

Surface EMG Rights Restored to Florida DCs

Editorial Staff

On Jan. 25, 2005, Judge Diane Cleavinger handed down a decision in the case of *Richard W. Merritt, DC vs. State of Florida, Department of Health* (DOH), heard in a Tallahassee court in July 2004. The case overturned a January 2004 Florida statute that listed surface electromyography (sEMG) as "not medically necessary" as a diagnostic method for evaluating injured persons when subject to reimbursement through personal-injury protection (PIP) insurance, a mandatory coverage under the state's vehicle no-fault insurance law. The impact of this statute on chiropractors throughout Florida caused Dr. Richard Merritt, a Lakeland, Fla., chiropractor, to take action and challenge the ruling. As legal strategies intensified, Dr. Merritt called on David Marcarian of Myovision, a company that provides surface EMG to the chiropractic profession.

"We reached out for help from Marcarian, and others who appear to specialize in sEMG, and the only one up for the challenge was Marcarian," said Dr. Merritt. "I for one am glad [that], as it turns out, that Marcarian's testimony was extremely powerful in court. We also found out that some of the other sEMG companies were actually a large part of the problem by promoting improper use of the technology."

The heated trial lasted two days. Dr. Merritt and Mr. Marcarian were the only ones to testify against the State. The long list of "intervenor" for the State included some of Florida's largest insurers:

- The Florida Insurance Council, Inc.
- The Property Casualty Insurers Association of America
- The American Insurance Association
- The National Association of Mutual Insurance Companies
- The Florida Automobile Insurance Company
- State Farm Mutual Automobile Insurance Company
- Allstate Insurance Company
- Government Employees Insurance Company
- The Florida Farm Bureau Insurance Companies
- Liberty Mutual Insurance Group
- First Floridian Auto and Home Insurance Company
- United Services Automobile Association

This group of insurance organizations joined the Florida DOH in defending the State's decision regarding the medical necessity of surface EMG. The DOH relied upon four expert witnesses, including an MD/PhD with expertise in electrodiagnostic medicine.

Judge Cleavinger's decision was an unprecedented 47 pages long. She found that surface EMG had demonstrated medical value, a level of general acceptance, and was not entirely dependent on subjective patient response. Her findings were based primarily on published studies and journal articles, the *Chiropractic Practice Guidelines and Parameters for the State of Florida*, and the

inclusion of surface EMG in the CPT codes.

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