

AMN Publishes Court Order, Revised AMA Opinion, and McAndrews' Essay

Editorial Staff

Finally, after 15 years, the American Medical Association (AMA) settled the most noteworthy and significant lawsuit ever filed on behalf of chiropractic. Dr. Chester Wilk, Dr. Michael Pedigo, Dr. James Bryden, and Dr. Patricia Arthur, led by antitrust Counsel Mr. George McAndrews, Esq., filed suit in October 1976 against the AMA. In U.S. District Court, August 27, 1987, Judge Susan Getzendanner's 101-page opinion declared the AMA had engaged in a nationwide boycott of doctors of chiropractic by declaring it unethical for MDs to associate professionally with chiropractors. On February 7, 1990, the U.S. Court of Appeals affirmed Judge Getzendanner's decision. In November of 1990, the U.S. Supreme Court refused to review the case.

As part of the settlement, the January 13, 1992 issue of the American Medical News (AMN) published Judge Getzendanner's permanent injunction order against the AMA (AMN pages 4 & 5), the revised AMA opinion on chiropractors (AMN page 5), and Mr. George McAndrews' 1,996 word essay (AMN pages 5 & 6).

In an exclusive interview, Mr. McAndrews talks about the settlement:

"DC": Mr. McAndrews, what can you tell us about the AMA's settlement of the Wilk et al. suit?

George McAndrews: Most of the information regarding the settlement that is not subject to the confidentiality order, appears in the American Medical News (AMN) where they are complying with either the direct terms of the injunction or the modifications to the direct terms of the injunction that we agreed on as part of the settlement. In respect to the monetary amounts, I can only state that the plaintiffs were satisfied with the monetary amounts. Beyond that, I'm not free to discuss them.

"DC": Knowing all that you know through the past 15 years of the litigation, are you satisfied with the results of the case?

George McAndrews: I'm very much satisfied. If you will look at the AMN, you will see that there is now an open statement to every AMA member, and consequently to almost every medical physician in the United States. There is an affirmative statement that it is ethical for medical physicians to voluntarily associate professionally with doctors of chiropractic. That is awfully important. That leaves the AMA with the right to speak under the first amendment about chiropractic, but not otherwise to interfere with any independent decision made by one of its members to work with a doctor of chiropractic. That also opens it up for doctors of chiropractic to begin working with medical physicians, trying to build relationships in a normal manner.

I think chiropractors should be aware of the fact that no order of a court can ever force individual relationships. As a lawyer I'm free to deal with any client, or not deal with any client: I choose. Doctors of chiropractic would be the first to scream foul if they were ordered to take care of

certain patients, whether or not they felt they should. If they were ordered to set up a group practice with a medical physician that they personally disliked, they would object. The point I'm trying to make is that the law forbids collective activity that takes away individual choice. We can't go a step further and say we're now going to take away individual choice and force relationships on either doctors of chiropractic or doctors of medicine. It is now clear that with the outcome studies that are starting to appear, that more and more medical physicians will be constrained to deal with doctors of chiropractic.

For those who haven't seen the essay, and I understand you may be publishing the essay, (Mr. McAndrews' essay is reprinted on page 5) the essay appeals to their good and common sense. If you'll notice, the first part of the essay quotes the American College of Physician's spokesman in a statement before Congress. One of the things they talk about is their absolute lack of knowledge of what does and doesn't work in certain common problems, one of the most common of which is back ache. I don't wish to constrain chiropractors to that, but it opens the door. The chiropractor should not be wary of the fact that some \$24 billion is tied up in back problems alone in the United States. Chiropractic gets probably less than a seventh of that. So there is plenty of health care activity just in that area that chiropractors should have access to that they do not right now. The last thing I should mention is this: As these studies start to be published, and as the RAND Corporation and the British Medical Journal, and the earlier studies become more widely known, as the American Spine Society starts to indicate that spinal adjusting is a very acceptable form of treatment, the medical profession opens itself up to a future charge by a patient that they were guilty of malpractice in not making a referral to a doctor of chiropractic. And sooner or later, given even the existing state of knowledge in the studies that are out there, a jury is going to accept such a charge. So this is evolutionary. We go first of all to requiring some form of contact or freedom to cooperate, then we go to outcome studies that show that chiropractic in certain conditions is the treatment of choice. We go to the next step: If the medical profession or its members continue to refuse to take advantage of that more beneficial therapeutic approach, then the law opens them up to a charge of malpractice. Doctors of chiropractic understand what standard of care is.

Now that the medical profession is put on notice, through the AMN and other journals, they can no longer sit on their hands and say I did not know. I might add, and I've said it before in "Operation Evidence" that the ACA is conducting, that a great many Americans and a great many medical physicians have not the slightest inkling of the existence of outcome studies favorable to chiropractic. That behooves the entire chiropractic profession to start talking in terms of outcome studies, to support new outcome studies. That's the way they stabilize the profession and gain access federal, state, and private corporate programs for health care.

