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David Prescott – Bar # 44092  
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(714)649-0661

Attorneys for Plaintiffs

EMERGED FILED  
SUPERIOR COURT  
COUNTY OF SAN FRANCISCO

JAN 15 2004

GORDON PARIGLI, Clerk  
PP  
Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

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

Plaintiffs/Petitioners, )

v. )

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

Defendants/Respondents. )

NO: CGC-03-419378

RESPONSE OF  
PLAINTIFFS TO  
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: Not set

PRELIMINARY STATEMENT

“Undisputed Material Facts No. 1 to No. 5” (p. 2 of SBCE’s separate statement –  
“Facts”) are repeated, verbatim, as “Undisputed Material Facts No. 1 to No. 5” and again as  
“Undisputed Material Facts No. 8 to No. 12” and “14 to 18” under the MOTION FOR  
SUMMARY ADJUDICATION (pages 5 to 7). Plaintiffs will hereafter respond to the “facts” 1  
to 5 only once but they will cross-reference the various reiterations thereof. Likewise,  
“Undisputed Material Facts 6, 7 and 8” are duplicated under the MOTION FOR SUMMARY  
ADJUDICATION. “Facts” 6, 7 and 8 will also only be specifically responded to once.

**PLAINTIFFS' RESPONSE TO SBCE'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS**

**MOTION FOR SUMMARY JUDGMENT**

**General Undisputed Material Facts**

**SBCE's MATERIAL FACTS &**

**ALLEGED SUPPORTING EVIDENCE:**

**PLAINTIFFS' RESPONSE:**

1. Plaintiffs are all licensed chiropractors in the State of California. (Also, Motion for Summ. Ad. – Nos. 1, 8 & 14)

Undisputed

Second Amended Complainant (sic) ("SAC") at p. 2, paragraph 2; Exhibits of the Chiropractic Board in Support of Motion for Summary Judgment, etc. ("Exhibits") at B-F; Declaration of Jeanine Smith ("Smith") at p. 2, paragraph 2.

2. No administrative or other action has been brought against any of the plaintiffs alleging any violation of the Chiropractic Act or any rule or regulation of the Chiropractic Board. (Also, Motion for Summ. Adjud. – Nos. 2, 9 & 15)

Undisputed

SAC at p. 5, paragraph 19; Chiropractic Board Exhibits at B-F; Smith at p. 2, paragraph 4.

3. There are no charges against any of the plaintiffs for practicing medicine or any other healing profession without appropriate licensure. (Also, Motion for Summ. Adjud. – Nos. 3, 10 & 16)

Undisputed

SAC at p. 5, paragraph 19.

4. Plaintiffs have never filed any petition for rulemaking or other determinative interpretation or ruling from the Chiropractic Board concerning the scope of chiropractic practice, the acquisition of "additional practice rights" under the amendments to the Chiropractic Act, or the legality of the role of the Council on Chiropractic Education under the Act, as amended. (Also, Motion for Summ. Adjud. – Nos. 4, 11 & 17)

Undisputed



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practice rights,” i.e., an expanded scope of chiropractic practice, to be obtained thereby.  
(Also, Motion for Summ. Adjud. – No. 13)

Chiropractic Board Exhibits at I., submitted in support of Motion For Summary Judgment.

The Role of the Council on Chiropractic Education under the Amendments to the Chiropractic Act of 1922 Does Not Violate California Constitution Article II, Section 12

- 9. The plain text of the amendments at issue herein does not confer any function to perform or possession of any power or duty on the Council on Chiropractic Education.  
(Also, Motion for Summ. Adjud. – No. 19) Disputed – legal argument.

