

ACA v. Trigon: McAndrews Addresses Appeals Court

"To say there is no conspiracy here is to ignore reality." - ACA General Counsel George McAndrews

On Feb. 24, George McAndrews, general counsel for the American Chiropractic Association (ACA), made an impassioned plea to the three-member panel of the Richmond, Virginia U.S. Court of Appeals, 4th Circuit. McAndrews argued that the ACA's lawsuit against Trigon Blue Cross/Blue Shield, dismissed by U.S. District Court Judge James P. Jones on April 25,¹ should return to court for trial.

The original lawsuit, filed by the ACA, 11 doctors of chiropractic and 15 patients on Aug. 18, 2000, alleged various racketeering, extortion, mail fraud and antitrust violations. The plaintiffs accused Trigon (now operating as Anthem Blue Cross/Blue Shield) of imposing a cap on spinal manipulation and reimbursing chiropractors 40 percent less than MDs for equivalent services.²

McAndrews and Trigon counsel were each given 20 minutes to state their cases and respond to questions from the judges. McAndrews used most of his time to argue that Trigon altered the 1994 federal guidelines on acute low back pain to remove reference to chiropractic-style spinal manipulation - purely for economic gain.

"They changed the critical definition of manipulation," stated McAndrews. "The evidence is that they weren't trained in [manipulation]. It was panic time."

McAndrews continued by saying that the "new" guidelines, co-authored by members of the Virginia medical physician trade associations and medical schools, directed low back patients away from chiropractors and toward MDs - conspiracy at the highest level.

"To say there is no conspiracy here ignores reality," implored McAndrews.

Attorneys for Trigon used their 20 allotted minutes to reiterate their contention that there is no evidence of a conspiracy and that doctors of chiropractic should receive less for the same services performed by medical doctors, because DCs are not as highly trained. They also maintained that as a for-profit company, Trigon had the right to make any business decision it deemed appropriate.

McAndrews also provided the Court with an official 81-page document³ that outlined the rationale for the appeal, including "overriding error on the part of the district court" concerning actions such as:

- "entering summary judgment against appellants on a record replete with factual issues";
- "misinterpreting several statutes and well-established precedents";
- "precluding discovery in this public and private interest lawsuit of the scope, context, and history of the conspiratorial actions of Trigon and the competitive Virginia medical societies in restraining competition with chiropractors"; and
- "treating this case as though it involved 'cultural bias,' rather than raw economic power disseminated through a conspiracy."

The appellants seek to reverse the district court dismissal of counts concerning racketeering and Virginia Insurance Equality Laws; to vacate four entries of summary judgment; and to order the district court to grant them "the discovery denied them."

Many in the chiropractic profession compare the *ACA v. Trigon* case to the landmark 11-year *Wilk v. the AMA* case, which also endured a lengthy appeal process. U.S. District Judge Susan Getzendanner's August 1987 decision was significant in that it officially acknowledged a conspiracy by a medical organization against chiropractic,⁴ something suspected for decades.

References

1. ACA to appeal judge's decision in Trigon lawsuit. *Dynamic Chiropractic*, June 2, 2003. www.chiroweb.com/archives/21/12/18.html.
2. ACA files major lawsuit against Trigon Blue Cross/Blue Shield. *Dynamic Chiropractic*, Sept. 18, 2000. www.chiroweb.com/archives/18/20/01.html.
3. *American Chiropractic Association, Incorporated, a non-profit corporation, et al., v. Trigon Healthcare, Incorporated, et al.*, on appeal from the United States District Court for the Western District of Virginia at Abingdon. *Brief of Appellants*. Record No. 03-1675.3. Full text available online at [\[url=http://www.acatoday.com/pdf/trigon_appellants_brief.pdf\]](http://www.acatoday.com/pdf/trigon_appellants_brief.pdf)http://www.acatoday.com/pdf/trigon_appellants_brief.pdf[\[/url\]](http://www.acatoday.com/pdf/trigon_appellants_brief.pdf).
4. Finally ... After 11 years, a federal judge in Chicago, Illinois found the American Medical Association GUILTY! *Dynamic Chiropractic*, Sept. 15, 1987.

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