Dynamic Chiropractic

CHIROPRACTIC (GENERAL)

Rule 302 -- The Big Cover-Up

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It has become apparent by the recent deluge of information from the California Chiropractic Association (CCA) "after the fact," that there has existed and continues to exist a cover-up of facts as it pertains to proposed changes regarding Rule 302 -- the Chiropractic Scope of Practice.

This cover-up started in response to the 1987 lawsuit by the California Medical Association (CMA) and the California American Physical Therapy Association (CAPTA) challenging the Board of Chiropractic Examiners' (BCE) authority to modify or enlarge the chiropractic scope of practice. A settlement agreement was finally reached between the CMA, CAPTA, and BCE this year.

As a result of this agreement, the BCE, CMA, and CAPTA unilaterally, without input from the chiropractic profession at large, decided the chiropractic scope of practice in their proposed new Rule 302. It appears that in resolution of the suit, a compromise was agreed to by the involved attorneys -- said compromise is clearly restrictive without merit, yet ambiguous as to the basic philosophy and rights of practice as a non-drug, non-surgical profession.

While the chiropractic profession is not opposed to modifying or defining its scope when it benefits the chiropractic patient and profession, it is curious how the BCE and CCA, who purport to represent the profession, allow CMA and CAPTA to dictate the terms of the chiropractic scope of practice. In this regard, the BCE and CCA have failed this profession in not defending it and promoting a chiropractic philosophy broad enough to accommodate all its members, to say nothing of the profession at large. While we as a profession expect attack from the CMA and CAPTA, we certainly did not expect our own profession to buy into the wishes of the CMA and CAPTA by allowing them to dictate the terms of the chiropractic scope of practice.

Rule 302 is fast becoming the subject of great controversy as the profession is finally being made aware of and realizing the far-reaching effects this rule will have on the profession. Little, if anything, has been known about Rule 302 by the profession, prior to the profession being informed that it was now law and adopted as an emergency measure on April 4, 1991.

Of grave concern is the manner in which this rule affecting the livelihood and basic essence of each and every member of the chiropractic profession has been essentially secreted from the profession and allowed the proposed ruling.

In fact, it is apparent that the players have realized their error in judgment and apparently now feel threatened by any opposition or exposure as to what has transpired. Why else would this profession be presented with more half truths, smoke and mirrors as a result of one simple letter sent by a group of concerned chiropractors (who incidentally the CCA now seeks to malign). At no time in recent history has the CCA reacted so strongly to any opposing view and inundated the profession with several mailings, including a special edition exclusively on 302, all "in the interest of informing the profession." Again, one week later 80 percent of the CCA Journal is devoted to the opinions, right or

wrong, true or untrue, of those people who feel "their's is the only way." The one common thread in all these publications is the conspicuous absence of any opposing view. Is this a snow job? Do the players in this agreement have something to fear? Who's authorizing and paying for the extraordinary expenditures necessitated by this barrage of mail? No such effort was made to inform the profession before the fact?

The rhetoric and confusion involving 302 continued in the meeting of September 12, 1991 held in San Diego, California by the San Diego Chiropractic Association and attended by approximately 125 practicing chiropractors. The purpose of the meeting was to inform concerned doctors of the new Rule 302. The meeting, an open forum debate, was attended by Mr. Michael Schroeder, attorney for the BCE and CCA; Mr. Garret Cuneo, executive director of the CCA; and Dr. Louis Newman, chairperson of the BCE. Also present were Dr. Jerrilyn Kaibel, Willard Smith, and Jeffrey B. Nowicki. The opposing team consisted of Drs. Larry Tain and Parlan Edwards. This entire meeting, two and one-half hours in length, was videotaped and demonstrates that there are legitimate questions and concerns regarding the legality, relevance and validity of the board's action.

The responses to the doctors' concerns are not as simple as the BCE and the CCA would have you believe. The deluge of information and all-out campaign and extraordinary funds expended to convince the profession that Rule 302 is the best security they can have is disgraceful and an insult to the profession. Careful scrutiny of this informative tape will reveal many discrepancies in the information provided. You may purchase your copy of this information media from Video Craft Production Services, 2512 Fletcher Parkway, El Cajon, CA 92020 for $20.

Despite the substantial opposition to Rule 302 in that same meeting, attorney Schroeder states, "This regulation is the first time in the history of this profession that every group within chiropractic has supported it, the CCA supported it, NICAC supported it ... All five chiropractic colleges have supported it. It's like chiropractic's answer to harmonic convergence. It's the first time the entire chiropractic profession got together and that by itself should tell you something." With all due respect to Mr. Schroeder, nothing could be farther from the truth. Mr. Schroeder underestimates the intelligence of the chiropractic profession. The mere necessity for this meeting is inconsistent with his statement. It seems the players in this agreed settlement were and still are Mr. Schroeder and other representative attorneys.

