

PART 3 - CHIROPRACTORS v. ACUPUNCTURISTS

Preserving Practice Rights and Limiting Tuition Costs as Chiropractic Colleges Add Acupuncture, Naturopathy or Whatever

CORRECTION: In part 2 of this series I erroneously indicated that N.C.C. had started a separate acupuncture school. That is not correct. Please excuse my error. N.C.C. offers postgraduate programs in acupuncture. N.C.C. is, however, still considering adding a separate degree program in acupuncture and/or in naturopathy. (N.C.C. is now called National University of Health Sciences. I will, however, with apology and for ease of recognition, continue to refer to the University as N.C.C..)

Serious consideration must be given as to how such acupuncture &/or naturopathy degree programs can be put into place without adversely affecting the practice rights of presently licensed chiropractors. In addition, due consideration should be given to not unduly burdening practicing chiropractors, and future students, with excessive tuition costs should they wish to join in the potentially expanding scope of practice afforded by these developments. I will look into these and related issues in this article.

The AMA and its cohorts have played a shell game. In the mid-19th Century, AMA members were called allopathic or regular practitioners; at the turn of the 20th Century they started calling themselves scientific practitioners and by the 1920's the title had become just medical practice. This left other schools of medical practice having to add some other word to describe their school of medicine: homeopathic, eclectic, chiropractic, naturopathic, traditional Chinese medicine, etc. Interestingly, the "Association of American Medical Colleges" in a "memorandum" dated January 13, 1998 acknowledged that "mainstream medicine" is in fact "allopathy" which they defined as meaning "to oppose disease".

(?) MEDICINE

As suggested above, the "allopaths" have captured the use of the word "medicine" and others have to now add some descriptive adjective in order to distinguish their school of practice. A broader, more non-specific, term is preferable. The contest should be over substance, not merely words. We have been hung up long enough on "that's not chiropractic", or naturopathy, or whatever. MDs don't fight about what the word "medicine" means. They focus on substance. So should we; both philosophical and scientific. Let's allow some early icons of chiropractic and natural health care to weigh in:

D.D. - "Disease is but the performance of **functions** in either an excessive or deficient amount. all disease shortens life by deteriorating the quality of the tissue . . ."1

B.J. - "We are prone to observe two gross classifications:

a. **Functional dis-eases** where we cannot observe abnormal matter.

b. Pathological dis-eases where we do observe abnormal matter. The border line between, to our observed so-called trained senses, is obscure, concealed and beclouded. we think of 'nervous diseases' as of **function** minus pathological structural destruction of tissue...."2

John Howard, DC (Founder N.C.C.) – "Our system is as broad as nature itself, and therefore embraces all natural methods which possess virtue in assisting normal **function** of the body. The term "Physiological Adjustment speaks for itself: Correction of body function by physiological means."³

Terrence Bennett, DC – "The healing arts professions have far too long neglected the clinical phenomenon of abnormal physiology (abnormal function) in the preoccupation with what was considered to be disease entities and pathology involving tissue changes."⁴

The common concept is **functional medicine**. Acupuncture is also **functional medicine**. For example, when traditional Chinese practitioners refer to the heart meridian they are not referring to an anatomical structure, they are referring to a *functional unit*.

More importantly, **functional medicine** is a broad concept. In my view, the term **functional medicine** serves several important purposes:

1. The term is sufficiently non-specific to allow growth and refinement based upon new findings in science; (To repeat, we should debate the science rather than the meaning of words such as "chiropractic" or "naturopathy".)
2. The term **functional medicine** has historical precedent;
3. The concept of **functional medicine** can serve to distinguish practitioners within this paradigm from "medical" practitioners;
4. **Functional medicine** is, in fact, an "alternative bio-medical paradigm" (It includes prevention, early intervention and "wellness".);
5. The concept of the innate "regulatory matrix" addressed in the previous articles in this series is the primary basis of **functional medicine** as practiced in Germany.

We should borrow a page from the "allopath's" strategy book. They do not create a new license category (or new degree) every time they develop a new diagnostic tool or therapeutic process. They simply incorporate the tool/process into the non-specific term "medicine". The allopathic monopoly is, however, served when alternative medicine is broken into pieces. Then, the allopaths can reduce "alternative medicine" to merely "alternative therapies" and seize control over such therapies.

