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1 BILL LOCKYER, Attorney General
of the State of California
2 CHAR SACHSON
Deputy Attorney General
3 State Bar No. 161032
JOSHUA ROOM
4 Deputy Attorney General
State Bar No. 214663
5 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
6 Telephone: (415) 703-5558
Fax: (415) 703-5480

7 Attorneys for Defendants/Respondents

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE CITY AND COUNTY OF SAN FRANCISCO

11 LAURENCE TAIN, D.C.; DONALD NIELSEN,
12 D.C.; ROBERT BITTERS, D.C.; STEPHANIE
13 WATTENBERG, D.C.; and LORI PRESCOTT,
14 D.C.,
Plaintiff/Petitioners,
15 v.
16 STATE BOARD OF CHIROPRACTIC
EXAMINERS; CALIFORNIA ACUPUNCTURE
17 BOARD; THE COUNCIL ON CHIROPRACTIC
EDUCATION, INC.; and DOES 1 to 20,
18 Defendants/Respondents.

Case No. CGC 03-419378

**RESPONSE TO PLAINTIFFS'
SEPARATE STATEMENT OF
DISPUTED AND
UNDISPUTED FACTS OF
THE STATE BOARD OF
CHIROPRACTIC
EXAMINERS**

Date: January 28, 2004
Time: 2:00 p.m.
Dept: 502
Judge: Charlene P. Mitchell
Trial Date: Not set

21 PLAINTIFFS' DISPUTED MATERIAL
22 FACTS (CONTENTIONS)

RESPONSE

23 HISTORICAL BACKGROUND
24 (Incorporated into Causes of Action One through
25 Four)

- 26 1. There was more than one "school of chiropractic" thought prior to 1922. Unknown, immaterial and irrelevant.
- 27 2. The respective "schools" had different perspectives about the education, training and scope of practice for chiropractors. Unknown, immaterial and irrelevant.

- 1 3. One "school" included treatment by means of Unknown, immaterial and irrelevant.
 2 osseous and soft tissue manipulation,
 3 neurovisceral and neuromusculoskeletal care,
 4 physical and reflex therapeutics (in part,
 5 based on Chinese meridian theory), and the
 6 full use of the naturopathic materia medica;
 7 but, prohibited the practice of allopathic
 8 medicine by chiropractors.
- 9 4. The "naturopathic materia medica", prior to Unknown, immaterial and irrelevant.
 10 1922 and to the present, includes at least
 11 herbs, homeopathics, nutritional and other
 12 substances derived from botanical, mineral or
 13 animal sources, plus air, water, clay, heat,
 14 sound, light, electricity, magnetism, physical
 15 movement therapies, massage, suggestive
 16 therapeutics and rest.
- 17 5. The wording of the 1922 Chiropractic Act Unknown, immaterial and irrelevant.
 18 (1922 Act) was the product of an agreement
 19 between the various schools and with
 20 persons licensed as naturopaths under the
 21 1909 amendment to the 1907 Medical
 22 Practice Act.

23 **FIRST CAUSE OF ACTION**

24 (As to Defendant Chiropractic Board Only)

25 **(Declaratory and Injunctive Relief Relative to Chiropractic Board Rule 302
 26 and the Original Intent of the 1922 Chiropractic Act)**

27 Liberal Construction & Requirements of
 28 Constitutional Law

6. Health care practitioners, including medical Unknown, immaterial and irrelevant.
 technicians and acupuncturists, with
 between 1% and 50%, of the 4400+ hours of
 education and training required for the
 chiropractic license are permitted by law to
 penetrate human tissues with therapeutic
 needles.

- 1 7. Orthodox medicine has, since at least the Unknown, immaterial and irrelevant.
2 1860s, been, and it now is, allopathic
3 medicine and it is based upon a different
4 theory of biological organization,
5 development, regulation and pathology
6 (allopathic paradigm) to that of all schools of
7 chiropractic (holistic paradigm);
8 chiropractors did, before 1922, generally
9 subscribe to the holistic paradigm (many still
10 do); these paradigms touch upon issues of
11 ultimate concern.
- 12 8. During the period from the early 1900s to the Unknown, immaterial and irrelevant.
13 start of the 1990's the holistic paradigm was
14 a marginalized concept in the United States.
- 15 9. Rule 302 contributes to the marginalization Unknown, immaterial and irrelevant.
16 of the holistic paradigm and unreasonably
17 interferes with the rights of chiropractors to
18 practice within the scope of practice intended
19 by the 1922 Act, to fully use and develop the
20 holistic paradigm, to develop their identity
21 within their profession and to fully enjoy the
22 economic benefits thereof.
- 23 10. Rule 302 also impedes the ability of patients Unknown, immaterial and irrelevant.
24 to choose lawful alternative health care.
- 25 11. Chiropractors are a discrete, insular minority Unknown, immaterial and irrelevant.
26 that have been, and now are, subjugated and
27 they have been historically subjected to a
28 pattern of invidious discrimination; in part
because they generally subscribe to the
holistic paradigm.
12. The discrimination against chiropractors, and Unknown, immaterial and irrelevant.
resulting diminution of their practice rights,
has been, and it continues to be, perpetrated
from without and within the chiropractic
profession; including by federal and state
agencies and The Council on Chiropractic
Education (CCE).
13. Chiropractors could not in the past, and they Unknown, immaterial and irrelevant.
cannot now, alter the effects of the unequal
treatment against them and/or the
marginalization of the holistic paradigm
without limiting their ability to work within
and develop the practices of the various
schools of chiropractic that existed prior to
1922.

