

Chairman's Message

The "Silver Linings" in the Trigon "Cloud"



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In a decision reached in late April, Judge Jones ruled in favor of Trigon Blue Cross/Blue Shield. His ruling contends that Trigon's MD advisory panel, composed of representatives from various Virginia medical societies, was not in conspiracy with Trigon to limit coverage of chiropractic services and payments to doctors of chiropractic. The judge maintained that the panel members are "agents" of Trigon who did not personally benefit from Trigon's discriminatory policies taken toward doctors of chiropractic.

The ACA believes this interpretation turns the existing antitrust law on its head and cannot be the law of the land. Furthermore, lead attorney George McAndrews found the judge's opinion to be "legally and factually wrong," and "full of holes." For these reasons, the ACA will vigorously appeal the ruling in the Fourth Circuit U.S. Court of Appeals.

Essentially, by asserting the neutrality of these MDs, Judge Jones chose to ignore the 100-plus years of systematic and constant efforts taken by medical physician groups to prevent competition, the payment of insurance monies, or referrals to or with doctors of chiropractic. In sum, we are optimistic that the depth of analysis applied by judges in the appeal process will lead to the simple justice doctors of chiropractic have so patiently sought throughout the history of our profession.

Almost from its inception, this case has closely paralleled the landmark *Wilk vs. AMA* lawsuit—which was won in 1987 after an appeal. Like the plaintiffs in the *Wilk* suit, we are certain we have a strong legal basis for an appeal in this case. George McAndrews said, "...in the *Wilk* case, I deliberated on whether or not to appeal for 30 days. In the Trigon case, I deliberated for 30 seconds."

After learning of the judge's decision to dismiss the federal lawsuit against Trigon Blue Cross/Blue Shield, I am sure many of you felt disappointment and may have even assumed that all was lost. Well, cheer up, because the judge's ruling was only "Round 1" in what will be a protracted, heavyweight fight to ensure that doctors of chiropractic and our patients are reimbursed fairly.

Now don't get me wrong; the ACA would have much preferred to win this early round. Had that happened, however, we would be cautioning that the other side will appeal and the battle is far from over. And that's what you need to realize now. This legal action

against a giant in the insurance industry will take years to adjudicate and, barring a settlement, it will not be over until the United States Supreme Court says it's over.

So where exactly are the "silver linings" in the judge's ruling?

First, if the judge had already made up his mind to rule against us, we can be thankful that he spared us the expense of a three-week trial that would have cost approximately \$1 million.

More important, the appeals process will permit us to challenge earlier decisions by the judge that limited evidence and discovery procedures that would have exposed discriminatory schemes prior to 1996.

And when it comes to the appeals process, we are very optimistic that the judge will be overturned based on the opinions of several antitrust legal experts. Bob Hirtle, an attorney for the Connecticut Chiropractic Association, said that most antitrust cases come down to factual issues, and in the case of the Trigon lawsuit, "that's encouraging." He pointed out that if the chiropractic plaintiffs can prove to the appeals court that members of the committee Trigon used to recommend its chiropractic policies were, in fact, competitors of doctors of chiropractic, then "they would be appropriate parties to constitute a conspiracy under antitrust laws. It looks like the ACA has a good, solid basis for appeal."

The California Chiropractic Association's Mike Schroeder, another attorney with antitrust expertise, says he was not overly

concerned by the judge's decision to dismiss the Trigon case. He pointed out that chiropractic overcame similar defeats in the *Wilk* suit and went on to win that case. He believes Judge Jones made some "unwarranted leaps" in finding that the Trigon advisory board members were not DC competitors. "I don't think we're going to lose this appeal," Schroeder says. He also thinks the chiropractic profession has already

achieved a substantial victory through the Trigon suit with its earlier settlement with the national Blue Cross Blue Shield association. That move led to the establishment of a chiropractic benefit in the federal health plan (that it administers) and expanded coverage for doctors of chiropractic to include payment for physical therapy services.

Rest assured, the ACA is fully committed to this effort and we will

not quit until justice is served. In the words of President George W. Bush after September 11, "*We will not waver; we will not tire; we will not falter; and we will not fail.*" ▼

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Notice of Examination

American Chiropractic Neurology Board Diplomate Examination

The American Chiropractic Neurology Board announces the 2003 Diplomate Examination to be held Thursday, September 25, through Saturday, September 27, 2003, in Orlando, Florida, at the Sheraton World Resort. (For room reservations, call 800/327-0363).

The examination fee for Part I and Part II is U.S. \$1,200. The fee to retake only Part 1 (written) is U.S. \$700, and the fee to retake only Part II (practical) is U.S. \$500. Make check or money order payable to ACNB. Early registration **MUST** be postmarked by July 31, 2003. The fee for the examination will increase to \$1,700 after July 31, 2003.

Applications may be downloaded from the ACNB Web site www.dacnb.org.

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