

California Board Of Chiropractic Examiners Seeks Amendments That Will Mandate Educational Diagnostic Responsibility

Editorial Staff

The Problem

The public of California has a reasonable expectation that they will not only be treated safely and competently by a doctor of chiropractic, but that the doctor will be adequately trained to recognize health problems requiring referrals to other health professionals.

California attempts to assure that this expectation will be met by requiring education as defined in Section 5 of the Act. However, neither the Board nor its staff are trained educators, or capable of evaluating educational programs. For this purpose the board relies on Accrediting Agencies to evaluate course content, and establish standards for measuring the quality of education.

The accrediting agency must have the expertise to advise the Board in all areas of education required by California law. Therefore, chiropractic colleges must be accredited by agencies capable of evaluating California's educational standards, as well as the performance of the college in meeting those standards.

The Solution

Add a new preamble and subsection (d) to the current chiropractic law in California as follows:

"Section 331.1 - Approval and Eligibility. (Preamble and Subsection (d) are new.)

"(Preamble) Doctors of Chiropractic accept patients who may be initially entering the health care system in California. Therefore, chiropractic doctors have a legal obligation to diagnose and recognize even those diseases and conditions which may be beyond their scope of practice to treat. The purpose for their knowledge of diagnosis and their trained ability to recognize all manner of health problems is to make those appropriate referrals for the overall protection of the public.

"(a) A school which initially meets the requirements of these rules shall be first provisionally approved. No school will be finally approved until a provisional program has been in operation for at least two years.

"(b) No school shall be provisionally approved until it shall present competent evidence of its organizational and financial ability to attain the minimum educational requirements set forth by these rules and institutional goals set forth in its application.

"(c) No school shall be provisionally approved unless there is a reasonable need for such school in the geographical area in which it is proposed to locate.

"(d) No school shall be approved, provisionally or otherwise, by the board unless the agency

accrediting that college, in addition to being recognized by the United States Commissioner of Education, fully accredits educational hours and course work in all of the areas of chiropractic education as required in Section 5 of the Chiropractic Initiative Act and its rules and regulations.

"(e) No school shall be provisionally approved until competent evidence of compliance with the requirements of Section 29023(a) (2) of the Education Code is filed with the board.

"Authority: Section 1000-4(b), 1000-4(g) (3), 1000-10(a) Business and Professions Code. Reference: Section 1000-5, 1000-7 Business and Professions Code and Section 331.12.2 California Code of Regulations.

The Testimony

A number of prominent figures in the chiropractic profession were at the administrative hearing to testify. Each person is listed in order of appearance. Included is a portion of their written or oral testimony that will give you a good idea of what they had to say.

Remarks of Vincent P. Lucido, D.C., ACA president, on behalf of the American Chiropractic Association before the California Board of Chiropractic Examiners March 8, 1990.

"Diagnosis is a central element in the 'standard of due care' expected of the doctor of chiropractic. The importance of properly educating and training future doctors of chiropractic in clinical diagnosis is illustrated by the fact that 'back pain,' a common ailment treated by chiropractors, may have different causes, including coronary thrombosis, lung disorder, duodenal ulcer, cancer of the stomach, most pelvic conditions (especially diseases of the ovaries and uterus), liver, kidney, bladder, prostate, intestinal and other diseases. Training in clinical and differential diagnosis is essential in order for the doctor of chiropractic to exercise the proper professional 'standard of due care' and determine which cause is responsible for the patient's 'back pain.'"

Grant Herndon, Esq. of Turner and Sullivan

"This firm represents The Association of Straight Chiropractic Colleges (ASCC). On behalf of our client, we submit this letter in opposition to the proposed rule change concerning Section 331.1 of title 16 of the California Code of Regulations.

"Both SCASA and CCE are recognized by the Secretary of Education for the purpose of accrediting college programs leading to the D.C. degree that meet the respective accrediting agency's standards. The standards of CCE and SCASA are based on different schools of thought within the field of chiropractic, but one cannot be said to be 'higher' or 'better' than the other. Moreover, pursuant to the terms of Section 4(g) (i) of the Act, in order to warrant Board approval, all schools must meet the requirements of Section 5 of the Act in addition to 'having status with the accrediting agency.' No school which fails to meet these requirements can be approved. In addition, all schools must meet the regulatory requirements set forth in Title 16, California Code of Regulations, Article 4 Sections 330-331.16. (Bus. & Prof. Code 1000-4(g) (1)). As graduation from an approved school is a prerequisite to licensure, it is wholly erroneous to argue that graduates of approved 'straight' schools somehow lack the qualifications to practice within the scope of their California licensure. Since existing statutes and regulations already require approved schools and licensees to comply with the educational requirements of Section 5 of the act, it's unnecessary (and, as stated above, beyond the Board's authority) to impose Section 5 upon accrediting agencies, thus altering the definition of 'accrediting agency' in violation of Section 4(g) of the Act. The proposed additions to Section 331.1 are superfluous and wholly unnecessary.

