

George McAndrews Files In Supreme Court Against JCAH

Editorial Staff

On May 8, 1990, George McAndrews, Esq., attorney for the four chiropractors in the Wilk et al v. AMA et al suit, filed with the United States Supreme Court a "Petition for a Writ of Certiorari" against the Joint Commission on Accreditation of Hospitals (JCAH). The Supreme Court only accepts for review approximately 150 out of some 4,000 petitions that are filed each year. It is anticipated that the AMA will now file a cross-petition for review of its loss to the chiropractors and, thus, possibly enhance the prospects that the Supreme Court will deem the issues important enough for review.

The petition asks that the U.S. Supreme Court review the lower courts' findings regarding the involvement of the JCAH in the AMA conspiracy against the chiropractic profession. The JCAH has been previously found, by the lower court and the appellate court, NOT GUILTY of conspiring against chiropractic. A review of this case could produce a different decision.

The JCAH now consists of five member associations. Until recently, there were only four members: three medical physician trade associations and one hospital trade association. The JCAH is controlled by a 22-member board of commissioners consisting of representatives of those associations. The AMA appoints seven of those commissioners as does the American Hospital Association (AHA). The American College of Surgeons, ACS (who were found guilty before settlement in the Wilk et al trial) and the American College of Physicians (ACP) each appoint three. Recently, the American Dental Association has also appointed a commissioner. The vast majority of JCAH commissioners are practicing medical physicians.

In 1964, five months after the AMA formed the Committee on Quackery, the executive director of the JCAH stated in the nationally circulated AHA Journal: "The Commission looks on Doctors of Chiropractic as cultists. A hospital that encourages cultists to use its facilities in any way would very probably be severely criticized and lose its accreditation."

This statement was included in a hospital accreditation manual published by the JCAH and the AHA. This manual was circulated to hospitals nationally.

The AMA Judicial Council drafted a proposed standard that would further prohibit the association of hospitals with chiropractors under penalty of loss of accreditation. The JCAH accepted the draft and included it in its revised Accreditation Manual for Hospitals under the title of Standard X.

The JCAH continually made statements expressing that it would "withdraw accreditation of a hospital that had chiropractors on its medical staff or that granted privileges to chiropractors." In addition, in 1973 Dr. Kessler, Director of the JCAH Hospital Accreditation Program "cooperated" with the AMA in the preparation and publication of "The Right and Duty of Hospitals To Exclude Chiropractors" which appeared in the Journal of the AMA. The article states that hospitals have "a duty to refuse to grant staff privileges to chiropractors" because they are "cultist practitioners." The article also states that a hospital that deals with a chiropractor will lose its accreditation.

Finally, in 1980 (four years after the Wilk et al suit was filed) the JCAH deleted Standard X and began a revision of its standards. The AMA membership, however, revolted. As an alternative, the AMA proposed that the new standards require each hospital to have an executive committee. The majority of the members of these committees would be medical physicians who would have sole authority to recommend hospital privileges for all health care providers.

The JCAH adopted the AMA's proposal and in so doing, perpetuated the power of medical physicians to decide whether chiropractors could obtain hospital privileges.

This petition by Mr. McAndrews, if the Supreme Court decides to accept it and if the Supreme court ultimately rules in favor of the chiropractic profession, could have an incredible affect on the future relationship between hospitals and chiropractors. While a few hospitals are currently opening their doors for economic reasons, the majority seem to be adhering to the long existing standards that "appear" to have been revised.

We can only hope and pray that the Supreme Court of the United States will see the importance of this issue, the historical damage to the chiropractic profession -- and will rule accordingly.

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