

**Halbur, Jennifer**

---

**From:** Hoxtell, Wade  
**Sent:** Monday, October 27, 2003 8:39 AM  
**To:** Halbur, Jennifer

Copies of testimonies from last weeks hearing on the chiropractic bill go to:

Patrick Greenwald  
2901 Wimbledon Way  
Madison, WI 53713-3427

608-273-0296

✓ 10-27-03 I sent Patrick testimony.



**Wisconsin Chiropractic Association**

521 E. Washington Avenue  
Madison, WI 53703  
Tel. (608) 256-7023 • Fax (608) 256-7123

**BOARD OF DIRECTORS**

Sherry L. Walker, DC  
President

Jeffrey R. Lyne, DC  
Vice President

Wendy L. Varish, DC  
Treasurer

Wendy M. Henrichs, DC  
Financial Secretary

Donn T. Gurske, DC  
Recording Secretary

Michael J. McMahon, DC  
Past President

Randall M. Adams, DC

Robin L. Baker, DC

Leo J. Bronston, DC

Steven M. Douglas, DC

Jack M. Masche, DC

Thomas E. Scherer, DC

Arnold F. Steele, DC

Russell A. Leonard  
Executive Director

October 23, 2003

To: Members of the Legislature

From: Wisconsin Chiropractic Association  
Allied Health of Wisconsin

Re: Agreement on Chiropractic Legislation

After a long and contentious struggle, the Wisconsin Chiropractic Association and Allied Health of Wisconsin have reached an agreement on SB 275 and AB 356 that will significantly improve the accountability and professionalism of the chiropractic profession.

We are in the process of informing chiropractors across the state of this important news. You may wish to do the same for doctors that have contacted your office.

The WCA and Allied Health ask for your help in securing passage of this historic proposal.

NOV 18 2003

# Lyons

## *Family Chiropractic*

November 16, 2003  
Senator Carol Roessler  
8 South  
P.O. Box 7882  
Madison, WI 53707-7882

Dear Senator Carol Roessler,

This past Thursday, the 13<sup>th</sup>, Dr. James Greenwald and I had the pleasure of speaking with Jennifer Halbur in your office. We came to discuss several problems with the current piece of Chiropractic legislation that is being considered.

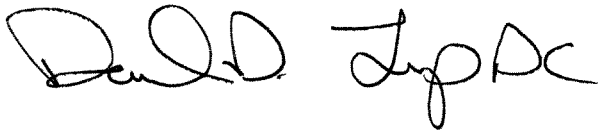
Jennifer seemed to think that since the WCA and Allied health had formed an agreement on the bill that everyone wanted it. Nothing could be further from the truth. Allied Health is a for profit corporation representing it's own interests, and while Mr. Leonard says that he represents all of the Chiropractors in Wisconsin, he does not. The WCA's membership is about 70% of the DCs in Wisconsin and the majority of them do not want this bill passed.

The bill itself has two major problems, primarily the continuing education and the duty to refer portions. By tightening the restrictions on who can sponsor continuing education and how the programs are administered, the WCA is positioning themselves to be the only provider of continuing ed in the state. This is very important for the WCA, as they need that money to cover their operating costs. Mr. Leonard also has a significant financial interest in this portion as he receives 35% of all continuing ed fees.

The duty to refer portion will restrict who chiropractors can refer to and destroy the level playing field we have fought so hard to create. As I understand it, if passed this bill will require that chiropractors refer only to medical doctors. Referrals to massage therapists or acupuncturists would not be possible. Apparently the bill will also make Chiropractors subordinate to medical doctors. Currently, Medical doctors can not provide expert testimony to refute a Chiropractor because Chiropractic is a separate and distinct profession. This bill would once again create a rift in healthcare when we have fought so hard to bridge it.

As this bill stands, I ask that you not support it. I would be happy to discuss these points with you or answer any questions that you may have regarding this bill.

Sincerely,



Daniel D. Lyons DC, LCP (Hon)  
President  
Alliance of Wisconsin Chiropractors

602 Pleasant Oak Drive Suite D Oregon, WI 53575  
drlyons@chorus.net 608-835-2884 Fax 608-835-2832

*State Senator  
Carol Roessler*



*Memorandum*

TO: Carol  
FROM: Jennifer  
DATE: November 21, 2003  
SUBJECT: SB 275 (Chiropractor Bill)

You are meeting with Representative Underheim, Russ Leonard, Dr. Conway, Legislative Counsel and possibly some others on Tuesday November 25<sup>th</sup> to discuss Senate Bill 275, the Chiropractor bill.

