Dynamic Chiropractic

NEWS / PROFESSION

New York State Insurance Department Robs Public of Freedom of Choice

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Back in 1963 a bill enacting Article 132 of the New York Education Law established the licensing of chiropractic as a necessary and responsible healing profession.

Article 132 defines chiropractic as; "...detecting and correcting by manual or mechanical means and structural imbalance, distortion or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column. In the ensuing years an assemblyman by the name of Anthony J. Mercorella was instrumental in the sponsoring of bills enhancing DCs rights and extending their scope of practice in New York.

In 1971, chiropractic rights were extended legislatively through a medical equality bill, which would require health insurers to cover chiropractic care, thus allowing the public a freedom of choice of both type of doctor and service in health care.

It was not be be a happily-ever-after saga.

In bitter truth and in an opposite interest, the New York State Insurance Department initiated a regulation to this amendment which contradicted the newly-defined equality bill, which would (and does) permit insurance companies to refuse to reimburse consumers of health care insurance for services rendered by doctors of chiropractic. Through a tangled web of bureaucratic "rhetoric" the regulation provides that intrusive spinal surgery and other medical modalities of treatment are covered, yet the unintrusive and more effective methods of care (basically everything chiropractors do!) are excluded from coverage.

Recently, on March 8, 1990 the New York State Chiropractic Association decided to challenge the regulation by the New York State Insurance Department, enhancing their arguments with the Wilk anti-trust suit and the court's decision upholding the original injunctions of Judge Susan Getzendanner in the recent appeal by the AMA (See the February 28 and March 14 issues of "DC").

"DC" called and discussed the action with the office of the attorney representing NYSCA, who turned out to be none other than the original assemblyman who helped establish the rights of DCs in the state of New York -- Judge Mercorella. In talking with his partner, Arnold Kideckel, we learned that this mandate which emasculates the chiropractors' rights in New York has been in effect for nearly 18 years.

In seeking an amendment, the law requires that first steps must be taken through the agency in question (New York State Insurance Department) -- so accordingly, last year NYSCA filed an application with the agency to request that they redefine their regulation and amend the offending clause.

The agency refused to grant their request, so now the regulation must be challenged in court or must go back through the state legislature.

As it now stands, by its very language, the regulation artfully implies that if a chiropractor takes x-rays for the purpose of detecting whether there is nerve interference resulting from vertebral distortion, misalignment or subluxation, this examination may not be covered. If a medical doctor takes the same x-ray of the very same patient for the "purpose" of diagnosing the patient's condition from the standpoint of his medical training and experience, this examination will be covered.

Legal counsel for the New York State Chiropractic Association now argues, "The regulation further discriminates against chiropractors because whether the examination will be covered depends upon the stated purpose of the examination. If it is stated that the purpose is to determine whether surgery is necessary, then the examination will be covered. If, however, it is stated that the purpose is to determine the necessity of manipulation of the spine, then coverage may be excluded under Part 52.16 (c) (7). Since chiropractors are not licensed to practice surgery, they cannot state the purpose of the examination to be to determine whether surgery is necessary. But with artful words, medical physicians may circumvent the exclusionary language of Part 52.16 (c) (7) and trigger coverage for the examination. A chiropractor has no such ability. The consumer suffers the detriment of unequal coverage based solely on the profession of the health care provider." So, what about the patient who may wish to choose chiropractic manipulation over physiotherapy or surgery by a medical practitioner?

Note the wicked irony to this current regulation -- because a chiropractor's license is limited to the practice of chiropractic -- this regulation provides for wholesale exclusion of chiropractic care.

"Conveniently" for the medical community, this inequality invalidates the original statute, which was created for the patients' freedom of choice of health care providers.

It looks like another battle for chiropractic.

In talking with Judge Mercorella's partner, Arnold Kideckel who has been working on this case, he said, "Having received a negative response from the agency, (the New York State Insurance Department), we are going to continue our fight. We are confident that justice will prevail and equality will be attained."

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