



NEWS / PROFESSION

Chiropractic's California Crisis

WHAT'S HAPPENING AND WHO'S DOING WHAT TO RESCUE THE PROFESSION

Editorial Staff

Through a series of procedural missteps, the California Board of Chiropractic Examiners (BCE) has, at the very least, embarrassed Governor Schwarzenegger and, to some extent, the chiropractic profession. The board's intention to rid itself of a chiropractic consultant with serious conflicts of interests and ties to the insurance industry was more than justified. But the board failed to follow the appropriate process and now finds itself in the center of an attack on the California Chiropractic Act by several members of the California state legislature. The situation is complicated by the fact that the Attorney General's office has sided against the board's efforts to fire its own executive director and rid itself of the chiropractic consultant.

The Chiropractic Act is an initiative passed by the voters of California in 1922 to define the scope of chiropractic practice and protect the chiropractic profession from constant assaults by the medical profession. As a voter initiative, the people of California passed a law that could not be tampered with by the state legislature. This was done deliberately, with the realization that politicians can occasionally be heavily influenced and even bought by medical, insurance and drug-company lobbyists.



State Assemblyman Mike Eng (D) and state Senator Mark Ridley-Thomas (D) have introduced similar bills¹ that if passed, would create initiatives which would bring the practice of chiropractic under the legislature, rather than keeping it independent, as the people of California intended in 1922. According to an article written by Eng,² these bills would:

- give the legislature the power to "modify, amend or repeal" the Chiropractic Act whenever it wishes (this means that the chiropractic scope of practice could be changed or abolished in a lobbying move by the medical, pharmaceutical or insurance lobbying groups);
- give bureaucrats (the Department of Consumer Affairs) the ultimate power to approve or disapprove the chiropractic board's choice of an executive director;
- give the legislature power to appoint two board members apart from the governor's appointments;
- require all gubernatorial appointments to the board to be approved by the state Senate; and
- allow the legislature to fire all board members.

Needless to say, this is some of the worst news the state's doctors of chiropractic have ever faced. This exposes the practice of chiropractic in California to constant attacks by overwhelmingly powerful medical, pharmaceutical and insurance lobbying groups. There is additional concern that erosion of the Chiropractic Act in California could be an archetype for similar attacks in other

states.

California law is very different from most states with regard to chiropractic. Most state chiropractic licensing boards are overseen by a consumer affairs department, and most chiropractic practice laws are subject to change by the legislature. If California's position seems overly protective, it is by design. In 1946, the board passed a resolution to "subject itself to administration by the DEPARTMENT OF CONSUMER AFFAIRS (formerly the Department of Professional and Vocational Standards)." But on March 1, 1976, the board resolved:

1. That this BOARD revokes, rescinds, and cancels its prior action, under B S P Code Sec. 102, and now does remove itself, withdraw, and declare its independence from the DEPARTMENT OF CONSUMER AFFAIRS:
2. That this BOARD will at all times in the future maintain an entirely autonomous position, free of control by the ATTORNEY GENERAL and the DEPARTMENT OF CONSUMER AFFAIRS or any other agency or department of the State of California;
3. That private counsel, previously retained by this BOARD, is by this resolution authorized to:
 1. bring suit against any appropriate state agency or agencies to enforce this BOARD's statutory power to select counsel and to decide his compensation, and
 2. to represent this BOARD in any appropriate action necessary to defend its autonomous position under the initiative measure of 1922.

This resolution was passed because "the BOARD OF MEDICAL EXAMINERS, DEPARTMENT OF CONSUMER AFFAIRS, and the ATTORNEY GENERAL, have, without pause, supported the partisan activities of the BOARD OF MEDICAL EXAMINERS, siding with that BOARD on every legal question, interpretation and contest between that BOARD and this, requiring this BOARD to retain private counsel to enforce its positions and the positions of Chiropractic practitioners generally."³

A similar situation took place in the 1980s when the California Medical Board sued the California Chiropractic Board, and the Attorney General's Office tried to represent the medical board against the chiropractic board. This was also the period during which the American Medical Association and other medical groups were found guilty of a 30-year conspiracy to contain and eliminate the chiropractic profession.

