

# Appellate Court Rules Against ACA in Trigon Case

## ASSOCIATION VOWS TO "FIGHT TOOTH AND NAIL" FOR CHIROPRACTIC

Editorial Staff

The U.S. Court of Appeals for the 4th Circuit has voted unanimously to dismiss a lawsuit brought by the American Chiropractic Association and several co-plaintiffs against Trigon Blue Cross Blue Shield of Virginia, on the court's belief that the ACA failed to substantiate many of the claims made against Trigon in the suit. Despite the legal setback, the ACA has announced it intends to "vehemently appeal" the court's decision by petitioning for a rehearing and appeal to the full panel of judges in the Fourth Circuit, in preparation for a possible hearing before the U.S. Supreme Court.

"While we are obviously disappointed by this decision, we stand firm in our conviction that moving forward with the Trigon lawsuit was the right thing to do for the chiropractic profession," remarked ACA President Dr. Donald J. Krippendorf. "The ACA continues to fight tooth and nail for justice for the chiropractic profession - and our dedication and determination in the Trigon lawsuit has only underscored our willingness to stand tall for chiropractic."

The ACA, along with the Virginia Chiropractic Association, 11 doctors of chiropractic and 15 patients, filed the suit against Trigon in August 2000, alleging a series of improprieties that included racketeering; extortion; mail fraud; antitrust violations; and other state and federal law violations. The plaintiffs contended that Trigon, in addition to committing the violations mentioned above, imposed a discriminatory cap on spinal manipulation that unfairly penalized chiropractic patients; reimbursed chiropractors at a rate 40 percent less than that paid to medical doctors who provided the same or similar services; blocked referrals to doctors of chiropractic; and paid chiropractors the lowest treatment code possible, even when higher-level forms of treatment were administered.

On April 25, 2003, before going to trial, the ACA's suit was dismissed by U.S. District Court Judge James Jones, citing that the ACA had produced "no genuine issue of material fact" sufficient to move the case to the trial stage. However, Judge Jones' decision also allowed for an immediate appeal to the Court of Appeals, which the plaintiffs pursued.

In rendering its decision, the Court of Appeals issued a 34-page, point-by-point analysis of the ACA's claims, the crux of which was summed up in its opening opinion:

"In this appeal, we consider whether Trigon Healthcare, Virginia's largest for-profit health insurance company, and its affiliated companies (collectively, Trigon), were engaged in an anticompetitive conspiracy with medical doctors and medical associations whose purpose was to harm chiropractors. American Chiropractic [the court's name for the ACA, the VDA and other appellants] filed this eight-count complaint alleging violations of federal antitrust laws, the Racketeer Influence and Corrupt Organizations Act (RICO), and various state laws, claiming that Trigon and the medical doctors and associations were engaged in a conspiracy that used Trigon's reimbursement policies and treatment guidelines to limit severely the flow of insurance dollars to chiropractor[s] and steer those monies toward medical doctors. Trigon argues that no conspiracy exists, and that it implemented its coverage policies unilaterally based on market supply and demand. The district court agreed with Trigon, dismissing two counts of the complaint for failure to state a claim and disposing of the remaining counts by granting Trigon's motion for summary judgment. Although we apply different reasoning than the district court in some areas, we affirm its disposition of the case in favor of Trigon."

Immediately after receiving the Court of Appeals' decision, the ACA implemented a thorough review of the court's opinion. It then announced that it would challenge the court's ruling by petitioning for a rehearing and appeal to the full panel of judges in the Fourth Circuit. The appeal will serve as a precursor to future petitions, including, if necessary, to the Supreme Court.

"If the nation's antitrust laws mean anything at all, the ACA has absolutely no choice but to continue to pursue this case and ensure that this decision is overturned," said Dr. Krippendorf. "Every patient who has been denied a proper referral to a chiropractor for musculoskeletal problems and has had to endure unnecessary pain, surgery, drugs and their side-effects or disablement from work or social activities is a silent witness to this lawsuit. We owe it to them - our patients - to fight this battle with every ounce of legal strength we can muster."

While the court's latest decision is a significant blow to the ACA's legal efforts, some significant accomplishments have resulted from the lawsuit. Blue Cross Blue Shield recently added a new chiropractic benefit to the Federal Employee Health Benefits plan, which is worth an estimated \$140 million per year. In addition, ACA has been instrumental in forming the Blue CcHIP (Clues/Chiropractic Clinical Healthplan Program), a liaison program that has allowed doctors of chiropractic to become part of local Blue Cross Blue Shield policy-making committees across the nation.

"These victories did not come by accident," explained Dr. Krippendorf. "They are substantial benefits derived from the support we've received from so many in our profession who want what is best for chiropractic ... We remain dedicated to protecting the rights of doctors of chiropractic, and we will do what we believe is the next right thing to do."

To learn more about the ACA's appeal and its continuing battle with Trigon, readers are encouraged to read *Dynamic Chiropractic's* interview with ACA general counsel George McAndrews, which begins on the front page of this issue.

*Editor's note:* The National Chiropractic Legal Action Fund (NCLAF) has been established to support the federal chiropractic lawsuits on behalf of the profession. Doctors, patients and other concerned individuals may contribute to the fund by sending a check to NCLAF, P.O. Box 75359, Baltimore, MD 21275.

### Resources

1. American Chiropractic Association to take Trigon appeal to highest level necessary. ACA press release, May 12, 2004.
2. ACA to consider next step in Trigon case, continue fighting battle with HHS. ACA press release, May 7, 2004.
3. ACA to appeal judge's decision in Trigon lawsuit. *Dynamic Chiropractic*, June 2, 2003. [www.chiroweb.com/archives/21/12/18.html](http://www.chiroweb.com/archives/21/12/18.html).
4. *United States Court of Appeals for the Fourth Circuit. American Chiropractic Association, et al., v. Trigon Healthcare, et al. and Blue Cross and Blue Shield Association.* Case No. 03-1675. Appeal from the United States District Court for the Western District of Virginia, at Abingdon. Opinion published May 6, 2004. Available at <http://caselaw.lp.findlaw.com/data2/circs/4th/031675p.pdf>.

