

Feds Drop Dr. Koren's Case

FIRST AMENDMENT RIGHTS OF HEALTH CARE PROFESSIONALS WERE AT STAKE

Editorial Staff

On June 19, 2001, attorneys for the Federal Trade Commission (FTC) informed Tedd Koren, DC, that they had dropped their investigation against him for allegations of false claims in three (of nearly one hundred) pamphlets that Koren Publications makes available to chiropractors and the public.

In a letter to Dr. Koren's attorney, James Turner of the Washington, D.C. law firm of Swankin and Turner, the FTC representatives said that they had "closed" the Koren investigation, noting in a bout of circumlocution that this was not a determination that a violation had not occurred, "just as pendency of an investigation should not be construed as a determination that a violation has occurred."

The FTC letter brought to a close a six-year siege during which Dr. Koren faced the possibility of heavy fines, restrictions on what he could write, and 20 years of "fencing-in" oversight by the FTC. At one point, Dr. Koren signed a consent order negotiated between his first attorney and the FTC, only to have the agency turn around and reject that agreement. This rejection was particularly outrageous to Mr. Turner, Dr. Koren's third attorney.

Mr. Turner was joined by other attorneys in his firm, including Charles Brown, twice-elected former attorney general of West Virginia; David Swankin, former executive director of the White House Office of Consumer Affairs under Lyndon Johnson; Betsy Lehrfeld, former West Coast director of the Council on Economic Priorities; and Christopher Turner, a specialist in regulatory information law. All the attorneys believed strongly that the restrictions proposed for Dr. Koren posed a threat to his constitutional first amendment rights and, if successful, to the first amendment rights of all chiropractors, health care practitioners and other professionals.

The theory of the FTC attorneys was that while it was true that any author could write about the dangers of vaccination, the usefulness of pediatric chiropractic, and the latest information about medical clinical trials, the fact that Dr. Koren was a doctor of chiropractic meant that his writing faced a higher standard of review than the writings of nonprofessional, medically unlicensed journalists. This, in the view of Dr. Koren's attorneys, simply couldn't be, and was not the law.

FTC lawyers told Dr. Koren and his lawyers that the only safe information a chiropractor could give under their theory was on low back pain, and that writing about the dangers of vaccination "terrorized" American families. Dr. Koren's lawyers stated that this approach placed unsupportable limits on the rights of health professionals to write and speak.

Dr. Koren and his legal team sought and obtained the public support of the International Chiropractors Association, Citizens for Health, the Citizens Advocacy Centers and other health and consumer groups. In addition, they also received private, behind-the-scenes assistance from the American Chiropractic Association, which discussed the matter with the FTC attorneys, and sympathetic encouragement from lawyers representing other chiropractors.

The FTC argued that the points made in Dr. Koren's publications were outside the scope of practice of a chiropractor, and were therefore false and misleading. Were the argument upheld, this would place an extraordinary burden on writers and publishers who are also chiropractors.

Jim Turner and his legal team attacked both the notion that Dr. Koren's statements were outside the scope of chiropractic practice and the notion that he was limited to saying only things that fell within the alleged scope. The FTC attorneys refused to reveal the names of their consultants, however, all indications are that the case was generated by the National Council Against Health Fraud, led by the formerly licensed Dr. Steven Barrett, who often consults with the FTC. Barrett, known for his rabidly "anti-chiropractic" rhetoric, said of the case:

"The agency undoubtedly estimates what effect an action will have on others involved in the same industry. Any case could have a deterrent value to others doing the same or similar things...To be effective against Koren, a global order would be needed. I think the FTC's wish to get a broad order is entirely explainable on that basis."¹

Barrett also wrote directly to Dr. Koren, stating:

"I will wind up helping the FTC if they go ahead. I certainly would be willing to do so."

Dr. Koren Announces Health Choice Foundation

To prevent further attacks on the free-speech rights of chiropractors and other and a number of concerned people have established the Foundation for Health Choice. The foundation, according to Dr. Koren, will focus on research and education, and issues of health choice and privacy, "beginning with alerting the public to the significant dangers that accompany routine vaccination and what to do about them."

In announcing the foundation, Dr. Koren stated: "We've been on the defensive far too long. It's time we stopped being pushed around by the pharmaceutical industry, government bureaucrats and the regulatory/industry complex they represent. Now it's our turn to go on the offensive. Our foundation will stand up for the freedoms that are being slowly and steadily denied us.

