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Attorney for Petitioners

CALIFORNIA BOARD OF CHIROPRACTIC EXAMINERS

LAWRENCE TAIN, DC;)	
STEPHANIE HIGASHI, DC;)	PETITION TO DEFINE PRACTICE
ERIC SPRATT, DC; LORI)	RIGHTS and TO AMEND, REPEAL
PRESCOTT, DC;)	AND/OR ADOPT SCOPE OF PRACTICE
GAYLE WALSH, DC. and)	REGULATIONS, AS NEEDED
ALEXIS M. RAMER, PhD.)	
)	(Govt. Code §§ 11340.6 & 11340.7)
Petitioners.)	
_____)	

Lawrence Tain, DC; Stephanie Higashi, DC; Eric Spratt, DC; Lori Prescott, DC; and Gayle Walsh, DC are chiropractors duly licensed to practice chiropractic in the State of California. Alexis M. Ramer is over the age of 21 and he is a resident of the State of California. (Said persons are hereafter sometimes referred to jointly as petitioners.)

Each of the named chiropractors seek on their own behalf, and on behalf of all other chiropractors, the right to provide all such diagnostic and treatment services as intended to be available for use by chiropractors under the 1922 Chiropractic Initiative Act (1922 Act) and subsequent amendments.

Each of the named petitioners has previously been a chiropractic patient and they each presently intend to utilize the services of chiropractors in the future on an as needed basis. Each of the petitioners seeks to have available for their own care all such diagnostic and treatment services from chiropractors as were intended to be available for use by chiropractors under the 1922 Act and subsequent amendments. This petition is made pursuant to Government Code sections 11340.6 and 11340.7.

On or about April 14, 2006, the present five chiropractic petitioners filed a petition seeking to have the BCE reconsider the scope of chiropractic practice. The BCE has not acted on that petition. A true and correct copy of that petition is attached hereto marked Exhibit A. Except as noted in Phase Two(b) below, the chiropractic petitioners hereby withdraw and dismiss without prejudice the petition filed on or about April 14, 2006.

Petitioners contend that the scope of chiropractic practice as presently defined in California Code of Regulations, Title 16, section 302 (Rule 302) is inconsistent with the original intent of the 1922 Act and also the subsequent amendments relating to elective education and training of chiropractors.

Pursuant to sections 4(b) and 4(e) of the Chiropractic Act, the BCE has the power to do any and all things necessary or incidental to the exercise its powers and duties and it has the power to adopt rules and regulations in conformity with the intent of the Chiropractic Act as amended and as reasonably necessary for the safety and protection of the public.

Petitioners hereby request the BCE to do those things and take those actions referred to hereafter in Phases One, Two and Three.

Phase One

Determine the original intent of the 1922 Act and the subsequent amendments related to elective education and training by doing at least the following:

- 1) Determining the general relationship between **prescribed** education and training and the practice rights for the licensed vocations and professions established under the California Business and Professions Code.
- 2) Defining the general relationship between the education and training **prescribed** in Section 5 of the 1922 Act and the practice rights of chiropractors.
- 3) Defining the general perspective of the various schools of chiropractic thought and treatment that existed in 1922.

4) Defining the meaning of the expressions “practice medicine, osteopathy and surgery” as each of those terms was used in the 1922 Act.

5) Defining the meaning of the expression “drug or medicine now or hereafter included in *materi medica*” as used in the 1922 Act.

6) Defining the meaning of the term authorizing chiropractors to “use all necessary mechanical, hygienic and sanitary measures incident to the care of the body” as used in the 1922 Act.

7) Defining the original intent of the amendments relative to elective education and training by giving due consideration to all of the determinations and definitions made in response to the foregoing six (6) paragraphs and by giving due consideration to all of the information referred to in the next paragraph.

In determining and defining those factors referred to in the preceding seven (7) paragraphs, the BCE should, for the first time, give due consideration to the entire Chiropractic Act as approved by the voters in 1922. In addition, the BCE should give due consideration to all other relevant information including, but not necessary limited to, the statutory language as understood and used prior to 1922 and also the legislative, judicial and bio-medical history leading up to the passage of the 1922 Act and subsequent amendments.

