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David Prescott – Bar # 44092
Edwin Grauke – Colorado Bar # 030701
VERITAS JUSTICE and BIOETHICS INSTITUTE
22365 El Toro Road, Suite 109
Lake Forrest, California 92630
(714)649-0661

Attorneys for Plaintiffs

FILED
San Francisco County Superior Court

APR 20 2004 *2004*

GORDON PARK-LI, Clerk
BY: *[Signature]*
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

LAURENCE TAIN, D.C.; DONALD NIELSEN, D.C.;)	
ROBERT BITTERS, D.C.; STEPHANIE)	NO: CGC-03-419378
WATTENBERG, D.C.; and LORI PRESCOTT, D.C.)	
)	
Plaintiffs/Petitioners,)	JUDGMENT BY COURT
)	UNDER CCP § 437C
v.)	AS TO STATE BOARD OF
)	CHIROPRACTIC
STATE BOARD OF CHIROPRACTIC EXAMINERS;)	EXAMINERS and
CALIFORNIA ACUPUNCTURE BOARD; THE)	CALIFORNIA ACUPUNCTURE
COUNCIL ON CHIROPRACTIC EDUCATION, INC.;)	BOARD
and DOES 1 to 20)	
)	
Defendants/Respondents.)	
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The motions of the State Board of Chiropractic Examiners and California Acupuncture Board for Summary Judgment as to the plaintiffs' Second Amended Complaint came on regularly for hearing on January 28, 2004, in Department 502, the Honorable Charlene Padovani Mitchell, Judge presiding. Plaintiffs were represented by David Prescott, Esq., Veritas Justice and Bioethics Institute. The defendant State Board of Chiropractic Examiners was represented by Char Sachson, Deputy Attorney General, California Department of Justice. The defendant California Acupuncture Board was represented by Jose R. Guerrero, Deputy Attorney General, California Department of Justice. The court on January 28, 2004, having

Judgment by Court as to State Board of Chiropractic Examiners and California Acupuncture Board

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duly considered the matter, granted the motions for Summary Judgment of the defendant State Board of Chiropractic Examiners and the defendant California Acupuncture Board and ordered entry of judgment in accordance with the court's written order to be thereafter filed. Said written order was filed on February 2, 2004.

Based upon the order granting the Motions for Summary Judgment of the defendants State Board of Chiropractic Examiners and the California Acupuncture Board filed February 2, 2004 and good cause appearing.

IT IS ORDERED ADJUDGED AND DECREED that:

1. The defendants State Board of Chiropractic Examiners and California Acupuncture Board hereby have judgment entered in their favor in accordance with the terms and conditions of the order filed February 2, 2004 a true and correct copy of which is attached hereto marked Exhibit A and the provisions of said order are incorporated herein by reference as though set forth in full.

Dated: April 20, 2004



CHARLENE PADOVANI MITCHELL
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

ENDORSED
FILED
San Francisco County Superior Court

FEB 02 2003 *2004*

GORDON PARK-LI, Clerk
BY: LINDA H. ESPY
Deputy Clerk

CALIFORNIA SUPERIOR COURT

CITY AND COUNTY OF SAN FRANCISCO

DEPARTMENT NUMBER 502

LAURENCE TAIN, D.C.; DONALD
NIELSEN, D. C.; STEPHANIE
WATTENBERG, D.C.; and LORI
PRESCOTT, D.C.
Plaintiff/Petitioners.

) NO: CGC-03-419378

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) ORDER GRANTING SUMMARY

) JUDGMENT AS TO

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v.
STATE BOARD OF CHIROPRACTIC
EXAMINERS; CALIFORNIA
ACUPUNCTURE BOARD, THE COUNCIL
ON CHIROPRACTIC EDUCATION, INC.;
and DOES 1 to 20,
Defendants/Respondents.