"Patients, providers, and their families, friends and supporters who seek nondrug-based health care," explained Dr. Koren, "need a home for their concerns. When there's a threatening letter in the mail from regulators and bureaucrats or a knock on your door, we're the people you can turn to."

The foundation's first priority, defending parents and practitioners who resist mandatory vaccination, grows out of Dr. Koren's FTC battle. FTC lawyers accused Dr. Koren of "terrorizing" American parents by writing about well-recognized vaccine dangers. As a chiropractor, they said, he had a higher duty than a journalist and could not write about health dangers not widely accepted. His professional status, they implied, gave the information more value than it deserved. This meant that chiropractors and other professionals that questioned "accepted" medical opinions had less freedom of speech than the average person.

Now that the FTC has dropped its case Dr. Koren intends to use his professional status to call attention to, and help people avoid, the serious dangers inherent in mass mandatory vaccination. "The U.S. government," Dr. Koren asserted, "has spent over one billion dollars compensating

parents for death or injury of their children caused by mandatory vaccination. This carnage must stop. If there is any value in vaccination it must be achieved without randomly killing or maiming children. Government, the medical industry, and private educational institutions must respect the choice of parents and adults to say no to some or all vaccines. Mandatory vaccination is an affront to our Constitutional rights"

The Foundation can be contacted by writing or e-mailing Dr. Koren at: P.O. Box 665, Gwynedd Valley, PA 19437. (Information will soon be up on his web site at www.korenpublications.com.)

"Thanks"

Tedd Koren,DC, wanted to thank all who assisted him in his six-year battle:

"So many DCs, non-DCs and organizations stood with us, supported us in word and contributed to our legal defense fund. So many couldn't afford much, but sent us prayers and spread the word; it was all helpful. We're trying to figure out a way to say 'Thank you,' and we will. Right now, I'm happy to say this: The legal defense fund has closed.

"Thanks go to Donald Epstein,DC, who introduced us to Jim Turner and his legal team at Swankin and Turner. Donny saw the danger of the FTC actions more clearly than I did at first. I'll always remember his letter to the profession: 'We're all on the Titanic. The iceberg is coming, and Ted's stateroom is just closer to it.' Thanks to Harris Coulter,PhD, mentor and advisor, who was always there for us and also recommended Mr. Turner; to Barbara Loe Fisher; and Kathi Williams of the NVIC, who donated to our legal defense fund.

"I thank Joel Margolies, my friend who put out the word immediately in his newsletter and alerted the profession. Joel and his wife Aviva were also very generous in their support. Others who generously helped are Drs. Gina and Bryan Reiker; Dr. Arno Burnier; Drs. Larry Markson, Dennis Perman and "The Masters"; Dr. Scott Walker, developer of NET; the late Dr. Michael Kale; DCs Rod Justice; Peter Thibodeau; Van Fotinopoulos; Tad Reckord; Roy Ostenson; Carleen Thum; Drs. Steven Silk and Raelynn Cancel; and so many others.

"Others to whom I owe thanks include members of the ICA; Drs. Charles Krieger; former ICA presidents Bob Braile and Bob Hoffman; Gerry Mattia; Ron Hendrickson (executive director); Mike McLean; and Bill Remling. You were the only national organization to support us and it meant a lot.

"I am also grateful to the Michigan Chiropractic Council; the Florida Chiropractic Society; the Miami Valley Chiropractic Association (Ohio); the Chiropractic Fellowship of Pennsylvania; the International Chiropractic Pediatric Association; the Niagara Chiropractic Society (Canada); Michelle Whitney,DC (Canada); Robert Gevers,DC (Spain); and Mark Braden (DC student).

"Last, but not least, I thank individual doctors and students. I know you never got the legal documents we kept promising to send out, and then couldn't due to sensitive negotiations that sprang up. I thank you for your indulgence and patience. Thank you, doctors in Canada, England, Australia and other countries. It wasn't even your country, but you saw the danger and helped.

"And thank you if I didn't mention your name. My main regret is that I can't thank everyone personally."

1. Interview with Stephen Barrett, MD ("The Quackwatcher") *American Chiropractor* Vol 21, Issue 1, 1999.
2. Stephen Barrett, MD, board chairman, Quackwatch, Inc. (Letter to Tedd Koren,DC).