Phase Two

a) Determine whether the BCE has the present right to amend, repeal and/or adopt new scope of practice regulations. Said determination should only be made after due consideration of all relevant statutory and constitutional law and all relevant State and Federal case law, including, but definitely not limited to the *Fowler*, *Crees* and *Tain* cases. [Petitioners’ counsel hereby specifically requests to be heard (orally and in writing) on these matters in the event that some person or entity contends that the BCE is presently precluded from adopting any new scope of practice rules or regulations due to the decisions in the

Fowler, Crees and/or Tain cases. He was a counsel of record in the Tain case.]

b) Petitioners contend that the BCE does presently have the power and authority to adopt new scope of practice regulations and they therefore specifically petition the BCE to adopt a regulation in substance as set forth in section “B” of Exhibit A (pp. 2-3) and as otherwise referred to in Phase Three. The terms and provisions of section “B”, Exhibit A are incorporated herein by reference.

Phase Three

a) Establish reasonable standards for elective education and training as necessary for the safety and protection of the public. Said standards should be established after due consideration of the input from petitioners, petitioners’ counsel, the chiropractic colleges, the chiropractic associations and diplomate boards of said associations, similar chiropractic entities and other interested persons and also with due regard for the general advances in the basic and clinical sciences related to all schools of chiropractic thought that existed in 1922.

b) Define such practice rights as may be acquired upon the completion of elective education and training - at both the undergraduate of graduate levels.

c) Define the examination processes and procedures to be utilized in connection with the elective education and training if related practice rights are to be recognized.

d) Adopt such regulation or regulations as are needed to give effect to the standards and practice rights defined in response to the preceding paragraphs (a)(b) and (c).

Petitioners have authorized and directed the undersigned to act as their attorney in this matter and to sign and file this petition on their behalf.

Dated: April 2, 2007

RESPECTFULLY SUBMITTED

DAVID PRESCOTT, attorney for
Petitioners

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April 14, 2006

California Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, Calif. 95833-2931

To the Board of Chiropractic Examiners and Each Member Thereof:

Lawrence Tain, D.C., Stephanie Higashi, D.C., Eric Spratt, D.C., Lori Prescott, D.C., and Gayle Walsh, D.C. (jointly hereafter referred to as petitioners) are chiropractors duly licensed to practice chiropractic in the State of California and they are also persons who utilize the services of chiropractors. They each presently seek to provide, and have available for their own care, all such diagnostic and treatment services as intended by the 1922 Chiropractic Initiative Act and subsequent amendments and as hereby sought to be defined and established by the California Board of Chiropractic Examiners (BCE).

Petitioners hereby request that the BCE determine and define each factor referred to in part A below and they specifically petition pursuant to Government Code sections 11340.6 and 11340.7 that the BCE repeal, adopt and amend regulations as indicated in parts B and C below. Petitioners have each authorized and directed their attorney, David Prescott, to make and sign this filing on their behalf.

A. PETITIONERS REQUEST THAT THE BCE DEFINE AND DETERMINE THE FOLLOWING

1. Petitioners request that the BCE define and determine the following:
 - a) The scope of practice that chiropractors were intended to have under the terms and provisions of the 1922 Chiropractic Initiative Act.
 - b) That the BCE has the right and duty to define and prescribe the minimum standards for the elective education provided for by amendments to the chiropractic act and as reasonably necessary for the safety of the public.
 - c) That the BCE has the right and duty to adopt regulations authorizing chiropractors to perform particular forms of diagnosis and treatment beyond the scope of practice authorized under presently existing BCE regulations and in so doing the BCE may condition such authorization upon completion of such prescribed minimum elective education and training as established by the BCE.
- 2) Petitioners further request that in defining and making the determinations requested in sub-parts (a)(b) and (c) above that the BCE define the following:
 - a) The theoretical and clinical perspective of each particular school of chiropractic that existed prior to, and around, 1922 and the forms of treatment chiropractors, including those licensed as drugless practitioners under the 1913 Medical Practice Act, utilized in that time period.

- b) The meaning of the expressions practice “medicine, surgery,” and “osteopathy” and the meaning of the expression “drug or medicine now or hereafter included in materia medica” as each of those terms are used in section 7 of the chiropractic act.
- c) The general advances in the theoretical and clinical and treatment aspects of each particular school of chiropractic that existed prior to, and around, 1922.

