

Historical Vignettes: Important historical events that have shaped modern chiropractic practice in Australia.

Historical Vignette 4: Removing the biggest impediment of all: The AMA's ethics-based boycott.

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Introduction

The first three historical vignettes recounted how, over a 15-year period, a small group of dedicated and determined chiropractors had significant impediments to interprofessional cooperation removed in Queensland. There remained however, a national impediment in the form of the Australian Medical Association's policy on chiropractic and its ethics-based boycott against interprofessional cooperation with chiropractors in any form. The boycott began in 1978. In 2003, following a 15 year campaign by an Australia wide group of determined chiropractors and assisted by the Australian Consumer and Competition Commission (ACCC), the Australian Medical Association (AMA) revised its decades old policy labelling chiropractors an exclusive dogma and removed its ethical prohibition against interprofessional cooperation between medical practitioners and members of an exclusive dogma (1, 2). Doing so created opportunities for interprofessional collaboration in the areas of clinical practice, education, and research never seen before in Australia. This historical vignette briefly recounts what was a David versus Goliath battle or, as Scotton said, "a holy war between the forces of good and the forces of evil" (3)p.23.

Having gone to Canadian Memorial Chiropractic College from 1978-1982, I was aware of the ongoing *Wilk et al v AMA et al* court case. It is noteworthy that the trial would not have been possible but for the 1975 removal of the tacit exemption of the medical profession from the Sherman Antitrust Act (4, 5). Doing so effectively removed the medical profession's opportunities for self-protective economic restraint and abuse within the health care market. No longer was the medical profession's monopoly over health care protected by law. The Wilk trial irrefutably revealed the "Iowa Plan", a conspiracy by organized medicine in the United States to "contain and eliminate" the chiropractic profession as competitors in the health care system (6).

The "key elements" of the "Iowa Plan" were:

- encourage chiropractic disunity;
- undertake a positive program of 'containment';
- encourage ethical complaints against chiropractors;
- oppose chiropractic inroads in health insurance;
- oppose chiropractic inroads in workmen's compensation;
- oppose chiropractic inroads into labour unions;
- oppose chiropractic inroads into hospitals; and
- contain chiropractic schools. (7)

In 1987, following 11 years of legal action, US federal appellate court judge Susan Getzendanner ruled that the AMA had engaged in a “lengthy, systematic, successful and unlawful boycott” designed to restrict cooperation between MDs and chiropractors to eliminate the profession of chiropractic as a competitor in the United States health care system (8). Getzendanner’s landmark decision opened the doors to interprofessional cooperation between chiropractors and medical practitioners.

When the Wilk decision was reached, I had been in Australia for 5 years. I had experienced the antithesis to interprofessional cooperation. I met George McAndrews, plaintiff’s lead counsel in Wilk v AMA and discussed with him the possibility that the Australian Medical Association was implementing a version of the Iowa Plan. Mr McAndrews said he was confident that there was a “conscious interdependent parallelism” between the Australian and American Medical Associations regarding their anti-chiropractic activities and that he had a “linking document” demonstrating their collusion. All I had to do was visit his offices in Chicago, Illinois, USA and the case would be made.

Following a 1995 research trip to McAndrew’s offices, funded by the Australian Chiropractors Association, I returned to Australia, not with a linking document. Rather, I returned with trial transcripts, evidence exhibits, appeal briefs and petitions as well as the Judge’s Memorandum Opinion and Order, some 15,000 documents in all. These were all copied and shipped to Australia by Mr McAndrews at no cost.

All that needed to be done now was to determine if the Australian Medical Association was caught under the umbrella of Australia’s trade practices law, gather Australian evidence, show the evidence was sufficiently similar to that presented in Wilk et al v AMA et al, and convince the Australian Consumer and Competition Commission or a court of law that, just as the AMA et al had breached the Sherman Act, the Australian Medical Association, using similar tactics, had breached Australia’s competition laws. Simple.

