

Chiropractic vs. HMOs in the Courtroom

ANTITRUST ACTION AIMS TO EXPOSE HMOS' DISCRIMINATION AGAINST DCS

Dynamic Chiropractic Staff

- pull* "If the Solla plaintiffs succeed in their efforts to demonstrate how chiropractic is all but totally excluded from HMOs, this will open the door to thousands of DCs to see millions of HMO patients. If this action fails, the precedent of DC exclusion will be set for the entire managed care community."

On December 2, 1993, three Long Island chiropractors filed an action in the United States District Court against the health care organizations who own or operate HMOs within the jurisdiction of the Eastern District of New York. Drs. Philip Solla, Andrew Lacerenza and Nicholas Napolitano and the Chiropractic Alliance for Equal Access to Health Care Organizations (a group of 70 DCs) are claiming that 11 HMOs operating under a Certificate of Authority issued by the New York State Department of Health have excluded chiropractic care from basic covered benefits and joined in a concerted effort to prohibit or curtail referrals of patients for chiropractic care by MDs (PCPs or gatekeepers) wherever HMOs provide "sham" chiropractic covered benefits in or out of a network.

This antitrust action is at the forefront of the chiropractic profession's efforts to gain a foothold in the managed care health services industry. After overcoming resistance and surviving the HMOs' motions to dismiss, the ACA, ICA and every New York State chiropractic organization endorsed the Solla action. The chiropractic plaintiffs submitted proof that the exclusion of chiropractic is a continuation of the conspiracy to eliminate the chiropractic profession as a competitor in the managed health care industry.

The attorneys for the DCs, Weber & Weber, have alleged in the complaint that the HMO defendants conspired to prevent doctors of chiropractic from participating in their respective health care plans. The few HMO plans with covered benefits prohibit chiropractic doctors from practicing in accordance with acceptable standards within the New York and Long Island community, and provide monetary incentives to medical health care providers not to refer enrollees for chiropractic treatment.

William Weber and Laurence Meyer, the Solla lead attorneys, have successfully argued and obtained an order in the stage one discovery proceedings directing each HMO defendant to produce all 1994 and 1995 patient records where the providers claim for payment was based on a diagnosis of specific ICD-9 or CPT codes. These records are expected to demonstrate how HMOs are excluding chiropractic from their basic plans, to the HMOs' financial detriment, and to the consumers' detriment. Attorney William Weber remarked to the court: "This (case) could be the first instance where the plaintiffs are successful in proving antitrust violations, thereby recovering substantial damages, while at the same time the defeated HMO defendants are enabled to turn a profit." In this scenario, Weber added, "The consumers stand to gain not only the option for effective alternative health care at lower cost, but lower premiums as well."

Studies by federal and state agencies, and by foreign governments, conclude that chiropractic care and treatment is as good, if not better, and more cost effective than comparable treatment

rendered by members of the medical or osteopathic community. The HMO defendants are aware of these studies. The discovery order directs the HMOs to produce the scientific studies they relied on when excluding chiropractic coverage from their plans.

The chiropractic plaintiffs have personally financed this antitrust action to the tune of more than \$400,000. A few contributions have been received from chiropractic state associations and DCs throughout the US, but the DC plaintiffs need \$200,000 to continue the discovery phase and to retain the economic experts who will review and render opinions on the HMO defendants' patient records.

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The chiropractic plaintiffs need the financial assistance of the chiropractic profession -- as a whole. This action has great significance for the future of each member of the chiropractic profession. Every chiropractor in the country is asked to send a minimum of \$100 to help support this effort. Contributions need to be sent as soon as possible to:

*The Chiropractic Alliance
c/o Dr. Andrew Lacerenza
199 N. Wellwood Avenue
Lindenhurst, NY 11757*

This is a plea to each and every chiropractic organization in the United States for financial assistance to sustain the chiropractic antitrust action as it enters the crucial and financially burdensome task of the discovery proceedings. The burden of an entire profession in this nation is far too large to be shouldered by a mere 70 chiropractic doctors. The Solla plaintiffs desperately need the help of other doctors of chiropractic. Sharing of the discovery fruits would promote the speedy and inexpensive determination of other actions against HMOs, but only the Solla case has the wherewithal to continue to gather those fruits and otherwise to push this action to a successful conclusion. For further information, contact Mr. William E. Weber, Esq. at (516) 232-0301).

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