B. PETITIONERS HEREBY PETITION THE BCE TO REPEAL CALIFORNIA CODE OF REGULATIONS, TITLE 16, SECTION 302 (Rule 302) and ADOPT A NEW SCOPE OF CHIROPRACTIC PRACTICE REGULATION

1. The reason for the request to repeal Rule 302 is that the scope of practice therein defined is inconsistent with the scope of practice granted to chiropractors by the 1922 Chiropractic Initiative Act and subsequent amendments.
 - a) Rather than the scope of practice provided for by Rule 302, chiropractors were intended to have the scope of practice sought to be provided by the new regulation the substance of which is stated in sub-part 2 next following.
2. Request is hereby made that the BCE adopt a new scope of practice regulation in substance as follows:
 - a) Except as otherwise hereafter provided by amendment to California Code of Regulations, title 16, section 331.12.2(d), or by other duly adopted regulation, chiropractors are authorized to diagnose and treat diseases, injuries, deformities or other physical or mental conditions except by the use of any drug or medicine in materia medica in 1922 and thereafter, or by the performance of surgery.
 - 1) The expression any drug or medicine in materia medica did not in 1922, and does not now, include, or prevent chiropractors from using, dispensing, administering, ordering or prescribing for the diagnosis and treatment of diseases, injuries, deformities, or other physical or mental conditions, any of the following:
 - a. Food, extracts of food, nutraceuticals, vitamins, amino acids, minerals, enzymes, botanicals and their extracts, botanical medicines, homeopathic medicines, other substances and things derived from botanical, mineral or animal sources, air, water, clay, heat, sound, light, electricity, electromagnetic energy, therapeutic exercise, suggestive therapeutics, rest or joint and/or soft tissue massage, manipulation and adjustment for physiological, physical or reflex therapeutic purposes.
 - 2) In 1922 the term surgery meant, and it still means, operative surgery and did not, and does not, include, or prevent chiropractors from using, needles for diagnostic or therapeutic purposes or prevent them from utilizing routes of administration of those substances and procedures otherwise within their scope of practice that include oral, nasal, auricular, ocular, rectal, vaginal, transdermal, intradermal, subcutaneous, intravenous or intramuscular.
 - b) A chiropractor may not hold himself or herself out as being licensed to practice anything other than as a chiropractor or as holding any other healing arts license or as practicing medicine, osteopathy, dentistry, optometry, physical therapy, naturopathy, or acupuncture unless he or she holds another such license.

- c) The BCE should adopt a regulation in conformity with the foregoing because said regulation would be consistent with the intent of the chiropractic act when read as a whole and in the context of preceding and contemporaneous medical and healing arts practice acts, prior case law, the history of medicine and chiropractic and other relevant information and because, among other things:
- 1) Chiropractors were intended to have the same basic practice right as did drugless practitioners under the 1913 Medical Practice Act (MPA) which was stated to be to “treat diseases, injuries, deformities, or other physical or mental conditions...”
 - 2) An alternative and complimentary reason is that schools of chiropractic thought existed prior to and around 1922 that utilized the types of substances, things and practices sought to be included within the chiropractic scope of practice by the proposed regulation.
 - a) Further, section 16 of the chiropractic act requires that the act be construed so as to not “discriminate against any particular school of chiropractic, or any other treatment...”
 - 3) The findings and conclusions made under part A hereof will support the basic right and exceptions as stated in the proposed regulation.

C. PETITIONERS HEREBY PETITION THE BCE TO AMEND CALIFORNIA CODE OF REGULATIONS, TITLE 16, SECTION 331.12.2(d) (Rule 331.12.2)

1. Request is hereby made that the BCE amend Rule 331.12.2 by defining and prescribing the minimum hours and standards of education and training it deems reasonably necessary for individual chiropractors to perform the “chiropractic meridian therapy, counseling, hypnotherapy and biofeedback” presently referred to in said Rule 331.12.2.
2. Request is hereby made that the BCE further amend Rule 331.12.2 by defining and prescribing the minimum hours and contemporary standards for additional education and training it deems reasonably necessary to enable individual chiropractors to safely utilize all of those substances, things and practices to be authorized by the new scope of practice regulation proposed in part B hereof.
3. Request is hereby made that the BCE further amend Rule 331.12.2 by defining and prescribing the minimum hours, subjects and standards for elective education and training to be made available under section 5 of the chiropractic act as amended.

The BCE has the authority to do the things and make the requested changes sought in parts A, B and C hereof pursuant to Chiropractic Act, section 4, subdivision (b).

Sincerely,

David Prescott
Attorney at Law

DP:ep