*STATE BOARD OF CHIROPRACTIC
EXAMINERS x CALIFORNIA ACUPUNCTURE
BOARD*

The motion of the STATE BOARD OF CHIROPRACTIC EXAMINERS and
CALIFORNIA ACUPUNCTURE BOARD for Summary Judgment, or in the alternative,
Summary Adjudication came on regularly for hearing on January 28, 2004, in Department No.
502, the Honorable Charlene Padovani Mitchell, Judge, presiding. Plaintiff was represented by
David Prescott, Esq., Veritas Justice and Bioethics Institute. Defendant State Board of
Chiropractic Examiners was represented by Char Sachson, Deputy Attorney General, California
Department of Justice. Defendant California Acupuncture Board was represented by Jose R.
Guerro, Deputy Attorney General, California Department of Justice. Defendant Council on
Chiropractic Education, Inc. did not appear for this matter.

1 The court, having considered the separate statements of each party, and the evidence
2 determined by the court to be admissible, as well as the written argument of counsel, finds that
3 there is no triable issue of material fact as to the following causes of action asserted in the
4 pleadings of plaintiffs and that Summary Judgment should be granted for the reasons stated
5 below.

6 As to FIRST CAUSE OF ACTION, that California Code of Regulations, Title 16, Rule
7 302 is invalid and unconstitutional, the Motion for Summary Judgment is GRANTED.
8 Summary Judgment is appropriate where a claim is barred by res judicata. (*Sartor v. Superior*
9 *Court* (1982) 136 Cal.App.3d 322, 328). The law is well settled in California as to the validity of
10 Rule 302 and the scope of chiropractic practice defined therein. (*People v. Fowler* (1938) 32
11 Cal.App. 2d Supp. 737 and *Crees v. Board of Medical Examiners* (1963) 213 Cal.App. 2d 195).

12 As to the SECOND CAUSE OF ACTION, that the court issue a writ of mandamus,
13 requiring the Board of Chiropractic Examiners to provide for certain elective educational courses
14 and training, and to do certain other acts associated with such elective education, the Motion for
15 Summary Judgment is GRANTED.

16 The Chiropractic Initiative Act of 1922, as amended in 1948, 1970 and 1976, gives the
17 Board of Chiropractic Examiners the discretion to include electives in the chiropractic
18 curriculum. A writ of mandate does not lie to compel the performance of a discretionary agency
19 action. (*California State Psychological Assn. v. County of San Diego* (1983) 148 Cal.App. 3d
20 849, 858; *Hunt v. Board of Chiropractic Examiners* (1948) 87 Cal.App. 2d 98, 101 and
21 *Tailfeather v. Board of Supervisors* (1996) 48 Cal.App. 4th 1223, 1244). Therefore, plaintiff's
22 second cause of action fails as a matter of law.

23 As to the THIRD CAUSE OF ACTION, that (1) the 1976 and 1978 Amendments to the
24 Chiropractic Initiative Act of 1922 are unconstitutional as to the school accreditation authority
25 vested in the council of Chiropractic Education, Inc., and (2) that the court issue a writ of
26 mandamus requiring the Board of Chiropractic Examiners to approve schools offering only
27 elective courses, the Motion for Summary Judgment is GRANTED.

28

1 There is no disputed material fact raising an issue of the unconstitutionality of the 1976
 2 and 1978 Amendments to the Chiropractic Initiative Act of 1922. Further, as stated above, a writ
 3 of mandate does not lie to compel the performance of a discretionary agency action. (*California*
 4 *State Psychological Assn. v. County of San Diego* (1983) 148 Cal.App. 3d 849, 858; *Hunt v.*
 5 *Board of Chiropractic Examiners* (1948) 87 Cal.App. 2d 98, 101 and *Tailfeather v. Board of*
 6 *Supervisors* (1996) 48 Cal.App. 4th 1223, 1244).

7 As to the FOURTH CAUSE OF ACTION, that Business and Professions Code Section
 8 4395 is unconstitutional on equal protection grounds, the Motion for Summary Judgment is
 9 GRANTED.

