

## After the War, What?

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Recent events in Texas, which will undoubtedly be duplicated in many or most jurisdictions, will soon force the insurance industry to alter forever and even, amend, the way claims are handled.

One cannot help but admire the foresight and adroitness of Drs. Mike Martin, George Aubert, James Franklin, Nancy Jones, and others who looked beyond the immediate problem and solved many difficulties before they had a chance to arise.

### Bringing Into the Fold

Dr. Martin, the principal author of the new Texas Chiropractic Act, then in charge of legislative affairs for the Texas Chiropractic Association, and now its secretary, enclosed the phrase "anyone who evaluated the musculoskeletal system" to draw the net tight around who was "practicing chiropractic under the act." The wording automatically put all Texas chiropractors under the jurisdiction of the Texas Board of Chiropractic Examiners (TBCE). This law change was aimed at making all doctors responsible for their individual actions, giving the TBCE the authority to tie down the "loose cannons."

Then, the Texas Board of Chiropractic Examiners led by its president, Dr. James Franklin, published rules that anyone who evaluated reports, charts, files, records or performed examinations or made recommendations that affected a treatment plan was "under the jurisdiction of TBCE" and could expect to meet the smiling face of the enforcement chairman, Dr. George Aubert, to justify their claims of "reasonable and necessary," "medically unnecessary," "undocumented" or whatever.

### Licenses in Jeopardy

Suddenly it's a dangerous licensure to be a "paper review consultant" and cut chiropractic claims unless the reasons are fair and acceptable. And only a consultant ready to retire would be deciding issues of scope of practice or determining "in their gut" a feeling that a procedure was experimental. Believe me, except as a friend, you don't want to meet George. And you don't go deciding for yourself that you can do the TBCE's job. George thinks the governor of Texas appointed him (and the other TBCE members) to do that job.

### That's One Solution

As I look into the future I see these moves as a solution to the chiropractors' problems with the carriers. Frankly, when they take biased and untrained "consultants" into a courtroom, they are going to commence losing with or without these recent legal changes.

However, nurses and untrained appointees can now, and probably will be, charged with practicing chiropractic without a license; and MDs and DOs will be challenged as to their qualifications to judge the efficacy of chiropractic treatment or even the need for it. The courts are already holding that only chiropractors can make chiropractic judgments.

## Loss of Public Trust At Stake

The carriers will lose much more than individual lawsuits; their credibility as insurers will be at stake. Part of the reason insurance succeeds is public confidence and trust, but if their transparent schemes become public knowledge, they are of such nature as to be reported widely, and it justifiably should be shouted from rooftop to rooftop, all across this nation.

## The System Has to Fall

The system of claim reviews is evil and corrupt. The attorney general of Texas, Jim Mattox, knows it; the State Board of Insurance knows it. Attorney General Mattox has sent two AG opinions to the State Board of Insurance, the second one stating that the first one was still right, and, although the board notified every carrier in the state to follow its guidelines years ago, most of them have not, and everyone knows it.

Neither has the State Board of Insurance made reasonable effort to enforce the laws of Texas in this regard. There will soon arise a hue and cry that the entire State Board of Insurance, including its senior staff members, resign. Resignation is too good for them, in my opinion, because they have watched Texas law being ignored and citizens' rights being violated while they relaxed in comfort.

Federal Judge Susan Getzendanner knows it and has said (paraphrased) that even as she found the American Medical Association guilty of violating the antitrust laws of the United States, the chiropractors would still be discriminated against by ingrained practices in the insurance industry.

## The Next Targets

Are the carriers so blind and indifferent not to realize they would necessarily be the chiropractors' next target? Apparently so. They continued their course of intimidation with neither wisdom or prudence, showering evidence of bad faith all across the land, and pursuing it with such vigor that they have aroused an unprecedented number of chiropractors to litigation, which is a very dangerous kind of litigation for them: bad faith, where they can win 90 percent of the cases, but the 10 percent they lose will more than make up for it, because their punishment, when found guilty, is based on the value of the company, not the amount of the claim(s) in dispute.

## No Winners in a War

But neither side can live with continual litigation; the winner just doesn't lose as much as the loser. There must be a better system. Even if the carriers go to their knees, there is still the problem of the professional regulations. It is not in the interest of the whole profession of chiropractic to leave themselves or the carriers to the tender mercies of the ever-present but few greedy providers, who may very well make up some ground rules of their own.

## New Attitude Among Regulators

The Texas Board of Chiropractic Examiners has again set the correct tone. Let each person be held responsible for his actions. But who should they be responsible to? There's only one right answer: the State Examining Board

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