DIVIDE & CONQUER

The founder of this publication, Donald Peterson, Sr., D.C., is quoted in the book "Assault on Medical Freedom" as having a high opinion of its author P. Joseph Lisa. I have quoted this book in numerous prior articles. A central point of "The Assault on Medical Freedom" is that after the "quackbusters" lost the Wilk case they developed a new strategy which, in relevant part, may be summarized as follows:

1. "Divide and Conquer by specialization";⁵
2. Restrict chiropractors "scope of practice to neuro-musculo-skeletal problems",⁶ and

3. Have insurance carriers deny any chiropractic claims related to the use of "meridian therapy" or "acupuncture" and similar types of treatment, including nutrition, etc..⁷

A subtle but very important point must be made here. The strategy of "divide and conquer" is directed towards creating multiple license (and perhaps accreditation structures) more than multiple degrees or multiple specialties within any particular degree or license. It is the splintering of the practice rights that gives mainstream medicine the edge. The practice rights of mainstream medicine are said to be "unrestricted" or "unlimited". Therefore, any dividing up or limiting of the practice rights of others serves to strengthen their position. Again, alternative practitioners should borrow a page from mainstream medicine.

MD/DO's – ONE LICENSE

Many states in the United States presently allow "unlimited practice rights" to persons with either the MD or the DO degree. Certainly that is true in California and Illinois. In California, that that was accomplished by a "treaty" between MDs and DOs and ultimately litigation. In Illinois it was achieved by the decision in the case of Chicago College of Osteopathy v. Puffer (1955). The Puffer court basically ruled that because osteopathic education (and accreditation) matched that required for the unlimited license granted MDs it would constitute undue discrimination to refuse DOs the same, "unrestricted" practice rights available to MDs. Prior to the Puffer case, DOs in Illinois had been classified as "drugless physicians" along with DCs.

DC – ND - DDT DEGREES

In part two of this series I discussed John Howard's early connections with German naturopathy. (Howard founded of NCC) Through most of the time from its founding in 1906 to 1952, NCC offered the DC degree and also the N.D. and/or D.D.T. degrees (doctor of drugless therapy). A separate licensing structure was not created. No additional license was needed because DCs in Illinois were, and still are, already broadly defined by law as "drugless physicians".

From 1922 to the early 1950's every president of all the schools that merged into LACC held both a D.C. & N.D. degree, 17 out of 18 other administrators held both degrees and 19 out of 27 full time faculty members held both degrees. (LACC is now called Southern California University of Health Science. I will, with apology, refer to it here as LACC for purposes of recognition.) What happened in the early 1950s to change all this?

1. The era of the so-called "wonder drugs" had recently arrived;
2. The AMA worked hand in glove with the FDA, state medical boards and agencies such as the attorneys general around the country to eliminate naturopathic practitioners. They achieved their objective and laws permitting the practice of naturopathy were repealed in almost all states by the late 1950s early 1960s⁸; but most importantly
3. The "death-dealing blow to the profession of naturopathy"⁹ was the prohibition by what is now the C.C.E. against chiropractic colleges teaching natural methods of treating the sick; except spinal manipulation. This edict was issued in 1952.

The 1952 C.C.E. edict was ironic. From the early 1900s to the 40s the typical chiropractic degree program required the completion of about 2000-2500 hours. That meant that the additional ND or DDT degrees could be added on to the 2000-2500 requirement. However, in the late 40s the requirements for the DC degree were generally increased as, for example, in California where the prescribed curriculum was increased from 2400 hours to 4000 hours in 1948. Having eliminated natural healing courses such as herbs, glandulars, homeopathics, neurovascular and visceral "manipulation", etc. what was put in its place? The curriculum became, and remains, oriented to mainstream diagnostic and treatment procedures. But, the chiropractic scope of practice precludes chiropractors from utilizing much of what they have learned. It is time to put the natural healing concepts back into the chiropractic curriculum. But, how?

The basic question is should the proposed natural healing curriculum [such as "regulatory matrix" evaluation and "adjustment" (see prior articles), herbs, glandulars, acupuncture, homeopathics, visceral manipulation, etc.] be electives within the 4800 hour chiropractic curriculum or added on to it. Obviously, it is significantly different to add hours to a 2000 to 2500 curriculum, as was the case prior to the 1950s, rather than to a 4800 hour curriculum as is now required to obtain the chiropractic degree. Let's look at some numbers.

CURRICULUM & FEES

In 1990 the University of Bridgeport opened its school of chiropractic. In 1997 it opened a separate school of naturopathic medicine and it is presently contemplating opening a school or program of acupuncture and traditional Chinese medicine. They are seeking accreditation of their naturopathic program by the national accrediting agency for naturopathic education.

The last time I checked (about 3 years ago) only one of the 11 states that license naturopaths required graduation from a school accredited by the national naturopathic accrediting agency. In the other states one could substitute "approval" by the state agency itself or, in some instances, regional accreditation. The Puffer case, cited above as an example of how DOs leveled the playing field with MDs, is instructive here. There is no need for requiring duplicate accreditation so long as the same standards are met. Why then should 60,000 chiropractors go knocking on the door of about 2000 "accredited" naturopaths for their approval of our educational process? You tell me!

