

## An Old War in a Modern Era: AMA's "Contain and Eliminate" Tactics Alive and Well

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As a modern-day doctor of chiropractic, you may think this article is born of ancient paranoia. Perhaps you're convinced this is about AMA bashing and yesterday's news. But just look around and you will see clear and compelling evidence that the long-standing war between the AMA and everyone else who does not come under the AMA umbrella is far from over. The names have changed, the venue has changed, the approach has changed and the legality has changed, but the intent has remained the same: to maintain monopolistic control over the delivery of health care.

### AMA Policies Continue to Discriminate

It was not that long ago - 1963, to be exact - that the AMA formed its infamous "Committee on Quackery," whose mission was to "contain and eliminate" the chiropractic profession. [Please let those two words, \*contain\* and \*eliminate\*, resonate for a moment](#), because 47 years later, the AMA House of Delegates, more specifically the Ophthalmology and Anesthesiology delegates, have introduced a resolution regarding scope of practice. Specifically, they are targeting the Public Protection and Affordable Care Act (PPACA), because it contains language deemed "troubling" based on AMA policy; for example, H-405.969, *Definition of a Physician*: "The AMA affirms that a physician is an individual who has received a 'Doctor of Medicine' or a 'Doctor of Osteopathic Medicine' degree," and H-160.936, *Comprehensive Physical Examinations by Appropriate Practitioners*, which declares that "the performance of comprehensive physical examinations to diagnose medical conditions [should be limited] to licensed MDs/DOs or those practitioners who are directly supervised by licensed MDs/DOs."

It does not get much clearer than that. Such language is not drafted for the purpose of generating a nice-sounding resolution to be filed away and not acted upon. It is a declaration of war on any health practitioner who is not an MD or DO! Unfortunately, other indicators abound that not only the AMA, but also individual state medical associations, are mobilizing their forces or are already on the offensive.

### Efforts to Limit Scope of Practice

As many of you know, the Texas Medical Board of Examiners [filed an action against the Texas Chiropractic Board of Examiners](#) alleging that the chiropractic board has no authority to authorize DCs to do manipulation under anesthesia (MUA) or needle electromyogram (EMG). If that were not bad enough, the medical board suggested that "diagnosis" can only be performed by a doctor of medicine or doctor of osteopathy.

The Court has granted summary judgment on this issue, finding that both MUA and needle EMG were outside the scope of chiropractic practice. Those rulings are currently under appeal, but field practitioners in Texas are already in "no man's land," wondering how their practices will be affected. Glenn Parker, the executive director of the Texas Board of Chiropractic Examiners, has issued a "notice" that cannot be terribly comforting:

"DCs are not required to stop performing MUA or EMG at this point, as the legal decisions are not final. However the Board urges each DC who performs these procedures to consult with his or her attorney concerning any possible legal implications of performing these procedures while the case is on appeal."

Imagine your patients' reactions to this effort to reduce you to a technician; not to mention the reimbursement and malpractice implications. In Texas, the reality of losing this case could be the immediate cessation of your ability to diagnose. The full trial is scheduled for August 2010; until then, the preparation, the uncertainty and the tense waiting game for the profession begins.

Even more troubling, while the Court granted only partial summary judgment on the diagnostic issue, that claim is still alive and will be decided at trial after a full presentation of evidence by attorneys on both sides of this issue.

Meanwhile, [in Connecticut there have been hearings](#) before the state board of examiners over informed consent. Those hearings have escalated into a legislative initiative whereby "diagnosis" will be part of a bill to limit doctors of chiropractic from treating people in the manner they have been doing for decades.

I hope you are beginning to see the pattern starting to build and realize that no state is immune from this activity. The Texas "success" for the medics may well be trumpeted as a rallying cry for more activism in your state!

From Yesterday to Today

In the '50s, '60s and '70s, the AMA essentially ingrained itself and its image into the very culture of the country, to the extent that Congress, government agencies, corporations and the general public considered AMA proclamations truthful and having the weight of law. Essentially, the AMA enjoyed a special position in society otherwise reserved only for elected officials or established governmental agencies.

Older doctors of chiropractic can well remember those years prior to the AMA lawsuit: all medical doors were shut, referrals were refused, hospitals would not perform testing for DCs, and obtaining privileges was a pipe dream. Every MD-related health care association mysteriously had a very similar anti-chiropractic position. Moreover, insurance companies all had MDs as directors of their benefits resolution departments, government agencies from NIH to FDA had medical doctors as directors, universities had negative position policies regarding DCs and conveniently had MDs as important faculty, and state departments of health had MDs at the helm.

