

Part 2: Are Chiropractors Stuck with Prior Court Decisions – A 1938 Abortion Debacle!

In “Part 1” we emphasized that the pending California practice rights lawsuit has been brought by 1 straight, 2 musculoskeletal practitioners and 2 mixers who seek to have the 1922 Chiropractic Act and subsequent amendments interpreted according to their **original intent**.

In Part 1 we also indicated that the instant trial court ruled that chiropractors are presently bound by prior case law (and the related Board of Chiropractic Examiners Rule 302) defining the chiropractic scope of practice even if that case law and Rule 302 are wrong. The trial judge followed a legal doctrine called *stare decisis*; - the matter has been decided. There are many technicalities to the *stare decisis* doctrine and a broad rule allowing prior case law to be ignored in the **public interest, or in the interest of justice**.

The practice rights case is now before the First District Court of Appeal. There, we seek a ruling that the prior case law and Rule 302 are not presently binding for several technical reasons. I will not bore you with the many technicalities but you may review them in the briefs at www.promedlaw.com/Pending-Cases.htm. More importantly for purposes of this article, we assert that the prior decisions and Rule 302 do not serve the public interest and that justice demands a full hearing as to the original intent of the chiropractic act as amended.

There are three mind-boggling aspects of the California chiropractic legal history that are particularly important to the public interest/justice aspects of the pending case: 1) The *Fowler* court (one of the early cases defining the scope of practice followed by the instant trial court) was an “abortion case”; 2) The complete 1922 Chiropractic Act has **never even been published** in the California statutes - **nor** has the entire act ever **been considered by any court, including the Fowler/Crees courts**; and 3) In the 1963 *Crees* case, the other case relied upon by the instant trial court, the California Attorney General’s Office attacked the then existing 1954 version of Chiropractic Board scope rule (Rule 302) while still acting as the attorney for the Chiropractic Board - **a no-no!**

The present chiropractic parties contend that chiropractors, under the 1922 Act, were intended to be authorized (but not required) to treat human conditions and ailments by all means other than through the use of allopathic drugs or operative surgery. (We will more fully develop the reasons for this conclusion in Part 3.) In addition, the parties assert the right of chiropractors to fully develop and advance the chiropractic paradigm, including by removing interference and enhancing the body’s innate capacity for homeostatic and/or dynamic self-regulation.

1938 Abortion Debacle

As indicated in Part 1, the 1922 Chiropractic Act was enacted as a result of the cooperative effort of straights, mixers, and naturopaths, including Charles Cale ND, the 1911 founder of LACC. “BJ” cooperated fully with this group and in the process called Dr. Ratledge, the founder of what is now Cleveland Chiropractic College, L.A. and the former prime mover to get chiropractors’ legal recognition in California, a “has been, a once-runner, a cold potato”.

The trial judge in the pending case concluded that she was bound to follow the scope of practice defined in the cases of *People v. Fowler* (1938) and the *Crees* case in 1963. The *Crees* court adopted the definition from the *Fowler* case and we will therefore highlight the *Fowler* case here.

One fundamental aspect of the doctrine of *stare decisis* is that a prior case only controls later decisions on points fully litigated in the earlier case. Therefore, one must carefully read the prior decision to see exactly what was argued and decided in that prior case. Dr. *Fowler* was charged with practicing medicine without a license. The most obvious question is – **What did Dr. Fowler actually do that constituted the unlawful practice of medicine?**

I read the *Fowler* opinion once, twice, three times. Nowhere in its opinion does the *Fowler* court ever state what Dr. Fowler did that constituted the unlawful practice of medicine. When I finally obtained the *Fowler* case records I was dumfounded to learn that **Dr. Fowler was accused of having performed an abortion.**

Dr. Fowler’s patient clearly testified that Dr. Fowler had performed an abortion on her. However, Dr. Fowler testified that he merely performed a surgical procedure to remove a dead fetus from the patient’s womb. Therefore, rather than charging Dr. Fowler with the criminal abortion, the prosecutor took the easier tack of charging him with practicing medicine without a license. That way he did not have to prove the fetus was alive when removed from the womb. Either way the procedure was “surgery” and outside the chiropractic scope of practice.

Ratledge’s Revenge

In the process of the “abortion” Dr. Fowler used a hypodermic needle to intravaginally inject pain medication and other substances to aid in the operative procedure. The *Fowler* court found the use of hypodermics to be outside the chiropractic scope of practice based upon the testimony for the prosecution by Dr. Ratledge. Of course, we agree that hypodermics cannot be used by chiropractors as part of a surgical procedure.

All medical malpractice attorneys will tell you that it is usually very difficult to find any MD willing to testify against one of their colleagues. Dr. Ratledge did not hesitate to testify against Dr. Fowler even though Dr. Fowler faced jail time. One must suspect that BJ’s having called him a “has been” fueled Dr. Ratledge’s willingness to testify against Dr. Fowler.

Among other things, Dr. Ratledge testified that the “use of hypodermics, syringes and needles ... is not part of the practice of chiropractic.” Dr. David C. Long, a LACC professor, testified that he taught “minor surgery” at LACC and that the use of hypodermic syringes and needles was taught and was part of the “philosophy of chiropractic”. The *Fowler* court readily accepted Dr. Ratledge’s viewpoint and ignored Dr. Long’s testimony even though section 16 of the Chiropractic Act (then and now) specifically provides that the chiropractic act is **not to be “construed so as to discriminate against any particular school of chiropractic, or any other treatment.”** No court has ever considered this anti-discrimination provision in interpreting the Chiropractic Act. We seek to have section 16 enforced against both extra and intra-professional discrimination.

The 1922 Chiropractic Act and subsequent amendments should be construed according to their original intent. The public interest and justice demand that chiropractors should not be stuck with a definition of their scope of practice that arose in a 1938 “abortion case”. We will consider the public

interest/justice aspects of the fact that the entire 1922 Act has never been made part of the California law and the inadequate representation of the Chiropractic Board by the Attorney General's Office in Parts 3 and 4.

*David Prescott is a former prosecutor, law school dean, professor of constitutional law, and a trial attorney with over 30 years experience. He is also a 1989 Cum Laude graduate of Cleveland Chiropractic College. You may contact him through **The Prescott Group** (888)989-0855.*