In a contradictory statement, Mr. Cuneo states that "it seems strange to me that we as a profession would allow a gun to our head based on whoever was occupying (the BCE) position at that time would determine what the scope was." The very thing he claims is intolerable, happens to be the current modus operandi of the board as clearly put by Dr. Louis Newman at the September 12, 1991 meeting when he states, "Who's going to prosecute under 302? Who's going to make the decision as to what is legal and what is illegal if you want to use those terms under 302? The board, nobody else. It's our interpretation that's important of what we feel 302 is ... But, you know you're sitting here and you're listening to four or five different people. You're getting four or five different opinions. Everybody, every one of you has a different opinion. But the fact is, and I hate to say it, the only opinion that counts is the opinion of the people that are empowered to enforce the act..."

If this is the case, then, why are we going through this exercise? Where is Mr. Cuneo when I need him. The smoking gun is still at my head. I believe the profession deserves and demands greater consideration.

Information prior to a letter mailed to all licensed California chiropractors by a group of concerned chiropractors was, to say the least, limited. In fact, many chiropractors did not receive notice of a July 15th deadline until July 21st. Many did not receive it at all. Did you?

The rule was enacted as an emergency measure on April 4, 1991, and according to Mr. Schroeder became a permanent regulation on June 22, 1991; all without consultation with the profession at large.

The major concerns and objections to Rule 302 continue to be the same concerns raised by the group of chiropractors in their mailing to the profession. These included the board's authority to modify or define the chiropractic scope of practice. The procedural defects in failing to notify the profession about the proposed change to their scope of practice.

In one article, Mr. Schroeder states that he was to ... draft a complete and accurate definition of the legal scope of chiropractic practice under the Chiropractic Act (something the courts have been unable to accomplish in 70 years, but no problem for Mr. Schroeder). Did Mr. Schroeder consult with practicing chiropractors, chiropractic colleges, other learned sources for input? If so, we in the profession must be informed as to who were these representatives that indeed did advise Mr. Schroeder regarding the past, current, and future scope of practice judged to be in the best interest of the chiropractic patient, as well as the chiropractic profession.

The board further purports to represent the profession by enactment of this rule. Yet, the CCA and ICAC, at best currently represent far less than 50 percent of the licensed, practicing chiropractors in California, a far cry from representing the profession.

Even assuming the board had authority to adopt a new rule with regard to the chiropractic scope of practice, adoption of Rule 302 will negatively affect the profession in the following manner, to name a few:

- It restricts the present scope of practice as chiropractors may now only be authorized to manipulate muscle or connective tissue in the process of a spinal or joint manipulation.

- Chiropractors are no longer authorized to perform colonic irrigations, enemas or use thermography as a treatment modality.

- The current section 302 authorizes chiropractors to diagnose and treat any condition; yet the modification is totally ambiguous inasmuch as diagnosis must be consistent with chiropractic methods and techniques (whatever those are).

- Physical therapy is eliminated and instead the chiropractor may utilize physical therapy techniques but only during the actual manipulation and/or adjustment.

- Chiropractors no longer have authorization to provide chiropractic prenatal and postnatal care but may treat a pregnant woman.

- Cannot perform a mammography.

- Under the proposed regulations, as modified, chiropractors will no longer be able to hold out to the public that they practice physical therapy.

Also, there is no rhyme or reason why our representatives would go so far as to delineate a bunch of negatives as to what we as a profession cannot do, a bunch of negatives that are irrelevant to our practice, e.g., cannot use lithotrypers, cannot practice dentistry, cannot practice optometry, can only be interpreted as red herrings. We as a profession are certainly more sophisticated, and knowledgeable than this. Instead, our representatives should be espousing a philosophy of the chiropractic profession that allow us to practice within the spirit of the original Initiative Act -- a non-drug, non-surgical profession, leaving room for advances in technology that fit within this definition.

Conclusion

In sum, it appears that Mr. Schroeder "sold out" the profession by compromising on the basic essence of the chiropractic practice.

To allow the diagnostic and treatment rights of the California chiropractic patient to be unjustly restricted by the efforts of a few from within, and those opposed to this profession, is incredible.

Mr. Schroeder evidently represents a point of view that is not shared by a majority of California chiropractors nor all attorneys familiar with chiropractic issues, nor chiropractic colleges. As well, there are CCA regional societies who by their action and written statements do not agree with the disposition of this suit by the described compromise.

As an alternative stance and policy, the chiropractic profession by legal and legislative means should direct its associations and legal representatives to establish that the scope of practice is essentially a non-drug, non-surgical profession, which practices a healing art and science based upon the integrity of the nervous system; that all non-drug, non-surgical procedures consistent with the chiropractic philosophy as taught by chiropractic institutions of professional training for licensing by chiropractic state boards -- current and future -- be employed.

It is long overdue that other health disciplines not only recognize the health benefits gained by our profession, but also to acknowledge the chiropractor as a comparably trained physician.

The positive approach to the definition of scope of practice should be exercised and defended legally, not restricted by compromise in order to resolve attempts by others to infringe upon the rights of California chiropractors. We're not seeking more practice rights, we're attempting to maintain our practice rights, our entity, and to continue treating patients in a mode and manner for which we have been more than adequately trained. To accomplish this, each and every member of the profession must take an active role in the future of chiropractic, by either financial means and/or active participation to ensure our future and our comparable place with allied professions.

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