The boycott that prevented MDs from accepting referrals from or making referrals to DCs was solidly in place, and thus the tentacles of power from the AMA touched every aspect of our lives in ways many DCs today cannot begin to imagine. Enter *Wilk, et al. v the AMA, et. al.*, the extraordinary Mr. George McAndrews, a lawyer whose father suffered the indignities of simply being a chiropractor, and his brother, Jerome F. McAndrews, DC. You have a winning combination to begin [an anti-trust lawsuit that lasted 14 years](#).

The AMA has learned a lesson from the *Wilk* lawsuit. It now understands that government action is protected under the *Constitution*, as is action in petitioning the government. It can lawfully petition local, state and federal legislators and attempt to influence any legislation without fear of committing actionable restraint of trade or illegal boycott. (However, the AMA does seem to be getting dangerously close with its resolution regarding the "definition of a physician," in that it appears to involve hospital action without the intervention of government.)

That kind of activity would bear much closer legal scrutiny, since it appears to involve action in restraint of trade by private parties, and our legal counsel can review and comment on that aspect of the AMA's current activity. For now, it appears that chiropractic inclusion in PPACA is a winner thus far in the health care act thanks to the Harkin amendment, which provides language that eliminates discrimination of providers.

### What It Means to You

So, what does this all mean to you as a doctor of chiropractic? It means the battle is clearly ongoing and eternal vigilance is still the order of the day. It is truly amazing that so many practicing DCs do not sense the urgency, even when AMA actions such as the one in Texas can impact their professional future.

You do not have to practice in Texas or Connecticut to feel the rippling effects of these efforts. Rest assured that we are just seeing the gearing up of what may soon become a 50-state effort if something doesn't derail the train. Stopping it as soon as possible is key.

Texas doctors do not have any choice about whether this will affect them. Whether they belong to their state association or not, practice in a large town or small village, practice solo or in a group practice; this kind of activity will ultimately affect every single doctor of chiropractic and every future doctor of chiropractic who considers practicing in Texas.

[The Harkin amendment](#) seems to have struck a negative chord with the AMA, which should automatically strike a positive chord for doctors of chiropractic. Even if you do not want to join a national organization, at least provide money for their political action committees to enable them to work the halls of the legislature. Consider that without strong political action, there would be no positive amendments to consider in the first place.

Fellow colleagues, this is not about philosophy, art, science or political affiliation - this is about survival of the profession and regaining our proper place in the health care delivery system. This is about preventing the next incarnation of an oppressive adversary who has systematically caused irreparable harm not only to the chiropractic profession, but more importantly to the millions of people who have been directly and/or indirectly dissuaded from visiting a doctor of chiropractic, perhaps losing their opportunity to regain health. This is about establishing a beachhead for every profession that is not aligned with the AMA and whose services are needed, yet maligned enough to cause patients to fear visiting an alternative non-MD for their care.

This is about transforming the now-broken health care system that is too costly, too procedure oriented, too mechanistic in its view, too drug oriented in its approach, too ingrained in the mindset of the consumers, too wealthy to provide a viable alternative campaign, too arrogant in its attempt to dominate all health care delivery, too costly in its delivery simply because it has eliminated all cost-effective non-drug conservative approaches, and finally, too big not to fail.

The chiropractic profession has been a champion for all the other non-drug, non-surgical complementary and alternative approaches to health care by paving the way with our steadfast determination to change health care delivery and by our pure, tenacious grit that we would not succumb to the AMA's oppression even before we knew of the conspiracy. Following our knowledge of the malicious covert and overt actions, plots, schemes and scams of the AMA, the profession came together to fight the common enemy. Nothing has changed since then except the venue and the attitude of the doctor of chiropractic. We need to rekindle that spirit of determination and the powerful "we won't be stopped" mantra that was heard in every village across America and enabled chiropractors to gain licensure, gain accreditation, gain inclusion in Medicare and so much else.

Perhaps the only thing the AMA has truly been successful at is in keeping us from being a united force, although we have ourselves to blame as much as anyone else.

We need to once again put aside our small battles that seem to occupy center stage and join forces in a spirit of can-do and cannot be stopped. If that were to occur, there is no battle we could not win, no effort at which we could not be successful and no enemy that could mortally wound our spirit.

Please support the legal battle in Texas and at least provide monetary support for a national association PAC if you do not want to get more involved. Your support will make this another battle the AMA will again come to regret.

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