

Wilk vs. AMA: Was It Worth the Fight?

Michael Pedigo, DC

There is a whole new generation of DCs and students in the profession since the 17-year legal battle with the AMA and the other 14 defendants ended in victory for our profession. Many know little or nothing about why the battle was fought. It is not my intent to live in the past, but lessons learned from history play an important role in making right decisions in the future.

In this article, I will address why five doctors of chiropractic filed the antitrust lawsuit in 1976 (Wilk vs. AMA) and highlight some of the victories we won. The reason was really simple: The AMA had created a written goal to "contain and eliminate" a competitor, the chiropractic profession. They created elaborate plans to accomplish this, and then they worked very hard to implement the plans.

In the early 1960s, the AMA had become concerned about the growing cooperation between MDs and DCs. That was not helpful to their "contain and eliminate" goal, so they changed their canon of ethics to make it unethical for any MD to associate with a DC in any way, shape or form. It was unethical for an MD to refer a patient to (or even accept a referral from) a DC.

Can you imagine it being unethical to accept a referral? Yet it was. During the trial, one of the AMA's expert witnesses testified that he would rather see a patient die before accepting a referral from a chiropractor! It's unbelievable but true, and recorded in the court records for all time. MDs were not allowed to teach or address students at chiropractic colleges or chiropractors at gatherings of DCs, nor were DCs allowed to address medical students or gatherings of MDs. It was a complete and total illegal boycott of our profession.

A second part of their plan was to destroy the credibility of our profession in all segments of society and to destroy the self-esteem of the chiropractor. They did this in many ways, one of which was to go around the country telling MDs and medical students that chiropractors were like "killers and rabid dogs." They always referred to us as unscientific cultists and quacks. Society in general listened to their brainwashing lies, because in those days the AMA was considered "God" when it came to health matters. When the media and legislators wanted information about our profession, they asked the AMA rather than the ACA or ICA. Because the AMA was held in such high esteem by society, what they said in those days was taken at face value. Rarely did anyone question the accuracy of their statements. During the discovery process in this case, we were able to determine that just about every anti-chiropractic statement in the media and organizations, such as senior citizens groups and unions, could be traced back to the AMA getting "second parties" to spread their propaganda. Refused to tell their MD that they were seeing a DC. Those that did were told to stop coming because I might "kill them." It wasn't until years later, after filing the lawsuit, that I learned why MDs were saying such things. The AMA was telling them that we were "killers and rabid dogs"!

Since only half of the MDs were AMA members, they needed a hook to force non-AMA members to abide by their boycott of our profession. They got the Joint Commission on Accreditation of Hospitals (JCAH), which the AMA controlled, to adopt the same ethical restraint of associating with DCs they adopted. This was a very powerful hook. MDs that did not follow that rule could lose their

hospital privileges. An MD without hospital privileges would be in a world of hurt. That was one of the strong tools they used to enforce their boycott against our profession.

The following is a brief summary statement of how broad and far-reaching the AMA's actions were:

"Evidence at the trial showed that the defendants took active steps, often covert, to undermine chiropractic educational institutions, conceal evidence of the usefulness of chiropractic care, undercut insurance programs for patients of chiropractors, subvert government inquiries into the efficacy of chiropractic, engage in a massive disinformation campaign to discredit and destabilize the chiropractic profession, and engaged in numerous other activities to maintain a medical physician monopoly over health care in this country."

On August 27, 1987, the judge issued a 101-page opinion finding the AMA guilty of long-term wrongdoing and illegally attempting to eliminate the chiropractic profession. In September of 1987, the judge issued a permanent injunction against the AMA and all of its members from ever trying to destroy our profession through such an illegal boycott again.

On February 7, 1990, the Court of Appeals found the AMA guilty. On November 26, 1990, the U.S. Supreme Court upheld the trial court and the Court of Appeals' finding. In January of 1992, the final settlement took place between the AMA and the plaintiffs to complete all terms of the court order, thus ending one of the longest antitrust legal battles in the history of this country. Was it worth it? Without a doubt!

It wasn't long after we filed the lawsuit that the AMA began modifying their position on chiropractic. Getting an acceptable statement was like pulling teeth. We refused to end this case until we had a statement without "weasel words." Finally, they adopted the following statement, which is current today:

AMA's New Statement on Chiropractic -- Printed in the American Medical News, January 13, 1992

"Revised Paragraph 3.08 of the Current Opinions of the Council on Ethical and Judicial Affairs:

"CHIROPRACTIC. It is ethical for a physician to associate professionally with chiropractors provided that the physician believes that such association is in the best interest of his or her patient. A physician may refer a patient for diagnostic or therapeutic service to a chiropractor permitted by law to furnish such services whenever the physician believes that this may benefit his or her patient. Physicians may also ethically teach in recognized schools of chiropractic."

The results of our victory in winning this important lawsuit have been many fold and are far-reaching. One of the first things I noticed when the AMA lifted the restriction on professional association and cooperation was the founding of the American Back Society, an association of various MD specialists, osteopaths, PTs and chiropractors. Some hospitals have gradually begun to open their doors to DCs. MDs have begun referring patients to DCs, and some MDs and DCs have formed joint practices. Radiology labs will take x-rays and MRIs when prescribed by a DC.

MDs teach in our chiropractic colleges, and DCs lecture to medical students. MDs and DCs conduct joint research. The news media presents a more balanced view of our profession. In fact there are more positive than negative articles on chiropractic these days.

We have more supporters among legislators and get more pro³chiropractic legislation passed on both a state and national level.

The credibility and esteem of our profession and the individual DC is at an all-time high. Had we not been successful in winning this lawsuit, the boycott would still be in effect, and it is likely the

chiropractic profession as a viable, growing member of the health care community would be a shadow of what it is today.

I certainly do not mean to imply that our profession is a bed of roses and that the AMA loves us and is bending over backwards to make up for the wrongs they did all of those years. In fact, I have no doubt that they would still like to see us go away. They are watching what they feared would happen if our profession ever gained the credibility it deserves come to pass. That is the reason they went all-out to stop interprofessional cooperation.

I have no doubt that behind the closed doors of many legislators, insurance officials, etc., they still spearhead anti-chiropractic legislation and policies. They no longer have the credibility they had a few years ago, though, and they must be careful to follow the law. If they don't, we will come after them. They cannot get away from the injunction issued by the court. If they violate it, there are serious consequences to pay.

This lawsuit was never about being anti-medical doctor. There have what's best for their patients. Once the boycott was lifted and the truth about the AMA's actions became known, many MDs got angry at being misled and lied to. Others opened their minds to the possible value of chiropractic research and began doing research and working with DCs.

We have come a long way. We have a long way to go. We will keep marching forward.

JULY 1998