[Australian Trade Practices Law and the Medical Profession](#)

JA Logan’s 1985 Opinion

In 1985 the Australian Chiropractors Association (Queensland) obtained a barrister’s opinion from JA Logan. Mr Logan was asked if the Australian Medical Association’s policy on chiropractic breached the restrictive trade practices provisions of the Trade Practices Act of 1974. At that time members of the learned professions, including medicine, were considered exempt from the provision of Australia’s existing Trade Practices Act which governed competition in the marketplace because they did not engage in ‘trade or commerce’. Professionals were not considered to be engaged in trade or commerce. Further, even if this hurdle could be overcome, it would be necessary to prove that the purpose of the policy was to “lessen, hinder or prevent competition” between medical

practitioners and chiropractors when faced with a request for a referral to a chiropractor. This explains Logan's opinion that, even though chiropractic was a government regulated profession, the Australian Medical Association itself was not contravening the Trade Practices Act in relation to its policy on chiropractic. Individual medical practitioners acting on the policy prohibiting interprofessional cooperation were not affected by the Act. (9)

1991 Legal Opinion

Armed with knowledge of the Wilk case, the Australian Chiropractors Association (ACA) obtained a legal opinion on the Australian Trade Practices Act which dealt with anti-competitive conduct and the AMA's policy on chiropractic. Mr CL Taylor of Henderson Trout provided detailed advice in August and October 1991. He opined:

- Significant financial and legal hurdles would be faced if the ACA brought a Trade Practices action against the AMA, not the least of which was proving the AMA was a 'trading corporation' within the ambit of the Trade Practices Act.
- The Trade Practices Commission might, if presented with compelling evidence of a breach, contact the party complained against, identify the complainant, and seek a response.

Mr Taylor offered the following advice to the ACA. Gather evidence:

1. That the AMA carries out any money making activities. i.e. is a trading corporation.
2. Of the steps taken by the AMA to discriminate against the chiropractic profession.
3. Of the steps taken by individual doctors to discriminate against the chiropractic profession.
4. The AMA's market power in the health care system.

We believed that evidence of 2,3 and 4 would not be overly difficult to gather. Evidence that the AMA was a trading corporation would be more challenging. This task became irrelevant in 1995 with the [Hilmer Competition Reforms](#).

In 1995 all Australian governments, federal, state and municipal, began a decade-long process to overhaul competition law in Australia. Ultimately all suppliers of goods and services, including professional work such as medical services, in the public and private sector were caught under the umbrella of the reforms (10). This meant that, for the first time, the medical profession, both the AMA and individual practitioners, were subject to the provisions of the Trade Practices Act, dealing with boycotts, and misuse of market power. This meant there was the possibility of a Wilk style case in Australia.

Gathering The Evidence

In the USA early evidence of the medical conspiracy surfaced with the 1972 publication of William Trever's book, *In the Public Interest* (11) and three years later, in 1975, with the emergence of a mysterious individual using the pseudonym 'Sore Throat' who claimed to be a former AMA physician holding documents proving an AMA conspiracy against chiropractic (12). Trever's book was a detailed expose of the Iowa Plan to *contain and eliminate* chiropractic. Sore Throat encouraged the chiropractors to sue the AMA and others for breaches of the Sherman Act. These two sources laid the groundwork for the chiropractors' case. No such sources emerged in Australia. Rather, we had to source our evidence by enlisting the services of a band of like-minded chiropractors. The ancient proverb, the enemy of my enemy is my friend, proved correct. All ideological differences were set aside, and the evidence flowed in from chiropractors around Australia. Twenty-four Freedom of Information searches were conducted in Australia plus one in the National Archives of New Zealand. An 'Antipathy File' grew with anecdotal accounts of medical discrimination. A media clipping service gathered published examples of medical interference with chiropractic. All medical associations were contacted by mail requesting their policy on chiropractic. In all, approximately 20,000 documents were gathered. Some were a single page while others were dozens of pages. Here are just a few examples from the Antipathy File:

Letter from Chief Executive Officer, Dr Doyle of Wodonga District Hospital advising that "this department does not accept referrals from chiropractors, aromatherapists, iridologists or other similar practitioners. Dr Doyle found it surprising that the Chiro Assoc would be running a seminar on CAT and MRI scans when the knowledge of radiology possessed by the average chiropractor could be easily accommodated on the back of a postage stamp.