10 Plaintiffs have failed to identify any legally sufficient fundamental rights. Neither the
 11 federal nor state Constitution suggests a person be employed absent the ability to satisfy job
 12 requirements. No prohibitive classification occurs when a statute categorizes those who can and
 13 cannot meet job requirements. (*Johnson v. Civil Service Comm.* (1984) 153 Cal.App. 3d 585,
 14 588-589). Nor is there a fundamental right to seek a particular cure or form of treatment for
 15 one's illness. (*People v. Younghanz* (1984) 156 Cal.App. 3d 811, 816). Plaintiffs claim that a
 16 right to enjoy the economic benefits and property rights of their chosen profession is a
 17 fundamental one. However, chiropractors do not have the right to penetrate human tissues by
 18 long established case authority and the scope of practice as defined in Chiropractic Board Rule
 19 302. Section 4935 serves a legitimate state interest by protecting the public from persons who are
 20 not qualified to penetrate human tissues by virtue of their training, education, examination and
 21 scope of practice. The work of physicians, podiatrists, and dentists by virtue of their respective
 22 scope of permitted practices have potentially greater health and safety consequences for their
 23 patients based upon their ability to perform surgery. Consequently, it is not irrational that the
 24 Legislature would exclude chiropractors from the exemption allowed to these other licensed
 25 professions. As our Supreme Court stated in *Warden v. State Bar* (1999) 21 Cal.4th 628, 649, "a
 26 court may not strike down a classification simply because . . . it may be to some extent
 27 underinclusive. . ." Section 4935 is consistent with the prohibition in the Chiropractic Initiative
 28

1 Act that chiropractors may not penetration human tissues, and plaintiffs' argument is without
2 merit.

3
4 IT IS THEREFORE ORDERED that the said motion for Summary Judgment is
5 GRANTED.
6

7 DATED: *January 30*, 2004

Charlene Padovani Mitchell
8 Hon. Charlene Padovani Mitchell
9 Judge of the Superior Court
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ENDORSED
FILED
San Francisco County Superior Court

FEB 02 2003 ~~2003~~ 2004 *la*

Superior Court of California
County of San Francisco
Department 502

GORDON PARK-LI, Clerk
BY: LINDA K. ESPY
Deputy Clerk

LAURENCE TAIN, D.C.; DONALD NIELSEN, D.C.;
ROBERT BITTERS, D.C.; STEPHANIE
WATTENBERG, D.C., and LORI PRESCOTT, D.C.
Plaintiff(s)

Case Number: CGC-03-419-378

CERTIFICATE OF SERVICE BY MAIL
(CCP 1013a (4))

vs.
STATE BOARD OF CHIROPRACTIC EXAMINERS;
CALIFORNIA ACUPUNCTURE BOARD; THE
COUNCIL ON CHIROPRACTIC EDUCATION, INC.
Defendant(s)

I, Linda Espy, a Deputy Clerk of the Superior Court of the City and County of San Francisco, certify that I am not a party to the within action

On February 2, 2004 I served the attached ORDER GRANTING SUMMARY JUDGMENT AS TO STATE BOARD OF CHIROPRACTIC EXAMINERS and CALIFORNIA ACUPUNCTURE BOARD by placing a copy thereof in a sealed envelope, addressed as follows:

David Prescott, Esquire
Veritas Justice & Bioethics Institute
22365 El Toro Road, Suite 109
Lake Forrest, CA 92630

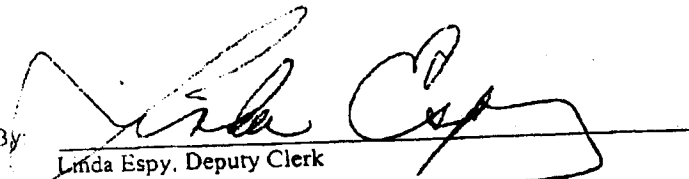
Char Sachson
Deputy Attorney General
Department of Justice, State of California
Attorney General's Office
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Jose R. Guerrero
Deputy Attorney General
Department of Justice, State of California
Attorney General's Office
1515 Clay Street, 21st Floor
OAKLAND, CA 94612

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA, 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: February 2, 2004

Gordon Park-Li, Clerk

By: 
Linda Espy, Deputy Clerk

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Errata