plaintiffs and the Chiropractic Board. Therefore, the C.C.E. has been dismissed from the case.

Too Bad if Rule 302 is Wrong

When last we reported on this case the plaintiffs had been on a winning streak. The Attorney General’s Office (the attorney for the Chiropractic Board) had submitted protracted arguments to the trial court and had lost on all of its arguments. However, the AG’s Office renewed some of its arguments and the second time around the trial court bought them and ruled against the plaintiffs. The plaintiffs have appealed that ruling. The case has now been fully briefed (written arguments by both sides) and the parties await oral argument on the case. (See, www.promedlaw.com/Pending-Cases.htm for copies of the actual briefs.)

The bottom line argument by the Attorney General's Office is that even if the plaintiffs' interpretation of the Chiropractic Act and amendments is correct it is too late to do anything about it. **That is, California chiropractors should be stuck with the prior judicial interpretations of the Act and Rule 302 even if the prior decisions, and Rule 302 itself, are wrong.** As indicated, the trial court accepted that argument the second time around. Actually, plaintiffs were satisfied with that ruling. It was inevitable that the California appellate courts would have to decide the question. The trial court's ruling has speeded up the process. We will return to this "**stuck with prior case law**" **argument and Ratledge's Revenge** in Part 2 of this series.

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