Dynamic Chiropractic
THE CHIROPRACTIC NEWS SOURCE
An MPN Media Publication

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Dynamic Chiropractic – March 12, 2006, Vol. 24, Issue 06

The Fight Continues

By James Edwards, DC

After a federal district judge ruled that federal law does not prevent medical doctors and osteopaths from performing a "manual manipulation of the spine to correct a subluxation," the ACA appealed the erroneous decision. Thankfully, the U.S. Court of Appeals for the District of Columbia reversed the lower court decision in what was a major victory for the chiropractic profession and the patients we serve![1] The appeals panel further questioned the District Court's opinion regarding which health care practitioners **are qualified** to provide the chiropractic service, not simply which providers **have a license** to do so.

So, what does all of this mean and where do we go from here? There are several crucial and positive aspects to the Court of Appeals' ruling. The obvious plus is the reversal of the lower court's decision that MDs and DOs, merely because of their licensure, are entitled to provide the manual manipulation of the spine to correct a subluxation.

Without question, the Court of Appeals significantly changed the issue to ask which provider is "qualified" to provide the subluxation service. The Court of Appeals determined that the District Court lacked the jurisdiction to make that determination and ruled that the new Medicare administrative process is now the proper forum to deal with the issue of who is and who is not "qualified" to correct subluxations of the spine.

Since the ACA began pursuing this issue more than 15 years ago, HHS has always maintained that MDs and DOs are physicians, and that this is a physician service; therefore, MDs and DOs may provide the subluxation correction service. There was never any consideration by HHS as to whether MDs and DOs knew anything about correcting a subluxation of the spine, whether they were qualified to do so, or whether they would ever actually perform the service. With the application of this new appeals process based on the court's ruling, the profession now has a forum to get to the heart of the matter.

The Court of Appeals made it very clear that it is not an absolute given that MDs and DOs may provide the service simply because of statutory definitions; now, it is a question of who is **qualified** to provide the service to patient.

The chiropractic profession has overcome a major legal obstacle with this ruling and we will now need to carry it through with administrative actions across the country to establish that only chiropractors are "qualified" to correct subluxations of the spine through the means of manual manipulation. This will require educating doctors about the new appeals process and perhaps supporting selective administrative appeals.

There is also a major overriding factor in all of this: The new Medicare prescription drug program will encourage more and more seniors to enter a Medicare-approved managed care plan. Without these kinds of administrative challenges, these seniors will find no meaningful chiropractic care under these plans. Our efforts in this regard could not have been timelier and more important.

In the final analysis, the Court of Appeals' ruling means that the fight continues! In fact, the defense of our right to be the sole provider of subluxation correction begins anew! And that will take financial resources to accomplish.

For all of you who have supported the National Chiropractic Legal Action Fund from the beginning, you should be very proud. But we cannot stop now! The administrative process will require expert legal advice in order to ensure that a doctor of chiropractic is the only provider authorized to provide the chiropractic benefit. For those of you who have not yet contributed to the NCLAF, isn't it time you started? To join the NCLAF and ACA in this historic war by making a $100 monthly contribution to the NCLAF, contact me by e-mail or fax (775-254-4115) for more details.

Author's note: The opinions expressed in this article are solely those of the author and do not necessarily represent the opinions, policies or positions of the American Chiropractic Association or the National Chiropractic Legal Action Fund.

Reference

1. Devitt M. Landmark decision in ACA lawsuit against HHS. Appeals Court ruling breathes

new life into legal battle. *Dynamic Chiropractic*, Jan. 15, 2006. **www.chiroweb.com/archives/24/02/12.html**.

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