

Part 3 – Who’s in Charge? - The Governmental Role!

The answer to the question “Who’s in Charge” is critical to your practice options and opportunities in a changing world. The answer indicates who has the power to enhance or diminish the economic well-being of the profession and your practice rights and how the game is to be played.

The role of the government and private “medical” societies, associations and schools has changed over time and the present chiropractic regulatory structure can only be understood in the context of that history. We will presently trace some important aspects of that history and take an initial look at the role of the California Board of Chiropractic Examiners (BCE) and Attorney General’s (AG’s) Office. These issues will be expanded upon in future articles. (See also, www.prescott-law.com.)

Regulatory Options

“State Legislatures were still enacting licensing laws in the 1820s; then they began to rescind them in quick succession.” (Starr, *The Social Transformation of American Medicine*, p.58.) Almost all states had eliminated their “medical” licensing laws by the 1840s. This prompted the formation of the American Medical Association in 1847, the push to re-institute licensing laws and the grab for monopolistic control by the allopaths. (Brown, *Rockefeller Medicine Men*.)

The states started re-enacting medical licensing laws in the 1850/60s. The first such law was enacted in the new State of California in 1876. Of course, the legislature can change the terms and provisions of laws enacted by it and the lobbying money/power game then comes into play - in the legislative arena. Although most of the California healing arts laws were enacted by the Legislature, the 1922 Chiropractic Initiative Act was enacted by the voters and cannot be changed by the Legislature. The Legislature can, however, place proposed amendments before the voters to change or even “sunset” the chiropractic profession.

Three primary choices as to who should be in charge were available in resurrecting the state licensing laws: 1) Put the “medical” schools in charge (by requiring graduation from a “legally chartered school”), 2) Grant private “medical” societies/associations the power to approve licensees (with or without examination), or 3) Reserve the primary authority to the Executive (administrative) Branch of the state government itself.

Placing the control in a state agency raises three additional questions: 1) Should there be one or more state agencies regulating the various “schools of medicine”? 2) Who should appoint members to the regulatory agencies (Boards)? and 3) **May the states prescribe basic curricula** for practicing the healing arts?

The Roles Determined

The various states went through a pattern of changing their licensing laws between the 1850/60s and the 1910s. Such a pattern is reflected in the licensing laws enacted in California. As previously indicated, the first medical practice act was adopted in California in 1876. That act was significantly amended in 1878. The 1876/78 act was repealed by the 1901 act. The 1901 act was repealed by the

1907 act. (a separate osteopathic act was also added in 1901 and repealed in 1907) The 1907 act was amended in 1909 and repealed by the 1911 act. The 1911 act was repealed by the 1913 Medical Practice Act (MPA). The primary reason for these changes was that the Legislature kept changing the answer to the questions as to who's in charge, how are members of the entities in charge to be chosen and as to whether states can, without violating due process of law, impose a prescribed curriculum on practitioners of the healing arts.

In California, the schools were put in charge for a short period of time as were the medical, eclectic, osteopathic and naturopathic associations. These options were found untenable and eliminated.

As indicated in "Part 2", the United States Supreme Court in 1912 ruled that states could, under their "police power", impose a prescribed curriculum for the healing arts without violating due process of law. The California Supreme Court relied on the 1912 U.S. Supreme Court case in approving the **state prescribed minimum curricula** included in the 1913 MPA. This ruling came in a case involving the criminal prosecution of Dr. Ratledge, the founder of what is now Cleveland Chiropractic College, for practicing without a drugless practitioner's certificate under the 1913 MPA.

By 1912/13 the questions about who and how the authority to regulate the practice of the healing arts had played out. Most states, including California, had by 1913 adopted the structure for the regulation of the healing arts that continues to this day. **That is, the administration of the regulatory power is placed primarily in one or more executive department agencies** (boards) and the Governor appoints the members of the regulatory boards. (We will return to the continuing role of "medical" associations and schools in subsequent articles.)

In addition, the laws enacted following the 1912 Supreme Court decision typically defined the scope of practice for each class of practitioners in correlation with prescribed education and training and related examination processes. This principle of correlating practice rights with prescribed education and training has been generally extended to all other practitioners, including osteopaths, physical therapists, psychologists, phlebotomists, acupuncturists, etc. All California courts since 1922 have failed to apply this **prescribed training-practice rights principle** to chiropractors. This is truly ironic since the **prescribed training-practice rights principle** was first recognized in the *Ratledge* case.

Chiropractic Board & AG's Office

As pointed out in "Part 2", the 1922 act was composed of two parts. The first part established the structure and operation of the BCE and the profession. The second part made certain provisions of the 1913 MPA applicable to chiropractors and modified other provisions as they were to be applied, or not applied, to chiropractors. In addition, section 16 of the 1922 Act prohibits any interpretation of the act which discriminates against any pre-1922 "school of chiropractic or any other treatment".

Neither the BCE, nor any court (including the *Tain* court) has actually considered or applied the provisions of the second part of the 1922 Act or the non-discrimination provision of section 16 in interpreting the chiropractic act. The impact of these provisions (and related matters) as to the original intent of the chiropractic act is still an open question and the BCE presently has the right to re-consider the original intent of the 1922 Act and subsequent amendments.

Since 1943, the California AG's Office has written over 20 published opinions interpreting the terms and provisions of the chiropractic act and that office also represented the BCE in the *Crees* case and in the *Tain* case. The AG's Office has never considered the whole 1922 act or the non-

discrimination provision of section 16 and it has consistently failed and refused to recognize that the **prescribed training-practice rights principle** should be applied to the practice rights of chiropractors. The AG's actions have been detrimental to the interests of the chiropractic profession and that will be the focus of the next article. Thereafter, we will return to the respective roles of the BCE, the schools and professional associations.

*You may contact David Prescott through the **Prescott Group** (888)989-0855 or seek additional information at **www.prescott-law.com**.*