Letter from Director of Medical Services, Whyalla Hospital, Dr Paul Rainsford advising that the hospital does not grant access to its facility for chiropractors, naturopaths, foot reflexologists, iris diagnosticians, witch doctors, devil worshippers or any other group of unorthodox practitioners of health charms.

Letter from Dr MJ McAuliffe to Harold Falge, chiropractor, stating that Dr McAuliffe could not refer a patient because he is 'bound by the AMA Code of Ethics which forbid me'

Letter from Kevin Szekely, DC giving accounts of six cases in which a GP refused to refer under WorkCover and in which the patient was advised that the medic would not give them a certificate if they were going to continue to attend a chiropractor.

Letter from Craig Moore, chiropractor, with stat dec attached in which a patient states that her orthopaedic surgeon told her to stop seeing a chiropractor because they are barbarians.

A deposition by an Ophthalmologist explaining that he was 'advised' to relocate his practice from a building housing a chiropractic practice and owned by a chiropractor, if he wanted to continue to receive referrals from the local GPs. (6)

My next task was to conduct a systematic textual analysis of documents collected in the United States and then a similar analysis of the documents obtained in Australia to unearth any relationships present within the data. As patterns emerged, supported by documentary evidence, meetings were held with the Australian Consumer and Competition Commission (ACCC), the first being in 1992. Over a 5-year period, dozens of such meeting were held with ACCC officers in Queensland, Western Australia, Victoria, and the Australian Capital Territory. After two years of meetings Mr Alan Ducret, Queensland Regional Director of the ACCC said the ACA likely had a good case if it wanted to take the AMA to court but there was not "enough blood on the floor for the ACCC to take the case on". By this he meant there was not enough evidence demonstrating how the AMA's policy lessened, hindered, or prevented competition between medical practitioners and chiropractors in the health care marketplace. After 3 more years of presenting the ACCC with evidence, Mr Alan Ducret, said "there is enough blood on the floor, the ACCC will take the case". In 1997 the ACCC contacted the Federal, State and Territory Branches of the AMA to determine if the AMA had in place any policies prohibiting interprofessional conduct between medical doctors and chiropractors (2). During the meetings Mr Ducret reminded the AMA because chiropractors are government recognized health care providers, it is not up to the AMA to take the law into its own hands by forcing its members to boycott chiropractors (2). The AMA assured the ACCC that no policy or action of the AMA prevented or discouraged members from dealing with chiropractors (2). Six years later, in 2003, without a long and costly trial, the AMA's exclusive dogma policy on chiropractic was moved to the history file after being in place for decades (1). In 2002 the AMA adopted a 'progressive policy' on complementary medicine, including chiropractic. When announcing the new policy, Dr Karen Phelps, AMA president said,

In the interests of best practice patient care, it is vital that all complementary medicines - like any medicines - are backed by solid evidence as to their safety, quality and efficacy.

Where there is evidence, there is acceptance. (13)

The new policy emphasised the importance of evidence-based assessment supporting interprofessional relationships. The doors to interprofessional cooperation were unlocked. It was now up to the chiropractic profession to embrace the challenges and opportunities this presented.

Conclusion

In 2004 Professor Marc Cohen, President of the Australasian Integrative Medicine Association offered advice that is as pertinent today as it was then.

No single professional group has ownership of health, and the best healthcare requires a multidisciplinary approach. Thus, there is an imperative for all healthcare professionals to work together for the benefit of their patients and the wider community. (14)

Four historical vignettes have been presented. Their purpose was to document the barriers faced by Australian chiropractors in the 20th century and to record the lengths that some within the profession would go to remove obstacles the multidisciplinary approach Professor Cohen referred to. These are by no means all the stories and are not the end of the story. More needs to be done to ensure the public has unimpeded access to chiropractic care as part of a multidisciplinary health care team.

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