"DC": Do you anticipate any further problems between the AMA and the chiropractic profession? Does the AMA have a new attitude towards chiropractic?

George McAndrews: It certainly has a new attitude. I can't say the new attitude will preclude friction. Remember now, the AMA is a trade association. Hidden behind the altruistic term "professional society," is the fact that it is a membership organization and as such, and like all membership organizations, must look after the financial interests of its members. Doctors of chiropractic are perhaps the biggest form of competition in the health care field, the biggest potential competition the medical physician group has. You cannot expect the AMA to lie down and allow the doctors of chiropractic to move in and take over large economic segments of health care without some sort of protest from the medical physicians' trade association. If the argument is couched in those terms, those are pro-competitive terms. If the argument is couched in terms of boycott or monopolistic practices, (and here I have in mind the AMA through 25-30 years of monopoly positioning has established somewhat of a fortress), and if its activities result in the

exclusion of doctors of chiropractic from those areas where they are legally entitled, then we will obviously want to review them. But to the extent the AMA's activities just foster wholesome debate and force the chiropractors to direct their attention to outcome studies and more research, then that's the way the system is supposed to operate. You can see from my essay, that's the way I hope things go.

I think the chiropractors have enough to offer that they can win the battle of the marketplace for a large segment of the neuromusculoskeletal and neuromusculoskeletal-related ailments. Having done that, they are open to becoming the primary health care providers that many of them claim to be across the board. Very few medical physicians are universalists: most of them are portal of entry and then gatekeepers for referrals. Chiropractors are positioning themselves for that and they should be happy that they have an area of expertise that is so important to most all human beings. Once that patient is in their hands, they will be able to handle the health care needs and with no barriers to referral, the doctors of chiropractic should be in a position to refer to medical physicians, to osteopathic physicians, to physical therapists, to nurse practitioners, and obtain referrals in return. That's the way the ideal system should function. I don't think it will happen overnight but I see its evolution.

"DC": Some have suggested that the monetary portion of the settlement could be used to help fund chiropractic research. This would be especially fitting considering the fact that the AMA used the apparent lack of chiropractic research as an excuse for attacking the profession. If you could choose how the monetary portion of the settlement could be used, what would you decide?

George McAndrews: Well I'm somewhat constrained here because I am the lawyer for the four plaintiffs and the plaintiffs have dedicated the income that was transferred. I want to be very careful. The income won't be a drop in the bucket compared to the enormous resources that this profession must turn toward research. Nevertheless, the money should be used for research. My own personal view is that it could possibly be used to fund a foundation that would act as seed money, based on my earlier statement that more ambitious resources have to be brought to bear. The chiropractic profession's future in this country is tied into research. They have to be able to prove effectiveness for different conditions as we enter the health care computer age. No one will care about philosophies. When the governmental agencies and the insurance companies start to look for efficiency and effectiveness, they will have to have data. Getting back to whatever the amounts are, and I'm not free to state, whatever they are, I believe they ought to act as seed money for research projects. I'm not the final determiner of that, obviously. I act as a consultant and act as a lawyer, and in that sense I do not make those final decisions.

"DC": Is there anything you'd like to add?

George McAndrews: Yes. I get calls all the time. They show a great deal of impatience. I'm reluctant to dampen any enthusiasm, and I encourage those chiropractors who are activists to remain activists. I merely ask them to understand that the new era of health care is going to require well-intentioned people working together in common for the benefit of the patient. The chiropractors have to look at their own house. I see things that make me want to drop to my knees and weep. I specifically refer to the coupons, the give-aways, the outrageous no out-of-pocket expense, full-page ads that don't mention health care at all, just refer to finances, and how the chiropractor and the patient can get together and deceive the insurance company by removing entry barriers that the insurance company and the patient have bargained for to reduce the premium. I'm taking about the deductible now.

If the chiropractors now begin to realize they are coming of age as they enter the final run toward their centennial year, if they begin to realize that the country is starting to treat them as a mature

profession, then they will realize they will no longer be given a great deal of benefit of doubt for aberrant conduct. What I have characterized in the past as the "weirdness factor." If they wish to be treated as professionals, they have to act as professionals. They have to allow the public to view them as totally professional health care providers, and I might add, as most of the profession is and does. It's the bad apples that no one seems willing to publicly denounce that hurt this profession. When we talk to insurance companies, to ERISA corporations, the ones that can make their own decisions, they pull out of their files these outrageous gimmicks that a few chiropractors use that are obviously a means of distorting the economic indicators involving chiropractic. It's very hard to answer those. During the time when the boycott was in effect, and there were survival tactics being utilized, they couldn't be justified but they could probably be explained. Today they can't be explained or justified: they're an outrage.

If the attempt at dialogue with the medical profession and the other health care professions is to succeed, it requires goodwill not only on the part of medical physicians, but demands goodwill and professionalism from the chiropractic physicians.

Revised AMA Opinion on Chiropractors

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 the physician believes that such association is in the best interests of his or her patient. A physician may refer a patient for diagnostic or therapeutic services 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.

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