

The HHS Subluxation Lawsuit: It Ain't Over!
By James D. Edwards, D.C.
NCLAF Chairman

On Oct. 14, 2004, a federal District Court ruling stated: "The court will simply reiterate its conclusion that 42 U.S.C. 1395x(r) does not prevent doctors of medicine and osteopaths from performing a 'manual manipulation of the spine to correct a subluxation.'" How is that for getting your attention? How is that for attacking the very core of the chiropractic profession?

By now, you have no doubt heard that the ACA appealed this erroneous decision and on December 13, 2005, the U.S. Court of Appeals reversed the lower court decision in what was a major victory for the chiropractic profession and the patients we serve! The appeals panel further questioned the District Court's opinion on the issue of which health care providers are qualified to provide the chiropractic service – not simply which providers have a license to do so.

To help you understand what all of this means, I would like to give you a brief snapshot of the legal landscape at this time.

There are a couple of crucial and positive aspects to the appeal court's 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 service.

Without question, the Court of Appeals significantly changed the issue to one of which provider is "qualified" to provide the subluxation service. The Court 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 over 15 years ago, HHS has always maintained that MDs and DOs are physicians, and that this is a physician service and 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, but now it is a question of who is "qualified" to provide the service to patient.

We have 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 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 Appeals Court's ruling means this that no fat lady has sung and IT AIN'T OVER! 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 that have supported the National Chiropractic Legal Action Fund from the beginning, you should be very proud of yourself. But we cannot stop now! The administrative process will require expert legal advice all the way in order to ensure that a doctor of chiropractic is the only provider authorized to provide the chiropractic benefit.

For those of you that have not yet contributed to the NCLAF, isn't it time you started?! We are fighting for your practice, your profession and your patients and we need you to join us. Please fill out the pledge form on the page and fax it in today.

Dr. Edwards can be contacted by email at JamesEdwards@JamesEdwards.com