



New Mexico Court Acts to Address Questionable Chiropractic Board Actions

On February 15, 2012, in a highly significant decision, the New Mexico Court of Appeals ruled favorably on a petition by the International Chiropractors Association (ICA) and two of the state's other professional regulatory boards, to issue a stay halting the implementation of two recent administrative rules adopted by the New Mexico Board of Chiropractic Examiners (NMBCE). The recent NMBCE actions that were the focus of the Court's attention dealt specifically with the promulgation of rules covering additions to a "formulary" or list of substances DCs would be authorized to prescribe and administer, and also the pathway by which the Chiropractic Board proceeded to issue "advance practice" standing to numerous DCs in the state.

ICA was joined by the New Mexico Board of Pharmacy and the state's Medical Board in requesting the Court to stay, according to the documents filed by ICA with the Court, the, "*New Mexico Board of Chiropractic Examiners from implementing its new rule establishing an advanced practice formulary to include dangerous drugs and drugs to be administered by injection...and implementing its new rules establishing a certain course of training to certify advanced practice chiropractic physicians to administer and prescribe dangerous drugs and drugs to be administered by injection*" because such actions were outside their authority under the law. The full text of the Court's decision will be published on ICA's website at www.chiropractic.org as soon as it is formally issued.

The issues being addressed in the multiple legal actions against the NMBCE are matters of law and not opinion or philosophy. The basic question dealt with by the Court in the February 15th ruling is an apparent failure on the part of the New Mexico Chiropractic Board to follow the specific terms established by the legislature for authorizing both a formulary of substances advanced practice DCs in the state might be able to prescribe and administer and the educational pathway through which such advanced practice DCs would qualify for that status. Out of similar concerns over adherence to the statute, New Mexico's medical and pharmacy boards also filed similar lawsuits. Because of the similarity in the concerns expressed in the three legal actions, on February 1, 2012, the New Mexico Court of Appeals acted to consolidate the three suits, over the strenuous objections of the New Mexico Chiropractic Board.

The next step will be an attempt to "mediate" a resolution between the four parties, the ICA, the NMBCE, and the New Mexico Medical and Pharmacy Boards, through which the actions of the Chiropractic Board might be brought into compliance with the specific requirements of the statute. If this mediation effort is unsuccessful, the New Mexico Court of Appeals will then proceed to hear ICA's full suit seeking to overturn the rules seen to have been adopted outside the provisions of the statutes governing the process.

“ICA has embarked on these legal actions reluctantly,” said ICA President Dr. Gary L. Walsemann. “We have done so only because steps to address the decisions of the Chiropractic Board that are not in compliance with the laws governing their processes through an appeal to the Chiropractic Board itself had proven to be unsuccessful. As a result of the refusal of the Board to come into compliance on its own volition with the rules as established by the legislation that governs it, ICA has sought the protection of the courts in New Mexico.”

Acting on behalf of concerned members in New Mexico and out of concern for the integrity and credibility of the chiropractic profession at large, on November 14, 2011, ICA filed a notice of appeal with the New Mexico State Court of Appeals directed at specific questionable actions of the New Mexico Chiropractic Board.

On December 21, 2011 the International Chiropractors Association (ICA) next filed an extensive memorandum in support of a motion to stay what is being held to be illegal actions on the part of that state’s Board of Chiropractic Examiners. In its [memorandum of explanation](#), ICA’s attorneys argued that it was important for the court to carefully consider the urgent issues of the letter of the law and the protection of both the public and chiropractic practitioners. This the Court proceeded to do and acted intelligently and responsibly on the basis of the facts presented by the petitioning parties, including the ICA.

These issues have had a long and contentious history. On August 30, 2011, at an official rulemaking hearing and meeting, the New Mexico Chiropractic Board adopted new rules to greatly expand the chiropractic formulary to include certain dangerous drugs and drugs to be administered by injection that had not been approved by either the New Mexico Medical or Pharmacy Boards as specifically required by state law. At that same hearing, lawyers representing the State of New Mexico were very clear in their advice that the Board was acting outside their authority and should not proceed. The Chiropractic Board ignored those admonitions and acted to adopt a new formulary anyway.

ICA representatives were present at both the August and December Board meetings and, in concert with New Mexico DCs, urged the Board to act only within the rules established by statute but to no avail. At their meeting of December 13, 2011, the New Mexico Chiropractic Board denied all requests to stay the implementation of the new rules pending appeal. ICA received official documentation of the New Mexico Chiropractic Board’s official denial of a request to stay the controversial rules on January 5, 2012. Having exhausted all administrative remedies, ICA is seeking the protection of the courts in the face of the Board’s questionable actions.

ICA’s attorneys filed the extensive memorandum of December 21, 2011 to document the urgent need for a court-ordered stay to stop the inappropriate Board actions as the evidence shows that the New Mexico Chiropractic Board knowingly violated the terms of the law and citizens and practitioners alike are clearly at risk as a result.

ICA has taken these extraordinary steps to help prevent a serious unraveling of public confidence in the chiropractic profession and severe damage to the credibility of the chiropractic regulatory process in New Mexico. “The public must have absolute confidence that the process of licensing and regulating the practice of chiropractic in all states has been undertaken with complete honesty and meticulous care to obey not only the letter but the spirit of the law as established by state legislatures,” said ICA President Dr. Gary L. Walsemann. “Regrettably, this does not appear to be the case with the current New Mexico Board of Chiropractic Examiners and action in the courts on ICA’s part was clearly the right thing to do.”

ICA's extensive legal actions in New Mexico were funded through donations made by concerned individuals from across the nation through ICA's unique on-line advocacy system, www.AdjustTheVote.org. Any individual wanting to contribute to ICA's ongoing legal efforts in New Mexico can do so through the AdjustTheVote website.

Since its founding 86 years ago, the ICA has consistently held that chiropractic is and should remain a drugless science and practice. The chiropractic profession has likewise established a powerful consensus on the issue of chiropractic as a drugless science. The testing of the National Board of Chiropractic Examiners (NBCE) does not include testing for the credentialing of the practice of medicine. The Chiropractic Paradigm developed by the Association of Chiropractic Colleges (ACC) and endorsed by every chiropractic organization in the United States identifies chiropractic practice as being drug-free. The World Federation of Chiropractic (WFC) expressly states: *Chiropractic is a health care discipline which emphasizes the inherent recuperative power of the body to heal itself without the use of drugs or surgery.* To further highlight this global consensus, the WFC, in its comprehensive chiropractic "Identity Consultation" agreed that patients are best "...managed principally by spinal adjustment, other manual treatments, exercise and patient education, without the use of drugs and surgery, enabling patients to avoid these wherever possible.

The New Mexico Chiropractic Board, encouraged by a tiny minority within the profession and one or two colleges seeking an advantage in the marketplace, has undertaken to establish medical and pharmaceutical privileges for some doctors of chiropractic through a back door, the risks to the public notwithstanding. These actions raise both ethical and legal questions and though the ethics of such behavior may not be readily addressed, the legal aspects can and will be dealt with through the courts.

Working in partnership with individual members and allied organizations across the nation, ICA will continue to work to ensure that the integrity of the chiropractic regulatory process is protected and that the inappropriate actions of a few ill-advised and unchecked individuals will not do needless damage to the profession at large or further place the public at risk.

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