

Part 4: The California Attorney General's Office Has Helped to "Throttle" Chiropractors

*"The Medical Board, empowered as it now is, to exercise unlimited authority over the practice of chiropractic, is using the medical law to **throttle chiropractic** and prohibit its practice in California."* (Proponents Argument on 1922 Ballot)

In prior articles we have focused on two bizarre episodes in the legal history of the chiropractic profession in California. First, that the scope of chiropractic practice in California was defined by a California court in a 1938 abortion case; Second, that the entire ballot measure which created the California chiropractic profession in 1922 has never been published in the California statutes. Further, the entire act has never been considered by, or brought to the attention of, any California court; nor has the whole Act ever been considered by the Board of Chiropractic Examiners.

I have been asked why I think that practicing chiropractors would be interested in specific legal issues raised in the pending practice rights case. On the surface this may all seem like technicalities. Not so, the issues go to the very heart of the chiropractic profession, its image in society and your individual "market share" as a chiropractor. (We will return to this point in a subsequent article.) In addition, each of you has the right to ask your "board" why it is insisting in the pending case that chiropractors should be bound by a decision defining their practice rights in a 1938 abortion case; the present plaintiffs have not argued that chiropractors should be allowed to perform abortions. You also have the right to ask your "board" why it is resisting the court's review of the entire chiropractic act in defining the practice rights of California chiropractors. Who is running the chiropractic ship?

The Role of AG's Office

The California Attorney General's Office plays a dual role in the legal system. First, it is "the guardian of the public interest". Second, it acts as the official attorney for most state administrative agencies, including the Board of Chiropractic Examiners. Obviously, there is a potential for these roles to conflict with one another; what then? That question was addressed by the California Supreme Court in the case of *People ex rel Deukmejian v. Brown* (1981) where the court stated, in part:

"In short, the Attorney General cannot be compelled to represent state officers or agencies if he believes them to be acting contrary to law, and he may withdraw from his statutorily imposed duty to act as their counsel, but he may not take a position adverse to those same clients." (Emphasis added.)

AG's Position in Crees Case

As will be seen by looking at the ballot language quoted at the start of this article, the chiropractic profession was started in California because the "Medical Board" was using the existing law to "throttle chiropractic". Therefore, one would expect that in any litigation affecting the rights of chiropractors it would be highly likely there might be a difference of opinion about the practice rights of chiropractors between the Medical Board and the Chiropractic Board. The problem is that the AG's Office represents both boards.

In the 1963 *Crees* case the chiropractic plaintiffs sued both the Medical Board and the Chiropractic Board relative to the practice rights of chiropractors. We referred to the *Crees* case in our prior articles as one of the cases that supposedly precludes the courts from reconsidering the scope of

practice issues raised by the instant plaintiffs. (See www.promedlaw.com, > medical articles > ARTICLES PUBLISHED IN THE CHIROPRACTIC JOURNAL for additional information.)

The *Crees* plaintiffs staked out their position based, in part, on a scope of practice rule promulgated by the Chiropractic Board in 1954 (1954 Rule 302) and a further interpretation of that rule by the Board. One attorney from the Attorney General's Office represented the Medical Board and another attorney from the AG's Office represented the Chiropractic Board.

Not surprisingly, the deputy attorney general representing the Medical Board took the position that the 1954 version of the scope of chiropractic practice rule (Rule 302) promulgated by the Chiropractic Board was invalid. Based upon the reasoning of the *Deukmejian* case quoted above the AG's Office had a choice to make: either defend the Chiropractic Board's Rule 302 or conflict off the case. That is not, however, what happened. The deputy attorney general representing the Chiropractic Board joined the argument of the Medical Board in opposing the validity of the 1954 version of Chiropractic Board Rule 302.

One could assume that the position of the AG's Office in the *Crees* case was merely the result of prejudice. You decide! However, I am sure that the inquisitors who prosecuted Galileo thought they were right to do so. How can anyone challenge to "truth" of the prevailing paradigm? The AG's Office gets its version of the "truth" primarily from the allopathic community with very little specifically articulated opposition from any consensus within the chiropractic community. Along that line, I am sure that there was a difference of opinion between straights and mixers about the validity of the 1954 version of Rule 302; whatever it was. Of course, as always, each side would have been focusing on **what they wanted to rule to be** rather than the real question: what was the intent of the drafters and the voters who voted in favor of the 1922 Act (60%) and subsequent amendments?

It should also be noted that the *Deukmejian* opinion was handed down in 1981 and the *Crees* case was decided in 1963. However, the same principles were obviously applicable in 1963 and the 1981 decision merely ruled on the basis of general rules relating to the attorney client relationship (AG-Chiropractic Board). More importantly, why is the Chiropractic Board now taking the position that the *Crees* case (along with the *Fowler* abortion case) precludes a reconsideration of the original intent of the 1922 Act and subsequent amendments?

Quit Throttling Chiropractors

The people of the State of California voted to create an independent Chiropractic Board so that the allopathic profession could no longer "**throttle**" chiropractors. Unfortunately, the medical establishment has continued to throttle chiropractors by its influence over the thinking of the group of attorneys within the AG's Office who practice law related to medical issues. Representation for the Chiropractic Board comes from within this same group.

The Chiropractic Board should direct the AG's Office how it wants that office to act in the pending case. It is difficult to see how the Board can fulfill that responsibility without at least holding an oral hearing with the present plaintiffs and their counsel of record as to their interpretation of the original intent of the 1922 Act, in its entirety, and subsequent amendments. This has never happened.

We will trace some additional aspects of chiropractic and their relationship to the "wellness – prevention/early intervention paradigm" and the pending action in subsequent articles.

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