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THE "DRUGLESS PHYSICIAN" - INCREASING MARKET SHARE

PART 3: Maximizing Practice Options & Market Image in a Changing World

At the end of the 19th Century there were many different types of medical practitioners. At the end of the 20th Century we find ourselves in a similar situation. How are chiropractors positioned in this scene? One could focus on the scope of our practice rights or on MARKET IMAGE. MARKET IDENTIFICATION is probably primary. But, without broad practice rights the market identity of each of us is bound to be substantially limited. Clearly, we do not all agree on what our market identity should be. This leaves two options:

1) We can continue to fight among ourselves; or
2) We can seek to create a broader UMBRELLA under which each person (or group) will have greater flexibility to define their own destiny.

The first approach necessitates both winners and losers. Therefore, option (2) is the preferable choice. But, what should the UMBRELLA be called. History must provide the answer. It has!

For example, California under the Medical Practice Act of 1913, provided for two license categories: 1) Physicians and Surgeons (presently this means either an M.D. or D.O.) and 2) Drugless Practitioners. As pointed out in prior articles, osteopaths, naturopaths, chiropractors, eclectics (mixers) and others got licensed as drugless practitioners under the 1913 Act. Therefore, the title of Drugless Physician/Practitioner is a broader category than any of the named practice systems.

Under the California Medical Practice Act of 1913, drugless practitioners were granted the same general practice rights as allopaths except that they could not use allopathic drugs or penetrate or sever tissue with a knife. California chiropractors are presently limited to adjusting the spine and only performing additional services as a direct adjunct to the adjustment. Many are satisfied with this scope of practice. So be it. But, in order to accommodate the rest of us, the “drugless” category (and/or scope of practice) should be resurrected. The category could be further subdivided into “Drugless Physicians and “Limited (Drugless) Practitioners”. The practice rights of the two could then be as follows:

Drugless Physicians:

To differentially diagnose all manner of illness and disease and to treat human ailments by all means necessary, except by the use of allopathic drugs or operative surgery. (See Addendum relative to specialization.)

Drugless (Limited) Practitioners

Specifically named therapies/therapists): To diagnose (analyze) only in accordance with their expressly granted (limited) right to treat. The right to treat should be specifically defined as, for example, stated above for chiropractors. This group could be further sub-divided into portal of entry and referral based practitioners. I will not, however, discuss this point further here.

In articles before this three-part series, I have argued that although chiropractors in California are presently defined as limited therapists, they were intended to have broader practice rights under the 1922 ballot measure. I have also pointed out that the Chiropractic Act was amended in 1948 to provide for up to 600 hours of electives (presently 720) and that these hours could be used to expand the scope of practice for those chiropractors having completed such electives. In addition, I have argued that the Oosterveen case (See Dyn. Chir. 1-26-98) held that persons with a healing arts degree in addition to the D.C. are entitled to a broader scope of practice than those with only the D.C. degree.

One could, in California, seek to confirm through litigation a broader chiropractic scope of practice based upon argument relative to the "intent" of the 1922 ballot. It is preferable, however, to expand the arguments and to focus on the argument that those persons whose education has gone beyond that required for only the D.C. degree should be classified (or, re-classified) as having the same scope of practice as the drugless practitioners did under the 1913 Act. That would be basically the same as the scope of practice defined above for the Drugless Physician.

There are at least six reasons for using the broader argument and for not limiting one's position to the intent of the 1922 ballot: 1) to argue all chiropractors are, in effect, drugless physicians is to fan the flames of the fight between chiropractors as to what "chiropractic really is", 2) The arguments based on only the intent of the 1922 Act do not benefit from the Oosterveen case (or the electives under the 1948 amendment) and the recognition of the legal significance of education beyond that required for only the chiropractic degree, 3) the argument based on the intent of the 1922 Act ignores, in part, the importance of CORE CURRICULUM concept spelled out in Part 2 of this series, 4) the broader arguments allow one to raise constitutional issues that have been successfully used before, especially by osteopaths (See below), 5) one raising only the 1922 argument would have to circumvent some prior adverse case law and the present Rule 302. (This could, however, probably be done as I have argued in prior articles.) and - probably most important - 6) even if the legal scope of chiropractic practice was expanded the market identity would remain limited without some additional degree/title.