**PLAINTIFFS SUBMIT THAT THE FOLLOWING ADDITIONAL FACTS AND CONTENTIONS (FACTS) ARE BOTH MATERIAL AND DISPUTED IN THIS CASE**

DISPUTED MATERIAL FACTS (CONTENTIONS)

SUPPORTING EVIDENCE

HISTORICAL BACKGROUD

(Incorporated into Causes of Action One through Four)

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| <ul style="list-style-type: none"> <li>1. There was more than one “school of chiropractic” thought prior to 1922.</li> <li>2. The respective “schools” had different perspectives about the education, training and scope of practice for chiropractors;</li> <li>3. One “school” included treatment by means of osseous and soft tissue manipulation, neurovisceral and neuromusculoskeletal care, physical and reflex therapeutics (in part, based on Chinese meridian theory), and the full use of the naturopathic materia medica; but, prohibited the practice of allopathic medicine by chiropractors.</li> <li>4. The “naturopathic materia medica”, prior to 1922 and to the present, includes at least herbs, homeopathics, nutritional and other substances derived from botanical, mineral or animal</li> </ul> | <ul style="list-style-type: none"> <li>¶ 14 of SBCE’s Answer to SAC, ¶ 14</li> <li>¶¶ 15 &amp; 16 of SBCE’s Answer to plaintiffs’ Second Amended Complaint (SAC), ¶¶ 15 &amp; 16.</li> <li>¶¶ 16 &amp; 26 of SBCE’s Answer to SAC, ¶¶ 16 &amp; 26.</li> <li>¶ 17 of SBCE’s Answer to SAC, ¶ 17.</li> </ul> |
|--|--|

1 sources, plus air, water, clay, heat, sound, light,  
2 electricity, magnetism, physical movement therapies,  
3 massage, suggestive therapeutics and rest.

- 4 5. The wording of the 1922 Chiropractic Act ¶ 18 of SBCE's Answer to SAC,  
5 (1922 Act) was the product of an agreement ¶ 18  
6 between the various schools and with  
7 persons licensed as naturopaths under  
8 the 1909 amendment to the 1907 Medical  
9 Practice Act

### 10 FIRST CAUSE OF ACTION

11 (As to Defendant Chiropractic Board Only)

### 12 (Declaratory and Injunctive Relief Relative to Chiropractic Board Rule 302 13 and the Original Intent of the 1922 Chiropractic Act)

#### 14 Liberal Constrution & Requirements of 15 Constitutional Law

- 16 6. Health care practitioners, including medical ¶ 28 of SBCE's Answer to SAC,  
17 technicians and acupuncturists, with between ¶ 28.  
18 1% and 50%, of the 4400+ hours of education Declaration of David Prescott and  
19 and training required for the chiropractic license Plaintiffs' Exhibits D & E as  
20 are permitted by law to penetrate human referred to therein.  
21 tissues with therapeutic needles.
- 22 7. Orthodox medicine has, since at least the 1860s, ¶¶ 31 to 34 of SBCE's Answer to  
23 been, and it now is, allopathic medicine and it is SAC, ¶¶ 31 to 34, inclusive.  
24 based upon a different theory of biological  
25 organization, development, regulation and  
26 pathology (allopathic paradigm) to that of all  
27 schools of chiropractic (holistic paradigm);  
28 chiropractors did, before 1922, generally subscribe  
to the holistic paradigm (many still do); these  
paradigms touch upon issues of ultimate concern.
8. During the period from the early 1900s to the start ¶ 40 of SBCE's Answer to SAC,  
of the 1990's the holistic paradigm was a ¶ 40.  
marginalized concept in the United States.
9. Rule 302 contributes to the marginalization of ¶¶ 23 & 35 of SBCE's Answer to  
the holistic paradigm and unreasonably interferes SAC, ¶¶ 23 & 35.  
with the rights of chiropractors to practice within  
the scope of practice intended by the 1922 Act, to  
fully use and develop the holistic paradigm, to  
develop their identity within their profession and  
to fully enjoy the economic benefits thereof.
10. Rule 302 also impedes the ability of patients to ¶ 37 of SBCE's Answer to SAC,  
choose lawful alternative health care. ¶ 37.

