

An ACA Interview with Organizer Bill Holmberg, DC

Editor's note: This is an interview the ACA conducted with Bill Holmberg, DC, on the impact of its lawsuit against Trigon Blue Cross/Blue Shield, and its federal lawsuit against the U.S. Department of Health and Human Services (specifically HCFA, now called the Centers for Medicare and Medicaid Services).

Dr. Holmberg worked many hours over 15 years to organize and direct fundraising for chiropractic's pivotal lawsuit against the AMA: *Wilk et al. vs. AMA et al.* Today, Dr. Holmberg is helping raise money for ACA's National Chiropractic Legal Action Fund, which was primarily established to fund the ACA's current legal battles.

The Holmberg interview is followed by brief interviews with Dr. Peter Willis, a member of the Virginia Board of Medicine, and one of the plaintiffs in the Trigon case; Dr. Richard Thompson, chairman of the federal legislation committee of the Ohio State Chiropractic Association; and Dr. Peter Spencer, president of the California Chiropractic Association.

Q: What type of ripple effect might take place if Trigon's type of anti-chiropractic policies and schemes are found to be illegal?

Dr. Holmberg: Every state insurance body, the federal and state legislatures, and the management of insurance companies that have allowed medical physician competitors to fix their benefit schedules, and chiropractors all over the country, would be in a lot better position to receive benefits and get payments from all types of insurance companies - not just the Blues. I think it will affect all insurance payments.

Q: Can you compare the chiropractic profession's current legal battles to the *Wilk* case in terms of their impact on the profession?

Dr. Holmberg: They both have a tremendous impact. The *Wilk* case was more on principle and the fact that the profession was being put down. To me, this case affects the economic ability for the chiropractor to receive payment. That's about what it amounts to. The *Wilk* case did not have the same effect other than from the standpoint that the AMA and all the other medical groups were told to just leave us alone.

Q: Some doctors have said that the Trigon lawsuit only impacts managed care health plans. Do you believe that the case has broader implications, even if you concentrate your practice on personal injury and workers' compensation?

Dr. Holmberg: I think it's going to affect all insurance carriers and all third-party payers that are influenced by competitive medical physicians and directors. It's not going to be just the HMOs and PPOs, etc.

Q: How would a victory in the Trigon lawsuit help increase the chiropractic profession's leverage in your state and help achieve more favorable treatment from insurance carriers?

Dr. Holmberg: If we are successful, the precedent will be there for the public and the legislatures to see, and carriers will have to think twice before they mishandle insurance claims from chiropractors.

Q: What do you believe the impact would be if we were to fail in these lawsuits?

Dr. Holmberg: Bad, bad, bad. I'm afraid it would give all third-party payers the right to be more discriminatory in setting up fee schedules. It could possibly be devastating.

Q: Having been deeply involved with the *Wilk* case as you were, is there anything else you would like to add about the current legal situation that the profession is involved in?

Dr. Holmberg: I am deeply concerned that 60,000 chiropractors are leaning on the generosity of the 11,000 chiropractors that have contributed to this extreme effort to benefit the entire profession and the patients we serve. In a way, the 60,000 are misappropriating the generosity of the 11,000, even though they will stand to reap the benefits if successful and suffer the consequences if it fails for lack of proper resources. A lot of people have said that this is an ACA case. So, the ACA has started it, if you want to say that, but it's going to affect the entire profession. I would urge the entire profession to get involved monetarily at \$100 per month or however they can to support the case. It's not just about the ACA. This is the problem we have in the profession with the two trade associations, the ACA and ICA. One starts something and the other one says "No, it's no good," because the other one started it. I think we need to overcome, as we did in the *Wilk* case. *Wilk* was finally decided to be for the entire profession, and once that happened, the funds came in and we were able to raise enough money to pay all our legal bills and everything.

Q: The typical doctor of chiropractic in his or her practice today is confronted with many problems and many priorities. Clearly, there are many things that a doctor needs to do, many programs that a doctor needs to support at the state and local level to help promote his/her profession. How important in the overall scheme of things do you believe it is for a doctor of chiropractic to support this particular initiative?

Dr. Holmberg: As I said before, it's going to affect every practicing chiropractor in the pocketbook. You have these seminar people who talk about (starting) a cash practice. A doctor might be able to get a cash practice going in one out of a 1,000 cases. I don't care what anyone says. You've got to play the ballgame, and the ballgame is third-party play: HMOs, PPOs, insurance, whatever. This lawsuit is an effort to affect that arena very heavily.