Personally, I think that the UMBRELLA should be DRUGLESS PHYSICIAN and be based upon the D.D.M. and/or N.D. degree. Others may argue in favor of only the N.D. degree

Naturopathy

This subject deserves extended analysis but I will limit myself to just a few points: 1) the graduates of schools such as Bastyr are learning more than was included in traditional naturopathy (why not call it was it is - drugless medicine?), 2) there is a huge fight going on between the Bastyr type graduates and other naturopaths about "what naturopathy really is" (Why jump out of our fight and into theirs?), 3) 11 states presently license naturopathy and only one of them requires graduation from a school accredited by the agency which accredited Bastyr. In other states, regional accreditation or approval by the naturopathic board or the state, etc. is sufficient.

I realize that the University of Bridgeport has added a school of naturopathy and that other chiropractic schools are considering doing the same. These schools appear to want accreditation by the agency having accredited Bastyr. Personally, I do not see any reason to give over the power of 50,000 chiropractors to 1000 naturopaths. Equally important, we need flexibility in devising programs in drugless medicine - especially at the post-graduate level (my personal interest). This can be achieved by

recognizing both the N.D. and the D.D.M. as qualifying one for the broad scope of practice defined above for the DRUGLESS PHYSICIAN. The fact that both MD's and DO's are presently licensed as physicians & surgeons is sufficient legal precedent to support the idea of both DDM's and ND's (At least those having graduated from schools such as Bastyr.) each being classified as drugless physicians.

I suggest that it is in the mutual interest of the Bastyr type naturopaths (&/or the others for that matter) and all chiropractors to agree to jointly support the type of licensing structure presented here. Even with such mutual support, we need a battle plan including both judicial and legislative action. Guidance is available from the legal and political history of the osteopaths in California & Illinois, and the history of the chiropractors, acupuncturists and naprapaths in Illinois. [1]/

Osteopathy

The California law relating to osteopathy has had an extremely interesting and important history. From 1913 to 1922 California chiropractors, naturopaths, eclectics (etc.) and osteopaths were each licensed as drugless practitioners. The 1922 California ballot resulted in the formation of both the Chiropractic Board and the Osteopathic Board. The opponents to each ballot measure accused both professions of being quacks. Under the 1922 Act, osteopaths were authorized to issue two licenses: 1) physicians and surgeons license and 2) the drugless practitioner license. The California osteopaths moved to full parity with allopaths through a series of maneuvers including a treaty with the allopaths, several cases which went to the State Supreme Court and a series of legislative acts. It should be remembered that osteopaths expanded their practice rights in a political/social environment which was much less responsive to the ideas of alternative medicine than is the case today. The California Osteopathic Board retained the power to issue "drugless" practitioner licenses until 1942 and the allopathic board retained that power until 1949.

The Illinois Supreme Court in Chicago College of Osteopathy v. Puffer (1955) 126 N.E. 2d 26, 28 stated that under the Illinois Medical Practice Act of 1923 the physician license category was divided "into two classes -- one which confers the right to practice medicine in all of its branches, and the other to treat human ailments without the use of drugs or medicine and without operative surgery." The court pointed out that the examination for the broader license covered the same things as required for the drugless license but with the addition of "materia medica, therapeutics, surgery, obstetrics, and theory and practice."