- 1 11. Chiropractors are a discrete, insular minority that have been, and now are, subjugated and  
2 they have been historically subjected to a pattern  
3 of invidious discrimination; in part because they  
4 generally subscribe to the holistic paradigm. ¶¶ 40 & 42 through 44, inclusive  
5 of the SBCE's Answer to SAC,  
6 ¶¶ 40 & 42 through 44, inclusive.
- 7 12. The discrimination against chiropractors, and  
8 resulting diminution of their practice rights, has  
9 been, and it continues to be, perpetrated from  
10 without and within the chiropractic profession;  
11 including by federal and state agencies and The  
12 Council on Chiropractic Education (CCE). ¶¶ 42 through 44, inclusive of the  
13 SBCE's Answer to the SAC,  
14 ¶¶ 42 through 44, inclusive.
- 15 13. Chiropractors could not in the past, and they  
16 cannot now, alter the effects of the unequal  
17 treatment against them and/or the  
18 marginalization of the holistic paradigm  
19 without limiting their ability to work within  
20 and develop the practices of the various  
21 schools of chiropractic that existed prior to 1922. ¶ 41 of SBCE's Answer to SAC,  
22 ¶ 41.
- 23 14. The decisions in the cases of *Fowler* and *Crees*  
24 reflect, in part, prejudice against chiropractors  
25 and the inadequate representation of counsel;  
26 including, in the *Crees* case, by the Attorney  
27 General's Office. ¶ 43(a) of SBCE's Answer to  
28 SAC, ¶ 43(a); Declaration of  
David and Plaintiffs' Exhibits  
D & E as referred to therein.

**SECOND CAUSE OF ACTION**

(As to Defendant Chiropractic Board Only)

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

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

- 15 15. The amendments, as at issue in this cause of  
16 action (1948, 1970 and 1976), have never  
17 been previously at issue, or directly interpreted,  
18 in any prior trial or appellate court proceeding,  
19 including the *Fowler* (1938) and *Crees* (1963) cases. ¶ 54 of SBCE's Answer to SAC,  
20 ¶ 54; SBCE, Exhibit J.
- 21 16. The Chiropractic Board (SBCE) has never considered  
22 or defined any specific standards for electives  
23 provided for by amendments to the Chiropractic Act,  
24 or otherwise; nor has the SBCE ever defined any  
25 practice rights that chiropractors may acquire by  
26 completion of such electives. ¶ 59 of SBCE's Answer to SAC,  
27 ¶ 59. (SBCE affirmatively alleges  
28 that no rights may be acquired by  
the completion of electives.)
- 17 17. No chiropractic college approved by the  
18 SBCE has ever offered electives as  
19 part of its basic chiropractic degree  
20 program. ¶ 60 of SBCE's Answer to SAC,  
21 ¶ 60.

THIRD CAUSE OF ACTION

(As to Defendants Chiropractic Board & Council of Chiropractic Education)  
(School Approval/Accreditation Process)

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

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18. The CCE acting for itself and acting through its members, affiliates, associates, auxiliary organizations and agents actively supported and promoted the enactment of the 1976 and 1978 amendments to the Chiropractic Act. ¶ 82 of SBCE's Answer to SAC, ¶ 82.
19. The CCE, as it existed prior to incorporation as a separate, autonomous, entity in 1971 did, in the 1940-50s, through its control over the accreditation 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. ¶ 44 of SBCE's Answer to SAC, ¶ 44(c-d).
20. Since becoming a separate entity in 1971, the defendant CCE accepted, endorsed and ratified the actions of the CCE referred to in ¶ 19 above, and has, since that time has coerced chiropractic colleges into abiding by its limited perspective on the scope of chiropractic practice by its control and regulation of the chiropractic accreditation process. ¶¶ 79 & 80 of SBCE's Answer to SAC, ¶¶ 79 & 80.
21. At no time since 1971 has the CCE directed or attempted to direct chiropractic colleges preparing students to become licensed in California to offer electives. The CCE does not now consider itself, nor has it ever considered itself, to have any duty or responsibility to make sure CCE accredited schools comply with the curriculum requirements of section to of the Chiropractic Act. ¶ 81 of SBCE's Answer to SAC, ¶ 81.
22. Each of the plaintiffs graduated from a school accredited by the CCE; none of them were offered any electives during their undergraduate training; nor were granted any increased practice rights by the completion thereof. ¶ 76 of SBCE's Answer to SAC, ¶ 76.
23. One or more of the plaintiffs intend to take postgraduate elective education to acquire additional practice rights if it is made available. ¶ 77 of SBCE's Answer to SAC, ¶ 77.
24. The accreditation/approval of chiropractic schools directly impacts the professional ¶ 75 of SBCE's Answer to SAC, ¶ 75.