"ASCC would agree that a licensed chiropractor should engage in the determination of chiropractic conditions for which he or she provides care and must be able to establish whether a person is suffering from a condition properly treated by chiropractic. However, ASCC does not agree that such determinations are the equivalent of diagnosis as historically and statutorily defined, and as apparently required by the proposed preamble to Section 331.1. In order to create a proper expectation in the public and to avoid confusion, ASCC favors the term 'chiropractic analysis' to describe the legitimate chiropractic functions referred to above as distinguished from medical diagnosis."

"My name is Garrett Cuneo, I am the Executive Director of the California Chiropractic Association (CCA) and I am here today speaking on behalf of the 32-member Board of Directors of the CCA. The CCA Board met on Sunday, February 25th and voted unanimously to support the adoption of Rule 331.1. We believe the proposed regulation is consistent with both the Board's responsibility to protect the consumer public, as well as the intent of the voters in adopting amendments to the Chiropractic Act in 1976 and 1978 to recognize only federally approved accrediting agencies which are capable of monitoring the educational program required in Section 5 of the Chiropractic Act.

"The recognition given by the U.S. Department of Education to the Straight Chiropractic Academic Standards Association (SCASA) was limited to 'straight chiropractic education' which is in sharp contrast to the recognition given to the CCE as a 'nationally recognized accrediting agency of accreditation of educational programs leading to a D.C. degree.' The level of recognition given to the CCE is the same as is given to the accrediting agencies of other primary care providers including physicians and osteopaths.

"The Council of Post-Secondary Accreditation, a non-governmental organization that works to foster and facilitate the role of the accrediting agency, recognized the distinction made by the Department of Education, and as you will note on page 2 of the July testimony, chastised the Southern California College of Chiropractic for implying that the recognition given to SCASA was the same as one given to CCE.

"The importance placed by this regulation on the scope of review performed by a recognized accrediting agency is consistent with the intent of the voters. As the organization which sponsored the 1976 amendments and supported the Board in its amendments in 1978, and as someone who served as Executive Secretary of the State Board during this time, I believe it is fair to state that it was never the intent of the voter to recognize accrediting agencies with different levels of responsibility and scope. The voters needed to be assured that any accrediting agency recognized in California would be qualified to judge the education standards of all chiropractic education -- not just 'straight chiropractic' education. A more detailed analysis of voter intent is included in the July testimony.

"My name is Gerard W. Clum, D.C., I am Vice President of the International Chiropractors Association and I am representing Dr. Fred Barge, President of the Association. I am testifying this afternoon in support of the proposed changes to Section 331.1.

"The ICA is a sponsor of the Council of Chiropractic Education and realizes CCE does not represent one faction of chiropractic philosophies. Rather, it includes a broad spectrum of thought. Regardless of philosophy, however, all CCE colleges agree to the following general principles:

"First, the standards of an accreditation association must remain high -- without high standards, we might as well not have an accreditation process.

"Second, high standards mean that the member colleges must be capable of graduating professionals who are able to diagnose, and in California, it means that the association should be capable and willing of assessing all of those course offerings of the institution."

Laurence W. Kessenick, Esq.

"This is being submitted on behalf of the California Chiropractic Association (CCA), and The Council on Chiropractic Education (CCE), by the law firm of Hanson, Bridgett, Marcus, Vlahos, and Rudy, as special legal counsel to those organizations. This testimony is submitted in support of the proposed amendments to 16 California Code of Regulations, Section 331.1.