Dr. Jerry Willis Interview

Dr. Holmberg: Dr. Willis, I want to thank you very much for agreeing to make some comments about the National Chiropractic Legal Action Fund from your standpoint as one of the plaintiffs in the Trigon case. How important do you think it is to the profession and your practice that these lawsuits were filed?

Dr. Willis: I think this is probably the most important thing that's happened coming from chiropractic since the *Wilk* suit. They're paying us 40 percent less. Trigon is insulting us and hurting our patients. It's totally unfair. This is an opportunity to try to get a level playing field, and

that's all we want - a level playing field.

Dr. Holmberg: You have been one of the doctors at the center of the whole litigation as an original doctor plaintiff. What has been the effect on your practice because of the special treatment Trigon has afforded to doctors in Virginia?

Dr. Willis: We've had numerous patients who, when they get up to the limit on manipulation, just quit treatment, even though they still have problems. It's difficult to treat a serious problem with 15 adjustments. There are other limitations that are springing up with other companies, and I think that they are encouraged by the *Trigon* case. They are the big-hitters. They insure almost 40 percent of the people in Virginia.

Dr. Holmberg: The type of economic discrimination at issue in *Trigon* is limited reimbursement for the same services as other health care providers, personal injury coverage or workers' compensation. Can you comment on the potential impact the Trigon type of discriminatory policies have on those other types of payers in your state or any state?

Dr. Willis: If Trigon gets away with it, why couldn't MedPay, which currently pays well? Why couldn't other companies develop the same rules and regulations? We've seen companies follow the Medicare restrictions that the *Wilk* case uncovered that grew out of the fraudulent AMA Quackery Committee, so why couldn't we see other companies follow it here? I think if this doesn't stop here, it's going to spread and get worse. If you've got a small group and they can stick it to you, they'll do it. With Trigon being bought out by Anthem, a company four times larger and in about eight other states, there are going to be a lot more people affected.

Dr. Holmberg: What do you think would happen to your patient growth and revenue if the lawsuit against Trigon is successful?

Dr. Willis: There would be a big expansion. For instance, Trigon, which is controlled by the medical profession, also writes the Commonwealth of Virginia insurance. They are self-insured. It's not Blue Cross/Blue Shield, but it's very restrictive. They have a \$40 co-pay; I charge \$35 for adjustments. Their co-payment is more than our services are.

Dr. Holmberg: Forty dollars co-pay for an office visit?

Dr. Willis: Yes, now that's the state insurance, which is administered by Trigon. It is not Trigon, but they are getting those ideas from the same place. This has got to be a collusion-type thing. For instance, national studies say the best thing for low back pain is manipulations and adjustments. Shortly after the U.S. AHCPR study came out, Trigon came out with its own distorted version of the federal study, obviously written by competitive MDs, and generalized manipulations/adjustments were mentioned just in passing. It wasn't one of the main things recommended. This goes on and on.

Dr. Holmberg: I want to come back to this co-pay. A patient goes into a MD's office. Is the co-pay the same?

Dr. Willis: For a general practitioner it's \$10-20.

Dr. Holmberg: Okay, so there's definitely discrimination.

Dr. Willis: Of course there is. We're lumped with orthopedic surgeons, who have much higher fees and who are going to see a patient two or three times. So it's just a way of putting up barriers. We had five young people in their 20s and 30s from the sheriff's department, and all five of them got

minimal care because their insurance just didn't give them any help. All five wrote letters protesting the way their insurance fees were structured.

Dr. Holmberg: Did it do any good?

Dr. Willis: We haven't heard. I would think that if we win this suit, I think they're going to be paying more attention.

Dr. Holmberg: One more question. How important is it to the future of the chiropractic profession that the ACA adopt a highly aggressive legal response when anti-chiropractic behavior is exhibited by employers, managed care companies, insurance carriers, and any other competitor group like the physical therapy association, which is trying to assert that physical therapists can substitute for chiropractors in correcting subluxations of the spine?