1 reputation and public perception of all  
2 chiropractors and directly affects the plaintiffs'  
3 scope of practice on the basis of those "facts"  
4 heretofore stated.

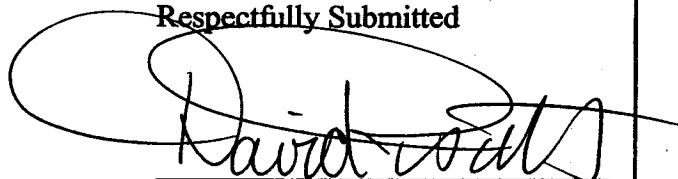
5 **PLAINTIFFS SUBMIT THAT THE FOLLOWING ADDITIONAL FACTS AND**  
6 **CONTENTIONS (FACTS) ARE BOTH MATERIAL AND**  
7 **UNDISPUTED IN THIS CASE**

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

¶ 61 of SBCE's Answer to SAC,  
¶ 61. (SBCE affirmatively alleges  
its only obligation is to examine  
over those subjects it considers  
part of the minimum requirements  
set forth in section 5 of the Act.

12 Dated: January 8, 2004

Respectfully Submitted



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15 **DAVID PRESCOTT, &**  
16 **EDWIN GRAUKE**  
17 Veritas Justice & Bioethics Institute  
18 Attorney for Plaintiffs  
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28 <sup>1</sup> Plaintiff's Exhibits refers to exhibits attached to "Request for Judicial Notice in Support of Plaintiffs' Opposition to Motions for Summary Judgment/Adjudication of Defendants State Board of Chiropractic Examiners & California Acupuncture Board"

## (PROOF OF SERVICE BY MAIL – 1013a, 2015 C.C.P.)

STATE OF CALIFORNIA            )  
   )  
 COUNTY OF ORANGE            )            ss.

I am a citizen of the United States. I am over the age of eighteen years and not a party to the within entitled action. My business address is 22365 El Toro Rd., Suite 109, Lake Forrest, California 92630.

On January 12, 2004 I served the within RESPONSE OF PLAINTIFFS TO SEPARATE STATEMENT OF DISPUTED AND UNDISPUTED FACTS OF THE STATE BOARD OF CHIROPRACTIC EXAMINERS on the Chiropractic Board, Acupuncture Board and on The Council on Chiropractic Education by placing a true and correct copy in a sealed envelope, express two-day delivery, addressed as follows:

CHIROPRACTIC BOARD  
 Ms. Char Sachson, Esq.  
 Deputy Attorney General  
 455 Golden Gate Ave., Ste. 11000  
 Oakland, Calif. 94102-3664

ACUPUNCTURE BOARD  
 Mr. Jose Guerrero, Esq.  
 Deputy Attorney General  
 1515 Clay St., 20<sup>th</sup> Floor  
 Oakland, Calif. 94612-0550

THE COUNCIL ON CHIROPRACTIC EDUCATION  
 Mr. Michael Schroeder, Esq.  
 1851 East First Street, Suite 1160  
 Santa Ana, Calif. 92705

I deposited the envelope in the U.S. Postal Service the same day with first-class postage thereon fully prepaid at Lake Forrest, California.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed on January 12, 2004, at Lake Forrest, California

  
 David Prescott