"SCASA and its proponents have characterized this debate as one between different philosophies and theories of chiropractic. They contend that they are the exponents of 'straight' chiropractic while all that oppose them are proponents of the 'mixer' philosophy. This, however, drastically misstates the problem. In point of fact, the debate between 'straight' and 'mixers' is a debate which is historically centered on methods of treatment, not upon the necessity for proper diagnosis. Those chiropractic institutions espousing the straight views include CCE colleges, such as Palmer College of Chiropractic. Straight colleges take the view that chiropractor's treatment should be limited to manipulation of the subluxation of the spine. Mixers, on the other hand, take the view that, once properly diagnosed, chiropractic treatment should include other modalities, including vitamin therapy and other techniques which are felt to be within the scope of the chiropractors competence. The view promulgated by SCASA, and the two colleges which founded it, appeared for the first time in the late 1970's and has been characterized as representing a 'deviate splinter group' within the chiropractic profession. See *Sherman College of Straight Chiropractic v. United States Commissioner of Education*, 493 F. Supp. 976 (D.D.C. 1980).

"CCE does not dictate to its colleges that they be straight, mixer, or that they espouse any particular chiropractic philosophy. It does require, however, that the students be properly trained to be primary care providers and an essential component of this training involves the diagnostic disciplines. Those disciplines, in turn, have drawn heavily upon the sum total of knowledge about the human body which has been gained in the past 100 plus years and much of that has been derived from advances in medicine. It is this knowledge and the teaching of it which SCASA and its colleges fundamentally reject.

"This scope of chiropractic practice and role of the chiropractor as a primary health care provider also is reflected in the Act's educational requirements for students of chiropractic. The Act requires that 4,000 academic hours of instruction be provided in specific subjects. Students must receive 800 hours of instruction in anatomy, histology and dissection; 320 hours in physiology; 320 hours in biochemistry; 720 hours in diagnosis (minimum 480 hours), dermatology, syphilology, pediatrics, serology and x-ray; 120 hours in obstetrics and gynecology; 320 hours in pathology, bacteriology and toxicology; 120 hours in public health, hygiene sanitation and first aid; and 1,120 hours in chiropractic principles, physiotherapy and diatetics. California Business and Professions Code 1000-5; 16 C.C.R. 331.12.1(b). The California administrative regulations require that the diagnosis component of the education curriculum comprise at least 18% of the hours of the educational program and include physical, clinical, laboratory and differential diagnosis. 16 C.C.R. 331.12.1(c); 331.12.2. The educational requirements mandate training beyond a mere diagnosis of a chiropractic condition. They prescribe an integrated course of study and do not condone failure to recognize other conditions which may require referral to other health care specialists and follow-up attention.

"It is generally accepted medical principle that a physician has a duty to advise a patient to consult

a specialist or one qualified in medical treatment which the physician is not qualified to give, where the physician knows, or should know, that the physician does not have the requisite skill or facilities to treat the patient's ailment properly, or when the method by which the physician is treating the patient is not providing relief or effecting a cure. The same principle applies to a chiropractor's duty to refer a patient to a medical doctor or other appropriate health care practitioner. See also *Cooper v. National Motor Bearing Co., Inc.* (1955) 136 Cal. App. 2d 229 [Nursing scope of practice encompasses diagnostic skills to determine when referral to a physician is [appropriate]."

James W. Healey, D.C., President of SCASA

"Please accept this letter and any oral comments I may be permitted before the Board as testimony of the Straight Chiropractic Academic Standards Association, Inc. (SCASA), in opposition to the adoption of the proposed amendment to Section 331.1 of Title 16, California Code of Regulations.

"It is SCASA's position that the proposed amendment is beyond the regulatory authority of the Board, is not necessary or fulfilling of its stated purposes, contains irrelevant and improper language, and is discriminatory against SCASA, SCASA-accredited colleges and straight chiropractic generally.

"SCASA is an accrediting agency which is recognized by the U.S. Secretary of Education. SCASA accredits institutions or programs of straight chiropractic, nationally, leading to the Doctor of Chiropractic degree. SCASA is directly at impact inasmuch as the proposed amendment, if adopted, would impose upon accrediting agencies criteria different from and beyond those contained in Section 4(g) of the California Chiropractic Act. In addition, Southern California Chiropractic College, holding status with SCASA and operating within California, would be affected by the proposed amendment's impact on SCASA.

"Accreditation, accreditation requirements, and accrediting agencies are already defined in the Chiropractic Act and a school or college of chiropractic having status with such an agency and meeting prescribed educational requirements are already defined as criteria for approval. The proposed amendment is, therefore, unnecessary and would not serve its stated purpose.

"SCASA further takes the position that the language of the preamble is both unnecessary and irrelevant to the proposed regulation amendment and improperly describes medical practice as a chiropractor's legal obligation. SCASA does not believe it was the intent of the legislature to have chiropractors practice medicine and the statement has no prefatory significance to the issues of accreditation or chiropractic school or college approval. The language should be deleted entirely.