Some have suggested the medical and insurance lobbyists are not really involved in the introduction of these anti-chiropractic bills. A review of Senator Ridley-Thomas' campaign contribution records over the past year reveals numerous donations by the California Medical Association, California Hospital Association, Pharmaceutical Research & Manufacturers Association, Blue Cross of California and several other medical physicians groups.

In addition, Ridley-Thomas has gone so far as to "request that the Conference Committee on the Budget Bill reduce the operating budget of the Board of Chiropractic Examiners to the amount of \$1,542,000 for the 2007-08 fiscal year." This would cut the board's funding in half and leave all state employees working for the board jobless. His reason for making this request was to "ensure passage of this measure (SB 801)." He goes on to explain that "thus, if SB 801 is not enacted this year, the board's funding would run out around January 2008 and would be forced to cease operation."⁴

Historically, in situations such as this, the California Chiropractic Association (CCA) and the International Chiropractors Association of California (ICAC) would utilize their political muscle to defeat bills attacking the chiropractic profession. The CCA, the larger of the two groups, is represented by a lobbyist with strong ties to the Democratic Party. In recent years, almost 80

percent of the CCA political action campaign (PAC) fund has been spent on the Democrats (\$141,000 for Democrats vs. \$38,000 for Republicans in 2005/2006; contributions for 2007 have not yet been reported).

But the CCA's approach to defeating these bills is confusing to many. It appears to be a "negotiate the damages," rather than declaring "war." Rather than oppose the bills outright, then-CCA President John Bueler Jr., DC, sent essentially identical letters to Eng and Ridley-Thomas supporting many of the proposed amendments in the bills. In these letters, President Bueler stated that the "CCA supports:^{5,6}

- authorizing the legislature to sunset and reconstitute the BCE;
- allowing the legislature to appoint the two public members; and
- requiring Senate confirmation of the governor's appointments.

Regarding the remaining two issues, Dr. Bueler stated: "Given the constant threats to the survival of the profession, CCA cannot support granting the Legislature open ended authority to make changes to the Act" and "Placing the BCE under DCA will not prevent problems inherent to a citizen-board structure. CCA supports an amendment to the Act to grant the Legislature the same, 'housecleaning' authority it has with other boards to sunset and re-establish the BCE when necessary."

When asked about the CCA's mixed-message approach, Bill Updyke, DC, current CCA president, defended the association's position: "As relates to the appointment process, we do not see a problem with allowing the legislature to have an approval process for some of the board appointees. That's applicable to other boards, and we believe that is a fair point. As for allowing the legislature to replace the board, that is a standard provision for the vast majority of boards that the legislature feels comfortable having. When they find a board is acting inappropriately, they want to be able to sunset it."

In the past, the CCA has been known to pull out all of the stops to kill a bill that threatened the practice of chiropractic. Rather than attempt to negotiate, previous CCA leaders would organize patient outcry, mobilize chiropractic students and put serious pressure on legislators. Those legislators who refused to respect CCA's position were often targeted for defeat in the next election.

Frustrated and confused by CCA's tepid approach to the current crisis, three members of the National Association of Chiropractic Attorneys (NACA) independently sent a letter to "Republican Members of the California Legislature" on June 4th. The letter urged "all Republican legislators to unanimously oppose this unneeded legislative power grab."⁷ The letter was signed by Mike Schroeder, chairman of the California Republican Party (CRP) in 1997; Shawn Steel, CRP chairman from 2001-2003; and Keith Carlson, current CRP treasurer.

The California Senate voted on S.B.801 two days after receiving that letter. The vote was 24-16 in favor of passing the bill to amend the Chiropractic Act, only three votes more than the 21 votes required for passage. All 24 "yes" votes were cast by Democrats. The 16 votes against the bill were cast by 15 Republicans and one Democrat.