If you are a chiropractor, even if you just graduated from the University of Bridgeport, and you want the naturopathic scope of practice you will have to go back to school for approximately 2 years, or 2000 hours. The same holds true if you would like to obtain the ND degree from Bastyr College of Naturopathic Medicine. ("Bastyr" is named after John Bastyr, DC, ND.)

Now to the tuition numbers. I will assume that a 4800 hour chiropractic education costs about \$100,000.00 or approximately \$2,000.00 per 100 hour segment. I will assume the same \$2,000.00 in tuition fees per 100 hour segment of naturopathic and/or acupuncture (traditional Chinese medicine - TCM) education.

Chiropractic education, pursuant to the edict of the CCE, requires completion of approximately 4800 hours but the typical accredited naturopathic program is only about 4000 hours. What's the tuition cost

assuming that the hours in natural healing courses are added on to the curriculum rather than being electives within the basic 4800 hours.

DC degree 4800 hours	\$96,000.00
ND plus 2000 hours	<u>40,000.00</u>
TOTAL	\$136,000.00

I will now use California as the basis for a comparison. The California Chiropractic Act requires only 4000 hours for the DC degree and requires 600 hours of electives. This elective requirement has been totally ignored. Let's call the 4000 minus 600 hours the "core curriculum". That means that if one were to still complete 4800 hours there would be 1400 elective hours available for study in both the theoretical and clinical application of herbs, homeopathy, glandulars, visceral manipulation, "regulatory matrix" evaluation and adjustment, etc..

Core Curriculum 3400 hours	\$68,000.00
Added hours 1400 hours	<u>28,000.00</u>
TOTAL	\$96,000.00

Of course, there would be significant overlap in the 1400 hours and much of it should entail clinic practice.

Grandfathering: What about existing chiropractors? As indicated, much of the 1400 hours would duplicate what is already in place with perhaps some changes in focus. In addition, much of it would be "clinic". Practicing chiropractors are already gaining clinical experience in their own offices and one could get even more creative and provide for further clinical enhancement with internet connections between several practitioners and between them and the schools and even clinicians around the world. A sort of internet clinic rounds. Due to space constraints, I will not address credit that should be given for "diplomate" course work previously completed.

Inspection of approved acupuncture programs show they typically offer about 200 to 300 hours of actual acupuncture course work and, at least in California, the Acupuncture Act prescribes 300 hours course work in herbal practice. In addition, many states presently require chiropractors, MDs, dentists and podiatrists to complete 60 to 300 hours in acupuncture in order to be certified. That is why, for example, NCC offers from 100 to 300 hours in acupuncture certification course work.

Therefore, it seems highly likely that existing chiropractors could meet contemporary standards not only as to acupuncture but also as to naturopathy or, my own personal preference, functional medicine within 300 to 600 hours of additional course work. Thus, rather than paying \$40,000.00 tuition fees as would be required under the University of Bridgeport or Bastyr approach they would end up paying more like \$6,000.00 to \$12,000.00 in order to be qualified for a broader scope of practice granted to separately licensed naturopaths and acupuncturists. For the 100 to 300 hours of additional work in acupuncture the tuition would be \$2,000.00 to \$6,000.00 rather than \$25,000.00+ for the additional work required to complete a separate licensing program.

CALIFORNIA PRACTICE RIGHTS

I have written several articles for this publication about the scope of practice issues in California. I will not re-hash all that here, but I will revisit two specific cases.

Oosterveen Case: In 1953, two naturopaths licensed outside California went to court and argued they were being deprived equal protection of the law because they could not get licensed to practice naturopathy in California. The California court disagreed and indicated that if they wished to practice naturopathic methods of healing they could get licensed as either an M.D. or as a D.C. The court also pointed out that at that time (1953) naturopathy was practiced by over 1200 chiropractors in California. The present Rule 302 is incompatible with this case and supersedes it until that rule is challenged and changed.

Chong case: The present Rule 302 specifically provides that chiropractors may not "practice surgery or sever or penetrate tissues of human beings". Therefore, chiropractors cannot use acupuncture needles without acquiring the additional acupuncture license. The Rule is simply wrong. However, to repeat, it is the law until changed.

As indicated previously, the California Chiropractic Act provides for at least 600 hours of electives. The Board of Chiropractic Examiners has, however, never prescribed the requirements for that curriculum and the schools have never offered it. But, rule 331.1.2 has, since 1977, recommended that electives be offered in "meridian therapy". Why not "acupuncture"? Because California chiropractors supposedly cannot penetrate or sever tissue.

Two of the most fundamental rules used by courts in interpreting statutes are: 1) look to the statutory and case law that preceded the statute to be interpreted, and 2) whenever wording in a statute is changed it is deemed to be important and to manifest and intention to actually change the substance of the prior rule.