Dr. Willis: One of our problems in the past has been we don't have enough numbers, but our numbers have expanded, and we're better organized. If you don't take the aggressive stance, they're going to run over any group. We've got 60,000; the medical profession has probably about 650,000. Who are they going to pick on? It's going to be us. The Virginia Board of Medicine did a study on whether physical therapists should do manipulations in Virginia. The head of the physical therapy department at the medical college of Virginia testified. I asked him if he thought these kids are ready to do spinal manipulations when they get out of his program. I think they had one or two quarters - just a few hours. He said, "Oh, no, they're going to learn that after they get into practice." There were more of them than there were of us. The Committee voted 3-2 to allow PTs to manipulate. There was a retired orthopedic surgeon who voted against it. He was very angry at allowing people who were so poorly trained to perform such a highly skilled and potentially dangerous maneuver if performed by untrained hands. He wanted to file a dissenting report, but we were not allowed to do that.

Dr. Holmberg: Now, in Virginia, a physical therapist can do manipulations or adjustments?

Dr. Willis: Yes.

Dr. Richard Thompson Interview

Dr. Holmberg: How important is it to the profession and doctors in Ohio that these lawsuits were filed?

Dr. Thompson: Being in practice for 30 years, I had the opportunity to go through the *Wilk* suit. *Wilk* was about getting credence and respect from the rest of the medical community. But I look at these lawsuits as economic survival. Without these lawsuits being filed we'd probably be out of Medicare right now. And that now trickles down to Medicaid patients, and I treat a lot of Medicaid patients in southern Ohio. It was vitally important that we filed these suits to get the credibility back in the economic realm.

Dr. Holmberg: Anthem Blue Cross/Blue Shield, which is purchasing Trigon Blue Cross/Blue Shield, I believe covers eight states, including Ohio. Does this concern you?

Dr. Thompson: Anthem is the second largest insurance carrier, which makes it important that we

battle these guys. We're in a "back of the bus" situation right now. Anthem has been fairly good to the Ohio doctors, although we have had our differences, but at least they will come to the table with us, and I think that's what's important about these suits.

Dr. Holmberg: Ohio has been very active in raising funds for the legal action fund. Why do you think your doctors in Ohio are so supportive of the lawsuits?

Dr. Thompson: We have a very strong, single association, not multiple associations like in some other states. We have a group of doctors concerned about what's going on throughout the U.S. Only 11 percent of doctors in the U.S. are contributing to these lawsuits. It's pathetic. Our association is doing a tremendous job of raising funds. Dr. Judson Sprandel from Canton, Ohio, who teaches the doctors in the state how to fight IME and workers' compensation cases, is donating all these proceeds to the lawsuits. So we have another champion in our state, and it's a real privilege to be an Ohio chiropractor. He feels that we need to hang together as a profession, or the MDs will succeed in having us hanged separately.

Dr. Holmberg: In your opinion, would a victory in the Trigon lawsuit help increase the chiropractic profession's leverage in your state to help achieve more favorable treatment by insurance carriers overall?

Dr. Thompson: If we win this Trigon suit, we could possibly put in the field doctors' pockets 40-50 percent more income. I truly believe that that will happen. If we set the precedent with this Trigon lawsuit, then it's going to be the trickle-down effect. These other insurance companies are going to have to come up to the normal standard and pay all their doctors on parity. Again, we have another seat at the table to negotiate with these other insurance companies.

Dr. Holmberg: The lawsuit against HHS addresses a discriminatory regulation that would have squeezed chiropractic out of the Medicare system. Do you believe this case impacts only doctors with Medicare patients, or does it have broader implications?

Dr. Thompson: I believe that it affects all doctors whether they are treating Medicare patients or not, because obviously if we lose the chiropractic position in the Medicare arena, we are going to lose it in Title 19 in Medicaid. Then all of sudden, the insurance companies are going to see that, and we are going to lose our position on the insurance companies. This HHS lawsuit absolutely scored a victory, thanks to ACA, in being able to get the PTs to do what they are supposed to do, but give us what we chiropractors do - treat subluxations.

Dr. Holmberg: How important is it to the future of the chiropractic profession that the ACA adopt a highly aggressive legal response when anti-chiropractic behavior is exhibited by employers, managed care companies, insurance carriers, or competitor groups, like the physical therapy association trying to assert that physical therapists can substitute for chiropractors in correcting subluxations of the spine?

Dr. Thompson: Well, plain and simple, Bill, without ACA initiating these lawsuits, thank heavens along with ICA and World Alliance, and all these other groups coming together, we wouldn't have a future in my opinion. I think this is absolutely a time to take lemons and make lemonade. It brings our national associations together as a group for the second time that I'm aware of in my 30 years of practice. The ICA initiated the *Wilk* suit it and ACA came on board. Now the ACA initiated this one, and all the other groups have come on board to fight our adversaries. First, I see it as a win just to get the chiropractors together. But secondly, if we don't win these lawsuits, we are not going to be in a very good position for the rest of the century.