A day later, the California Assembly voted on the Assembly version of the bill (A.B.1137). The vote was 42-29 in favor of passing the bill, just a single vote over the 41 votes required for passage. The 42 "yes" votes were cast by 42 Democrats. Those against amending the Chiropractic Act included 27 Republicans and two Democrats.

The effort of sending out this single independent letter appears to have garnered the support of almost every Republican senator and assembly member. When asked if this letter was one of the reasons why there wasn't one Republican vote for either bill, CCA President Updyke replied: "I think it's a reasonable conclusion."

The Senate bill is now with the Assembly and the Assembly bill is now with the Senate. This is the last opportunity for the bills to be voted down before they go to Governor Schwarzenegger and then to the California voters. The CCA has announced that it is attempting to raise money through its "Californians to Protect Chiropractic Patient Rights" PAC to convince Californians to vote against the anticipated ballot initiatives. But most believe the chiropractic profession will be hopelessly outfinanced, as neither the CCA nor the ICAC has the money to reach and influence the 22 million eligible California voters on the same level as those who oppose the profession.

The people of California will likely be exposed to a barrage of embarrassing messages about the chiropractic profession, crafted by several well-funded special-interest groups. In addition to impacting chiropractic practice, these initiatives will likely tarnish chiropractic's image for years to come. In essence, chiropractic's only real opportunity to defeat this threat is to kill the bills before they are passed. Once on the ballot, chiropractic's demise is only a matter of money.

When asked if the CCA had the political muscle with the Democratic legislators to deliver the six changed votes needed to defeat the bills (four in the Senate and two in the Assembly), CCA President Bill Updyke was unwilling to make a commitment:

"We've been very active and continue to be very active behind the scenes as relates to this. When you get at the exact numbers and specifics about this, we've been able to get all of the members very aware of this, and the initial vote that you see may not be reflected the next time it comes around because of our behind-the-scenes efforts.

"It's not a yes or no question, because I've had many conversations with elected officials that I consider to be good friends when they don't see things the way I do. It's impossible to go down that path. Legislators do actually make some very important decisions and they're independent. It's not necessarily going to go the way that you would expect."

The profession is left to draw one of two conclusions after considering the results of the initial voting on these bills and the CCA's efforts to impact those votes:

- If the CCA still hopes to change Democratic votes, was enough effort made to impact the voting of Democratic legislators in the first place? Was too little effort made initially and if so, is there enough time to pull out a victory?
- If the CCA can't deliver the six Democratic votes required to defeat the bills, what does that say about the CCA's ability to accomplish much of anything in Sacramento? Certainly, having a Democratic lobbyist and spending almost 80 percent of the PAC funds on Democratic legislators should yield more than three votes for what Dr. Updyke considers "the most significant thing facing the profession at this point in time."

References

1. A.B.1137 was introduced in the state Assembly on Feb. 23, 2007. S.B.801 was introduced in the state Senate on the same day. To view the history and current status of the legislation, visit www.leginfo.ca.gov.
2. Eng M. "What Is the Real Problem at the California Board of Chiropractic Examiners?" April

27, 2007. www.californiaprogressreport.com/2007/04/what_is_the_rea.html.

3. California Board of Chiropractic Examiners - Resolution No. 1-76. Passed March 1, 1976. www.chiroweb.com/CA
4. Letter from Sen. Ridley-Thomas to Assembly Budget Committee Chairman John Laird, May 31, 2007.
5. Letter from CCA President John Bueler Jr., DC, to Assemblyman Mike Eng, April 18, 2007. www.calchiro.org/documents/AB1137Letter_000.pdf.
6. Letter from CCA President John Bueler Jr., DC, to Sen. Mark Ridley-Thomas, April 18, 2007. www.calchiro.org/documents/SB0801Letter_000.pdf.
7. Letter from Mike Schroeder, Shawn Steel and Keith Carlson to "Republican Members of the California Legislature," June 4, 2007. www.chiroweb.com/CA

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