The 1913 Medical Practice Act provided that "drugless practitioners" were prohibited from "penetrating or severing tissue". Dr. Chong, a chiropractor, was prosecuted in 1916 for practicing medicine without a license. He argued that he was being denied due process of law because whenever he did an adjustment he "penetrated and severed tissue" and therefore he could not have practiced under the 1913 drugless practitioner license even if he had obtained one. The court responded that the drugless practitioners were only prohibited from penetrating or severing tissue "with a knife"; that is, penetrating tissue with a knife would mean your were doing the "surgery" which was reserved to "physicians and surgeons". In my view, the Chong case triggered the change in language in the 1922 Chiropractic Act to a prohibition against performing surgery with a knife rather than penetrating or severing tissue. Therefore, chiropractors should be allowed to use needles.

Mr. Schroeder, in handling the California scope of practice lawsuit from 1989 to 1991, never brought the Chong case (or any law preceding 1922) to the attention of the court and California chiropractors ended up being prohibited from penetrating or severing tissue. The present Rule 302 (adopted in 1991) has never been challenged in court. Neither LACC, nor any other California Chiropractic College, intervened in the case handled by Mr. Schroeder to protect their students, or graduates, scope of practice rights. Nor have they challenged the rule since its adoption in 1991.

The Board of Chiropractic Examiners cannot challenge its own Rule 302 because they accepted the settlement arranged by Mr. Schroeder. As a result, if you want to use acupuncture needles in California you have to go back to school for about 1200 hours (\$24,000.00) and sit for an additional licensing examination. In my opinion, that could be changed by appropriate legal challenge to the existing Rule 302.

As previously indicated, LACC has started a new and separate school of acupuncture and traditional Chinese medicine. One can only hope that Rule 302 will be changed so that they will also be able to better serve the rights of practicing chiropractors by offering a 100 to 300 certification program in acupuncture similar to that offered by Dr. Amaro and NCC. (UCLA has a 300 hour program in acupuncture for MDs)

Of course, if you wanted to add herbs, etc. that would necessitate additional training. However, the expense entailed would obviously be much less than pursuing a whole new license. Equally important, is the fact that by dividing up the field of non-allopathic medical practice we are playing into the hands of mainstream medicine.

REVIEW & CONCLUSIONS

I started this series of articles by agreeing with Dr. Amaro that there is a "turf war" going on between chiropractors and acupuncturists. We have shown the war is extending to naturopaths with the creation of new, separate, schools of naturopathy. We have reviewed some of the evidence for the use of acupuncture needles based upon Western neurology and diagnostic criteria and as to the "regulatory matrix". The use of needles is obviously not within the exclusive domain of traditional Chinese medicine.

We have reasoned that license categories are not synonymous with degree titles. That is, one can qualify to be a "physician and surgeon" with either the MD or DO degree. California once defined the non-allopathic license category as drugless practitioners. Illinois still utilizes the term "drugless physician". Drugless physician is an appropriate license category for practitioners under the DC, ND, OMD or other appropriate degree title. (As previously indicated, NCC at one time utilized Doctor of Drugless Therapy as a degree title.) How the license category(s) are created, structured and used for education towards various degrees and/or specialization makes a huge difference to both the cost of acquiring rights to practice and to the opportunity of mainstream medicine to usurp the practice rights of alternative practitioners.

In closing, I would like to add a personal point. For me, the real "turf war" is primarily constitutional and philosophical - what is the "ultimate ground of being"? As a former professor of constitutional law, I am committed to the leveling of the playing field for a bio-medical science based upon "holism", irreducible complexity, inherent self-regulation and the proposition that life is the product of intelligent design; that it is teleological. (Please note the words "leveling the playing field" do not mean dominating it.) Allopathic, materialistic, reductionistic biological and medical science based upon "warring" with disease/nature and an assumption that life is the product of random chance should not have the monopolistic power it has acquired. This is a war not only for practitioners of alternative medicine but for the very "heart and soul" of this planet. I aim to serve.

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1. D.D. Palmer, *The Science, Art and Philosophy of Chiropractic* (1910) p. 25.
 2. B.J. Palmer, *The Subluxation Specific – The Adjustment Specific* (Reprinted, 1993) p. 500.
 3. R. Beideman, *In the Making of a Profession: The National College of Chiropractic 1906-1981* (1995) p. 39
 4. Martin, *Dynamics of Correction of Abnormal Function, Terrence Bennett Lectures* (privately published 1977) p. vii)
 5. Lisa, *supra.*, at p. 152.
 6. *Id.*, at p. 227-28.
 7. *Id.*,
 8. Lisa, *The Assault on Medical Freedom* (1994) pp. 264-281.
 9. Wardwell, *Chiropractic, History and Evolution of a New Profession* (1992) pp. 38 and 141-42.