Until the 1955 Puffer case, osteopaths and chiropractors in Illinois were both considered drugless physicians. Chiropractors still are. In the Puffer case, the Illinois Supreme Court found that the Chicago School of Osteopathy offered a curriculum which was the reasonable equivalent of that offered by medical schools in the State of Illinois. Based upon that factual finding, the Court concluded that it would constitute unlawful discrimination for the state to refuse graduates of the osteopathic school the same type of license as MD's. (See also the California case of D'Amico v. Board of Medical Examiners (1974) 11 C. 3d 89)

It should be noted that although Illinois chiropractors are designated as "drugless physicians" this does not necessarily mean they can treat by any drugless method they choose. Further definition of the term "drugless physician" under the Illinois law is beyond the scope of this article. I suspect, however, that no matter what the scope of practice may be defined to be under Illinois law, most chiropractors

find their market identity is limited to the market image created by those groups who take it upon themselves to define “what chiropractic is”.

Acupuncturists & Naprapaths

Acupuncturists and the naprapaths both undertook protracted litigation with the State of Illinois in the 80’s and early 90’s. The Illinois Department of Professional Regulation administratively ruled that it did not have the power to license either group as only chiropractors could be licensed as drugless physicians. The acupuncturists and naprapaths each then went to court and obtained separate rulings to the effect that the State Department of Professional Regulation did, in fact, have the power to license both acupuncturists and also naprapaths (in addition to chiropractors) as drugless physicians.

After this initial victory, the acupuncturists and naprapaths each went to court again and argued that they should be allowed to be licensed without meeting the educational standards set for chiropractors. They argued that requiring them to complete the same core curriculum as required of chiropractors violated their constitutional rights. The courts did not buy this argument. No court ever has, or is likely to, accept such an argument. Their argument was very different to that raised in the Puffer case. In Puffer, the osteopaths argued that they had, in fact, met the same educational standards as MD’s and should, therefore, receive an equivalent license and practice rights.

Even though the acupuncturists and naprapaths did not win the educational standards argument in court, their activities did convince the Illinois legislature to act. The legislature passed two new laws separately granting acupuncturists and naprapaths specific, limited, practice rights. In addition, the new laws permit acupuncturists and naprapaths to qualify for limited licenses with less education than required for chiropractors. These two new laws, in effect, create a two-tiered licensing structure for drugless practitioners similar to that proposed above.

The experience of these various practitioners makes it obvious that the battle for broader practice rights is a chess game in which court action and legislative action needs to be coordinated and orchestrated for the desired result.

Conclusions

The interpretation of the history of chiropractic law I have presented in articles before this three-part series, plus the concepts developed in this series, provide a legal, political and tactical base from which to move towards a broader scope of practice for those chiropractors who desire it. But, we need to borrow a page from the allopath’s book when it comes to the terminology to be used; especially as to the impact this has on market identity.

Allopaths have achieved market dominance, in part, by claiming to be simply practicing “medicine” and by not generally using any descriptive modifier except perhaps “scientific”. They have thereby avoided the limitations that immediately attach when any descriptive term such as allopathy or naturopathy, etc. is added to the term medicine. We need to do likewise. Therefore, the term “drugless” should be the only conceptual limit placed on the broader license category.

The broader license of DRUGLESS PHYSICIAN demands a new CORE CURRICULUM. Presently licensed chiropractors have already satisfied a core curriculum in basic and clinical sciences and therefore, as suggested by the court's language in the Puffer case, all that is needed is additional natural "therapeutics" (or "materia medica") and appropriate "theory and practice".

The added therapeutics should include herbs, acupuncture, classical and/or clinical homeopathics, advanced clinical nutrition and should, in my opinion, include bioenergetic, functional medicine and detoxification therapeutics. It interesting to note in passing that the chiropractor J. Shelby Riley published a book in 1918 (*"Zone Therapy Simplified"*) which has been described as "an early forerunner of acupressure" and National College of Chiropractic offered the first acupuncture curriculum of the modern era in the United States.

It should be evident from Part 2 of this series, that the issue of "BIOLOGICAL PLAUSIBILITY" is unavoidable. We need an open dialogue about the philosophical and theoretical issues raised by the concept of biological plausibility. The concept that "life" is irreducibly complex and cannot be reduced to merely chemistry or a body's parts (including the genes and/or nervous system) needs to be further developed and refined. The new data emerging from physics and mathematics needs to be incorporated into our medical "theory and practice" along with such ideas as morphogenetic fields, energetic, informational, and vibrational medicine, etc. as well as the idea of the "biology of belief".

