Dynamic Chiropractic
THE CHIROPRACTIC NEWS SOURCE
An MPN Media Publication

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Dynamic Chiropractic – January 15, 2005, Vol. 23, Issue 02

Teddy Roosevelt and the ACA Lawsuits

By James Edwards, DC

By now, you have probably read that the U.S. Supreme Court has declined to hear the ACA's appeal of the Trigon Blue Cross/Blue Shield (BC/BS) case, and that the ACA's "subluxation" lawsuit against the U.S. Department of Health and Human Services is on its way to the Court of Appeals. Without question, certain irresponsible elements in the profession will attempt to spin these setbacks for their personal agendas and try to convince you that the lawsuits were ill-advised and a waste of the profession's resources. Nothing could be further from the truth!

Before getting to Teddy Roosevelt and what he might think of the profession's efforts, a little background is in order.

Since 1998, I have traveled all across the country alerting the profession to the seriousness of the offenses and the need for doctors of chiropractic to unite behind these two lawsuits. Almost every one of my speeches discussed my personal "Top Ten List" of recent ACA accomplishments and achievements; in every presentation, the two above-mentioned lawsuits were ranked number one and number two. In fact, I told many audiences that the ACA was fully committed to these causes and would "fall on its sword," due to the importance of both lawsuits to the profession.

With the recent rulings against the chiropractic profession, some might think my future presentations will place less emphasis on the importance of the lawsuits. I can assure you they will not - because win, lose or draw, these two federal lawsuits were the association's "finest hour," have accomplished so very much for the profession, and were worth every penny spent!

If you have any doubt about that statement, take a moment to look at the facts relative to

what the lawsuits have accomplished:

- As a direct result of the Trigon Blue Cross/Blue Shield lawsuit, millions more Americans now have greater access to chiropractic care and hundreds of millions of additional dollars are being reimbursed for chiropractic care. In January 2002, the Blue Cross/Blue Shield Association began covering chiropractic care within its Federal Employee Health Benefits plan. This plan covers 3 million employees and 9 million dependents, and is worth an estimated $120 - $140 million per year.
- As a direct result of the Trigon lawsuit, Blue Cross/Blue Shield extended its chiropractic coverage in its Federal Employee Health Benefits plan by including an extra benefit for physical therapy services within the plan.
- As a direct result of the Trigon lawsuit and the actions of BC/BS, one state physical therapy association said this about its impact: "In the eyes of Blue Cross Federal Employee Plans and First Source Plans, chiropractors are actually physician-level physical therapists. In fact, they are reimbursed for performing physical therapy evaluations as well as all of the 97,000 CPT procedures. The National Chiropractic Lobby [ACA] is taking this same argument to courts all over the country to compel the insurance carriers to reimburse chiropractors for 'physical therapy.'"[1]
- As a direct result of the Trigon lawsuit, the Blue CCHiP program (Blue/Chiropractic Clinical Healthplan Integration Program) was launched. It is a liaison program between BC/BS and the ACA that has allowed doctors of chiropractic to become integrated into local Blue Cross/Blue Shield policy-making committees and has addressed many problems chiropractors face on a day-to-day basis with local Blue Cross/Blue Shield plans.
- As a direct result of the Trigon lawsuit, Blue Cross/Blue Shield and the ACA began to work cooperatively to improve chiropractic recognition and coverage in BC/BS plans nationwide - plans that cover 88 million lives.
- As a direct result of the Trigon lawsuit, a warning was sent to medical doctors, hospitals and insurance companies that they too might be subjected to civil racketeering charges should they conspire to injure competition with chiropractors.
- As a direct result of the HHS lawsuit, HHS Secretary Thompson ruled that physical therapists cannot be reimbursed for providing the chiropractic benefit under Medicare![2]
- As a direct result of the HHS lawsuit, the Department of Health and Human Services reversed its prior policy letter to clearly state: "As a standard Medicare Part B benefit, manual manipulation of the spine to correct a subluxation must be made available to enrollees in Medicare+Choice plans."[2] This important policy change made the chiropractic benefit available to Medicare beneficiaries enrolled in those plans.

The "mainstream" of this profession was also convinced about the importance of the Trigon

lawsuit, as evidenced by the fact that 47 state chiropractic associations, the Congress of Chiropractic State Associations (COCSA), the Association of Chiropractic Colleges (ACC) and the National Association of Chiropractic Attorneys (NACA) all joined the ACA in the appeal by filing amicus briefs with the U.S. Supreme Court!

When it comes to the HHS lawsuit, nothing is more important to the profession, since the lawsuit seeks to protect the "core" of chiropractic by prohibiting others from providing subluxation care. The state delegates of COCSA are in agreement and recently adopted an official position statement calling for an appeal of the judge's decision.

Regardless of the final outcome, the above achievements - in and of themselves - were worth every penny spent on the two legal actions! While I am hopeful that the higher court will correct the errors made by the lower court in the HHS lawsuit, there is no guarantee that will happen. However, I can tell you that the two lawsuits have yielded enough positive benefits to more than justify the time, energy and expense expended, and I am very proud of the ACA for its unwavering defense of the profession.

So, what would Teddy Roosevelt think of the ACA lawsuits? I must admit that I have no idea. However, I believe the following quotation from the 26th president of the United States speaks volumes about what he might think about the profession's Herculean effort to date:

"It is not the critic who counts, not the man who points out how the strong man stumbled, or where the doer of deeds could have done better. The credit belongs to the man who is actually in the arena; whose face is marred by dust and sweat and blood; who strives valiantly, who errs and comes short again; who knows the great enthusiasms, the great devotions, and spends himself in a worth cause; who, at the best, knows in the end the triumph of high achievement; and who, at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who knows neither victory nor defeat."

Without question, the ACA is "the arena," "its face is "marred by dust and sweat and blood," and it has been "striving valiantly" and is spending itself "in a worthy cause." And most importantly, the association's place "shall never be with those cold and timid souls who knows neither victory nor defeat."

Rest assured, these two lawsuits are not the end of our legal efforts ... they are only the

beginning. In the final analysis, these legal actions are the initial, opening battles in a very long war to ensure fair reimbursement and prohibit others from providing subluxation care. I cannot tell how long the war will last, but I can tell you this: The ACA will not yield or quit until all required "triumphs of high achievement" are attained for our profession, our practices and our patients.

References

1. *New Horizons* - Publication of the Arkansas Physical Therapy Association, August 2004.
2. Centers for Medicare and Medicaid Services. Updated *Operational Policy Letter #23*, Jan. 15, 2002.

James Edwards, DC
Treasurer and District VI Governor
American Chiropractic Association
Austin, Texas
jamesedwards@jamesedwards.com

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