Also, though, the term 'diagnosis' has historically, technically and professionally described a medical procedure. Section 7 of the Chiropractic Initiative Act, in defining the licensed scope of chiropractic practice, specifically provides that the license 'shall not authorize the practice of medicine.' If the Board meant by 'diagnosis' that procedure which is used by a chiropractor to determine chiropractic conditions to which chiropractic care could be applied, a logical necessity, then it should have stated as much (though such is implicit and not requiring restating). But the language here clearly infringes upon the practice of medicine. It is inappropriate as an amendment to a chiropractic regulation."

"My name is John Miller and I am President of the Council on Chiropractic Education. I am testifying today in support of the proposed Regulation which would amend Section 331.1, by

adding a Preamble and Subsection (d). We understand that the intent of the Regulation would be to provide adequate protection to the public by assuring that Chiropractic Colleges adequately prepare their students in the diagnostic skills which are necessary if they are to act as portals of entry into the health care system.

"CCE's policies recognize, among other things, that members of the public who seek chiropractic care often have little or no idea about the origin of their problem. They may simply know, for example, that they are suffering from low back pain, one of the most common reasons for a person to seek care from a chiropractor. When that patient presents himself or herself to the chiropractor, the patient should expect that the chiropractor will make a diagnosis. The patient should not expect the chiropractor simply to commence chiropractic care without considering whether the back pain might be caused by some condition which is not susceptible to chiropractic care. In such an instance, the chiropractor must be trained to arrive at a diagnostic impression of the patient's problem and determine whether or not it is amenable to chiropractic care. In this instance, the doctor of chiropractic has the responsibility of referring the patient to a practitioner whose care may be more appropriate. CCE's policies and Standards recognize this basic principle. I am attaching to my testimony our newly revised Standards and our written Policies which attest to this fact.

"Do both of these associations do pretty much the same thing on a roughly equivalent basis? We feel that the answer is an unequivocal no. What is one major distinction? Without question one of the major distinctions between the two associations is the attitude that each takes towards the issue of diagnosis. I have already stated CCE's position on the subject. What is SCASA's?

"We suggest that SCASA's answer is best found by examining SCASA's own Standards for Accreditation. I am attaching a copy of those Standards with this testimony. I draw your attention, particularly, to the foreward, on page i. This foreward contains the following important comments:

'SCASA is committed to the unique and traditional objectives of straight chiropractic. It resolves to serve the public and the profession by evaluating those chiropractic educational institutions which promote objectives that are wholly chiropractic and distinctly non-medical. [Emphasis added]

I continue to quote:

'Under the influence of the Council on Chiropractic Education (CCE), most colleges have redefined chiropractic objectives and have changed their educational programs to fit these new objectives.

'Whereas some colleges have done so eagerly and others reluctantly, a few have resisted the trend. These colleges which are supported by the straight chiropractic movement, believe that CCE's commitment to medico-diagnostic objectives mandates the teaching and practice of chiropractic in a manner which endangers public health and safety. [Emphasis added]'

"And, as I continue, I draw your attention finally to the following:

'Accreditation by the commission provides an alternative route for colleges which cannot accept the philosophical stance nor the medico-diagnostic [and I emphasize the term medico-diagnostic] objectives of the Council on Chiropractic Education. [Emphasis added]'

"I could not have stated SCASA's position more succinctly if I had tried. SCASA and its colleges utterly reject the principle that a chiropractic student should be trained in diagnostic skills. They totally reject the notion that there is a sum of scientific knowledge which has been learned independently of the chiropractic profession which is nevertheless necessary for a chiropractor to possess so that the chiropractor may be in a position to diagnose patients and refer those who are

not candidates for chiropractic care to professionals who may appropriately treat them."

The board members were generally quiet after each presentation. On a few occasions there were the usual clarifying questions. But push came to shove at the end of Dr. Healey's (SCASA President) presentation.

During the questions from the Board, Dr. Healey referred to diagnosis of pathology beyond what a doctor of chiropractic could treat as 'medical diagnosis.' At this point, Bruce Reyes, D.C., chairman of the board of examiners corrected Dr. Healey: "Chiropractors in California are required to diagnose all forms of illness. This diagnosis is not 'medical diagnosis,' it is 'chiropractic diagnosis.'"

This pretty well sums up why the California Board of Chiropractic Examiners is attempting to enact this amendment.

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