Dr. Holmberg: I don't know if it's still in their long-range plan, but physical therapists are still trying to get into every state they can, and be given the right to adjust and manipulate the spine for subluxations.

Dr. Thompson: In Ohio, we battle every year to keep PTs from having direct access. Thank heavens we're working with the medical association. But next door, Pennsylvania has lost that battle. I see the PTs are really gaining momentum, so we've got to fight this thing.

Dr. Peter Spencer Interview

Dr. Holmberg: Dr. Spencer, just how important do you feel it is to the profession and to your practice that these lawsuits were filed?

Dr. Spencer I definitely feel it's critical that these lawsuits were filed for our profession and my private practice. Without these lawsuits, I fear there would have been continued erosion of the reimbursement and the recognition of chiropractic by the insurance industry; only by standing up for our rights are we able to stop some of the practices that have been harmful to the chiropractic profession and every chiropractor in private practice. The bottom line is the fair and rightful dollars that we should be able to collect for the services we provide.

Dr. Holmberg: How do you think the private insurance industry in your state and across the country will react if they learn that Trigon's type of anti-chiropractic policies and schemes have been found to be illegal? What type of ripple effect do you think might take place?

Dr. Spencer I am convinced the entire insurance industry is not only aware of this, but also watching these lawsuits. If some policies are found to be illegal I think there will be a lot of companies looking to re-evaluate and restructure how they provide chiropractic services, and how they compensate for chiropractic services. I think they will be put on notice that certain practices will not continue to be allowed under the law, and by continuing those practices they may find themselves at risk of being the victim of a lawsuit. The ripple effect will be that other insurance carriers will catch on and quickly change their policies to allow us to be treated more honestly and fairly.

Dr. Holmberg: And if we fail?

Dr. Spencer I don't think we can totally fail. Total failure would have been to have never filed the lawsuits. The fact that we filed them put the insurance industry on notice that chiropractors will fight back and stand up for fairness and equality. One way to fail would be to run out of money and have to quit before we saw this to completion. It would be a failure that we had enough resolve to stand up for what we believed in, but couldn't raise enough money to see it to its finish. That would be a sad day for me to see. If we fail, the insurance industry will feel it can continue these practices which we disagree with, and some of the polices such as letting others provide chiropractic manipulations to correct subluxations.

Dr. Holmberg: It's been said that the Trigon lawsuit only impacts managed care health plans. Do you believe that the case has broader implications, even if you concentrate your practice on personal injury or workers' compensation?

Dr. Spencer This is not just about managed care. We have already seen in every state that there is encroachment of managed care into personal injury and workers' compensation with HMOs. The managed care model and PPO-type programs in personal injury cases and workers' compensation cases are altering policies, either with limited services or reductions in the amount and type of procedures allowed. Certainly in California we've seen quite a bit of encouragement of these practices in personal injury and workers' compensation, and we must try to stop those.

Dr. Holmberg: Somebody told me within the last year, that 900-1,000 chiropractors have closed their doors in California because of managed care, PPOs and HMOs. Is this really how big the HMOs, PPOs and third-party payers are out there?

Dr. Spencer They're big. I don't have a number on that, but there is definitely an increasing number of doctors who have not been renewing their licenses in recent years. We don't have good, hard statistics on exact reasons why they aren't, but we do know that reimbursements are down in California to very low levels, and income has been affected by that. Fighting for fairness is essential. That's why the California Chiropractic Association has filed a lawsuit against the American Health Specialty Plan for some of their practices, which we think have been unfair. We are battling in court ourselves. We are looking into the legal issues of PPOs taking discounts in workers' compensation and personal injury cases. We're questioning the legality of those discounts. It is taking money out of chiropractors' pockets that we often feel has been taken unfairly. It is making it more difficult for a lot of doctors to make a fair income in California.

Dr. Holmberg: Would a victory in the Trigon lawsuit help increase the chiropractic profession's leverage in your state to achieve more favorable treatment by all insurance carriers?

Dr. Spencer Absolutely. A victory in these lawsuits would definitely help us achieve more favorable treatment. We would point out the Trigon lawsuit and know we could achieve a victory in court if necessary. But hopefully, with more open communications and through negotiations we could achieve a successful result, much more easily than having to go through filing lawsuits.

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