This article is being written in December, 1998 and by the time it appears in print I expect that the group of naturopaths associated with such schools as Bastyr will have introduced new licensing legislation in California. Assuming I am correct, chiropractors will have three potential courses of action: 1) politically oppose the legislation (as we have done in the past), 2) cooperate with the naturopaths and channel the proposed legislation along the lines outlined here, or 3) assuming neither of these courses of action is successful, prepare to go to court to stop the implementation of the legislation on constitutional grounds.

One of the major hurdles that any legislation to create the type of licensing structure outlined here will face is that the legislatures in the respective states will not want to create new "Boards". There are several options. In California, for example, the new structure could be placed under a new board, under the medical board or osteopathic board or under the chiropractic board. The latter seems preferable to me but it would probably stir up too much controversy within our own community and would require a ballot measure. The legislature could, however, place the matter on the ballot without the need for any voter petition. Negotiation and time will tell the tale.

The legislative approach is not the only one to take. A declaratory relief action could be filed seeking a declaration that persons completing a broader CORE CURRICULUM, as suggested herein, are entitled to broader practice rights and, perhaps, the right to use the new degree title. (The Oosterveen case recognized that persons with, for example, the N.D. degree were entitled to place their degree on the wall in their office. But, the chiropractic board had prohibited them from advertising the fact they had such a degree. The court did not address the question as to whether the board was right in so limiting the use of the degree.) The legislative and judicial strategies are mutually reinforcing. The preferred approach is to combine these approaches and to orchestrate action within our own profession and with other groups such as the naturopaths.

Of course, persons who have already studied such things as acupuncture, herbal medicine, and advanced clinical nutrition, etc. may desire recognition for their training in any new structure such as discussed in this article.

Addendum

The issue of "grandfathering" always arises in any new licensing scheme. In the circumstances where the new category requires additional education, it is usually preferable for any recognition of prior education to be resolved in the schooling process. That is, the institutions granting the new degrees should establish standards for transfer credit for work previously completed and/or grant some limited right to challenge portions of the new curriculum by examination.

The courts, and any administrative agency considering recognition of new rights created by the new degree, would look carefully at any transfer of credit process and would disfavor the acceptance of any prior education which had not itself involved some evaluation process or testing.

A second issue relates to those chiropractors previously granted some kind of "diplomate" status. First, the new structure would not, in any way, diminish whatever recognition they may have previously achieved from their diplomate status. Unfortunately, I have not seen any evidence that anybody has expanded their legal scope of practice by any of the diplomate programs. I have very little personal insight as to whether these "diplomates" have been able to enlarge their market identity with the public.

Again, we need to look at the picture in mainstream medicine. Specialization for MD's and DO's occurs after, and outside, the licensing process and involves the acquisition of practical experience. Of course, the problem is that one cannot obtain any practical experience towards specialization credit unless authorized by law to perform the chosen activity in the first place.

A short comparison with the situation for California lawyers is instructive. Attorneys can practice within any area of the law they choose, but if a lawyer wishes to hold himself or herself out as a specialist (e.g. - in criminal law) they must become certified. The certification process requires three things: 1) take specified course work, 2) perform and document activity, under the general license, in the specialization area and 3) pass an examination in the area of choice.

To repeat, chiropractors who are already diplomates would not loose anything under the new structure. If they sought a broader scope of practice they would, along with everybody else, need to meet the new requirements. Then, additional specialization could be added based upon their prior achievements plus the documented activity under their expanded scope of practice.

The time is ripe for the type of licensing structure presented in this 3-part series of articles. In presenting such a structure to the courts and/or legislative bodies we should focus on not only the requirements and the benefits to practitioners, but also upon PATIENT CHOICE and AN END TO VIEWPOINT DISCRIMINATION.