

Part 3: Are Chiropractors Stuck with Prior Court Decisions – Omitted Portion of 1922 Act!

The chiropractic “license shall authorize the holder thereof to **practice chiropractic** in the State of California **as taught in chiropractic schools or colleges**; and, **also, to use** all necessary **mechanical**, and **hygienic and sanitary** measures incident to the care of the body....”

(Part of Section 7 of 1922 California Chiropractic (initiative) Act)

What does the expression “practice chiropractic ... as taught in chiropractic schools or colleges” mean? In Parts 1 and 2 we pointed out that the trial court in the pending case considered itself bound by the answer to this question from two prior cases (*Fowler/Crees*). We presently seek to have that question reconsidered and seek an order from the appellate court that the trial court is **not** bound by the interpretation of “Section 7” promulgated by the *Fowler/Crees* courts.

In both *Fowler* and *Crees* the chiropractors argued that chiropractors are entitled to do anything they are “taught” in chiropractic school. That sounds reasonable, but QUESTION: Does that mean that if a chiropractor has a short course in chemotherapy he or she is entitled to use that type of treatment? **No court** will accept a yes to that question. If you answer no, you are right back where you started. There is a third alternative that will be briefly addressed below.

The *Fowler* court resolved the “as taught” question by re-writing Section 7 of the Chiropractic Act to provide that chiropractors are “authorized to practice chiropractic **AND** (the particular practice) must be taught in chiropractic schools or colleges.” **No evidence had been introduced** at the *Fowler* trial as to the practices of the straight, mixer and naturopathic “schools of chiropractic” that existed prior to 1922. Therefore, the court used a dictionary definition of chiropractic and limited the chiropractic scope of practice to adjustments and other services as only an adjunct thereto. The *Crees* court adopted the *Fowler* court rulings as does the Chiropractic Board’s present scope rule (Rule 302).

Omitted Portion of 1922 Act

The California Board of Chiropractic Examiner’s web site includes a purported copy of the 1922 “Initiative Act” composed of 19 Sections from 1922 plus a 20th Section from 1978. The 1922 Act was composed of two parts. The first part (the portion on the Board’s web site) established the structure and administration of the State Board of Chiropractic Examiners. (You may view the entire Act at www.promedlaw.com – Pending Cases - Tain Case Links) The second (**longer**) part modified and applied certain provisions of the 1913 Medical Practice Act to the new “chiropractic” profession. **Bizarre** as it may seem, the entire second part of the 1922 Act was omitted when the Act was first published in 1923; indeed, the whole Act has never been added to the California statute books.

We have argued to the appellate court that “**justice**” demands that chiropractors must not be stuck with the interpretation of their practice rights as defined by the *Fowler/Crees* courts because those courts never considered both parts of the 1922 Act. We have also argued to the appellate court, among other things, that the **public interest** requires that the chiropractic paradigm(s) be fully developed, advanced and made available to the California patient population.

The Third Interpretation

Again, what does the expression “practice chiropractic ... as taught in chiropractic schools or colleges” mean? What about the expression related to the right to use **mechanical**, and **hygienic and sanitary** measures? The chiropractors in *Fowler/Crees* argued that the latter expression granted them a whole new category of practice rights. We disagree.

There is a fundamental rule of statutory interpretation that all provisions of a law must be read together and in the context of the whole statute. Obviously, that cannot be done unless the whole Act is brought before the court. The chiropractors in the *Fowler/Crees* cases did not bring the entire 1922 Act before the courts. The present plaintiffs sought to do so, but, as previously indicated, the trial court deemed itself bound by the rulings in *Fowler/Crees*. We expect the appellate to reverse that holding.

When you look at the actual 1922 ballot itself (www.promedlaw.com web site) it becomes obvious that the expression “as taught” means “as prescribed to be taught”. The prescribed curriculum to be taught is set forth in Section 5 of the Act. Section 5 was 3 inches directly above the “as taught” expression on the 1922 ballot presented to the voters and the two are clearly interconnected. The judicial concern about the chiropractic schools being able to expand the practice rights to include such things as surgery or chemotherapy simply does not exist. There is no provision for teaching brain surgery, chemotherapy, etc. in the prescribed, “as taught”, chiropractic curriculum.

Unfortunately, the fact that the term “as taught” means “as prescribed to be taught” does not totally resolve the interpretation question. For that, one has to look at the entire 1922 Act; both Part 1 and Part 2.¹

Among other things, Part 2 of the 1922 Chiropractic (ballot) Act compared and contrasted the prescribed chiropractic curriculum with the prescribed curriculum for the drugless practitioners certificate under the 1913 Medical Practice Act. The respective curricula show **only** four differences:

- 1) Chiropractors were required to complete a total of 400 more hours than drugless practitioners;
- 2) Drugless practitioners took a course in “**hygiene**” - chiropractors a course in “**hygiene and sanitation**” (drugless practitioners were, however, required to be examined on “hygiene and sanitation”);
- 3) Drugless practitioners took a 260 hour course in “manipulative and **mechanical therapy**” - chiropractors took 500 hours in “**chiropractic theory and practice**”; and
- 4) Chiropractors took only 100 hours in “obstetrics and gynecology” whereas drugless practitioners were required to complete 265 hours in those subjects.

The ballot arguments stated that chiropractors would not be allowed to practice obstetrics. Obviously, because they had less required training in that area.

The foregoing strongly suggests that chiropractors were intended to have the same basic practice rights as the drugless practitioners. (We contend that was to treat by all means other than the use of allopathic drugs or operative surgery.)² Further, that the right to use **mechanical**, and **hygienic and sanitary** measures is not the grant of additional practice rights but a clarification showing that chiropractors were, to repeat, intended to have practice rights at least equal to those of the drugless practitioners. In addition, the equal protection clause of the Federal and State Constitutions demands nothing less.

In Part 2 of this series we pointed out the shocking fact that the practice rights of California chiropractors was first defined in an abortion case. Here, we have addressed the mind-boggling fact that chiropractic practice rights have been defined based upon consideration of only one portion of the Chiropractic Act. In Part 4 we will demonstrate that the California Attorney General's Office has, in acting as the attorney for the Chiropractic Board, failed to properly represent that Board or chiropractic licensees.

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¹ Evidence is also required to show, among other things, the forms of practice utilized by straights, mixers and naturopaths ("schools of chiropractic") prior to 1922.

² Much additional evidence is available to support this position. Also, drugless practitioners were expressly precluded from severing or penetrating tissue. On the other hand, Chiropractors were precluded from performing "surgery".