- 1 14. The decisions in the cases of *Fowler* and *Crees* reflect, in part, prejudice against Unknown, immaterial and irrelevant.
2 chiropractors and the inadequate
3 representation of counsel; including, in the
4 *Crees* case, by the Attorney General's Office.

5 **SECOND CAUSE OF ACTION**

6 (As to Defendant Chiropractic Board Only)

7 (Interpreting Amendments to the Chiropractic Act Relative to "Electives")

8 **Please Note: The "Facts" Stated in ¶¶ 1 to 14, above, are Incorporated into this C/A.**

- 9 15. The amendments, as at issue in this cause of Unknown, immaterial and irrelevant.
10 action (1948, 1970 and 1976), have never
11 been previously at issue, or directly
12 interpreted, in any prior trial or appellate
13 court proceeding, including the *Fowler*
14 (1938) and *Crees* (1963) cases.
- 15 16. The Chiropractic Board (SBCE) has never Immaterial and irrelevant.
16 considered or defined any specific
17 standards for electives provided for by
18 amendments to the Chiropractic Act, or
19 otherwise; nor has the SBCE ever defined
20 any practice rights that chiropractors may
21 acquire by completion of electives.
- 22 17. No chiropractic college approved by the Unknown, immaterial and irrelevant.
23 SBCE has ever offered electives as part of
24 its basic chiropractic degree program.

25 **THIRD CAUSE OF ACTION**

26 (As to Defendants Chiropractic Board & Council of Chiropractic Education)

27 (School Approval/Accreditation Process)

28 **Please Note: The "Facts" Stated in ¶¶ 1 to 17, above, are Incorporated into this C/A.**

- 18 18. The CCE acting for itself through its Unknown, immaterial and irrelevant.
19 members, affiliates, associates, auxiliary
20 organizations and agents actively
21 supported and promoted the enactment of
22 the 1976 and 1978 amendments to the
23 Chiropractic Act.
- 24 19. The CCE, as it existed prior to Unknown, immaterial and irrelevant.
25 incorporation as a separate, autonomous,
26 entity in 1971 did, in the 1940-50s,
27 through its control over the accreditation
28 process for chiropractic schools,
significantly limit the schools of
chiropractic as they had existed prior to
1922 and to the 1940-50s; including the
importance of the holistic paradigm.

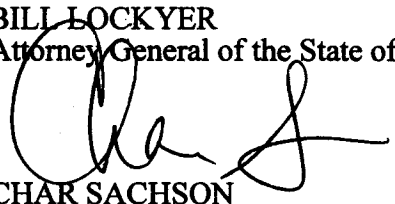
- 1 20. Since becoming a separate entity in 1971, Unknown, immaterial and irrelevant.
 2 the defendant CCE accepted, endorsed and
 3 ratified the actions of the CCE referred to
 4 in ¶ 19 above, and has, since that time has
 5 coerced chiropractic colleges into abiding
 6 by its limited perspective on the scope of
 7 chiropractic practice by its control and
 8 regulation of the chiropractic accreditation
 9 process.
- 6 21. At no time since 1971 has the CCE Unknown, unintelligible, immaterial and
 7 directed or attempted to direct chiropractic irrelevant.
 8 colleges preparing students to become
 9 licensed in California to offer electives.
 10 The CCE does not now consider itself, nor
 11 has it ever considered itself, to have any
 12 duty or responsibility to make sure CCE
 13 accredited schools comply with the
 14 curriculum requirements of section to of
 15 the Chiropractic Act.
- 12 22. Each of the plaintiffs graduated from a Unknown, immaterial and irrelevant.
 13 school accredited by the CCE; none of
 14 them were offered any electives during
 15 their undergraduate training; nor were
 16 granted any increased practice rights by
 17 the completion thereof.
- 15 23. One or more of the plaintiffs intend to Unknown, immaterial and irrelevant.
 16 take postgraduate elective education to
 17 acquire additional practice rights if it is
 18 made available.
- 18 24. The accreditation/approval of chiropractic Unknown, immaterial and irrelevant.
 19 schools directly impacts the professional
 20 reputation and public perception of all
 21 chiropractors and directly affects the
 22 plaintiffs' scope of practice on the basis of
 23 those "facts" heretofore stated.
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PLAINTIFFS' ADDITIONAL FACTS AND CONTENTIONS

- 1. Neither the SBCE, nor any of its agents, associates, or designees, has ever administered, and they do now administer any examinations relative to elective chiropractic education Unintelligible, immaterial and irrelevant.

Dated: 1/23/04

Respectfully submitted,
 BILL LOCKYER
 Attorney General of the State of California

 CHAR SACHSON
 Deputy Attorney General
 Attorneys for Defendants/Respondents

DECLARATION OF SERVICE

(AG Mailroom)

Case Name: *Tain, et al. v. State Board of Chiropractic Examiners, et al.*

No. CGC 03-419378

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On January 23, 2004, I served the attached **RESPONSE TO PLAINTIFFS' SEPARATE STATEMENT OF DISPUTED AND UNDISPUTED FACTS OF THE STATE BOARD OF CHIROPRACTIC EXAMINERS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, addressed as follows:

David Prescott, Esq.
Veritas Justice and Bioethics Institute
22365 El Toro Road, Suite 109
Lake Forrest, CA 92630
Attorneys for Plaintiffs

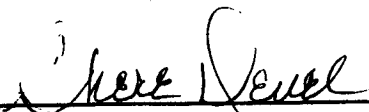
Jose Guerrero, Deputy Attorney General
California Department of Justice
Office of the Attorney General
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Acupuncture Board

Michael Schroeder, Esq.
1851 East First Street, Suite 1160
Santa Ana, CA 92705
The Council on Chiropractic Education

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 23, 2004, at San Francisco, California.

Chere Deuel

Typed Name



Signature