I am faxing you an explanation of the four issues that seem to be the areas where there is disagreement. I have included excerpts from people who have contacted you or the Committee on these issues.

I think the meeting on Tuesday will begin with a lot of accusations between Russ and Dr. Conway. I am trying to be optimistic that the group will work together and decisions will be made once and for all but given the history between these two, I'm just not sure they will work together.

*Carol - I'll also have a copy for you  
the day of the meeting.*

# Senate Bill 275

## HISTORY

- The Senate Committee on Health, Children, Families, Aging and Long Term Care held a public hearing on SB 275 on 10-14-03.
- Russ Leonard (WCA) and Dr. Conway (Allied Health) met for 6 hours days after the hearing and developed a compromise agreement.
- On October 23, 2003, Dr. Conway and Russ Leonard briefed Eileen O'Neil, Laura Rose and myself on the "compromise."
- The Senate Health Committee scheduled an Executive Session on SB 275 on November 11, 2003.
- On November 10, 2003, Senator Roessler was made aware that the "compromise" may not be the agreement we thought it was.
- November 25, 2003, Representative Underheim scheduled a meeting between Russ Leonard, Dr. Conway, Leg Council, Senator Roessler, Pat Essie, etc.

## 4 POTENTIALLY QUESTIONABLE COMPONENTS OF SB 275

### 1. Nurse

- The proposed substitute amendment allows a Practical Nurse to work under the direction of a chiropractor.
- During the public hearing, you expressed some concern about this.

### 2. Nutritional Supplements

- The proposed substitute amendment requires a chiropractor to complete 48 hours in a postgraduate course of study in nutrition that is approved by the examining board before the chiropractor can provide counsel, guidance, direction, etc. regarding nutritional supplements.
- Of those who submitted testimony at the public hearing, **Aberle Chiropractic Clinic** (located in Fitchburg) expressed concerns about this language. This group argues the following:  
*Under current law chiropractors can talk to and suggest nutritional supplements to their patients provided we tell them that it is for overall wellness and not for the purpose of treating a disease.*

*Chiropractors have educational requirements regarding supplementation and nutritional guidance included in our chiropractic training.*

- **Dr. Kimberly Johnson Theil, Johnson Chiropractic (Oshkosh)** is opposed. I talked to her on 11-18-03.
- **Dr. Gerald Henderickson, Hendrickson Pain Relief Center (Oshkosh)** is opposed. Spoke to him on 11-18-03.
- **Erin Tarter, MS, RD, CD (University of WI Hospital and Clinics)** opposes the nutritional language:  
*It takes years of education to become a registered dietitian, at least 5 when you consider the 4 year bachelor's degree innutrition plus the year long dietetic internship.*

### 3. Duty to Refer

- The proposed substitute amendment requires a chiropractor to “inform the patient and refer the patient to a physician” if the chiropractor determines that a patient has a condition that is not treatable by chiropractic means.
- The **WI State Medical Society** testified in opposition to this language. They argued the following:  
*“...referral duty would instantly and dramatically broaden chiropractor power with the ability to diagnose specific non-chiropractic medical problems—a power WI.'s judiciary has recognized is distinct to physicians only as currently defined.*

*Kerkman v. Hintz: “...a requirement that a chiropractor refer a patient to a medical doctor is the imposition on the chiropractor to make a medical determination that the patient needs medical care, such a determination could not be made without employing medical knowledge.”*

*“The ‘Duty to Refer’ provision is to allow chiropractors to diagnose medial conditions beyond the scope of their current practice.”*

*“The WI Chiropractor newsletter states, ‘The addition of a duty to refer...will expand the opportunity of a chiropractor to serve as a primary health care provider, qualify a chiropractor to serve as a managed care gatekeeper, and increase the clinical credibility of the profession’.”*

- **Dr. Rosemeyer, Chair of the Chiropractic Examining Board** argued against “duty to refer.”  
*“Duty to Refer does not allow patient’s liberty to opt out of a referral process to an MD therefore damaging their right to personal privacy and confidentiality.*
  
- “ Protection of the public is a good thing. 4-5 years ago, our Board addressed this with a hearing...created duty to inform. It seems silly to have to refer a patient with TMJ or bunions to an MD...increase health care cost and patient costs.”*
  
- **Daniel D. Lyons, DC, LCP (Hon), President of the Alliance of Wisconsin Chiropractors** sent a letter to you with the following argument against “duty to refer.”  
*“The duty to refer portion will restrict who chiropractors can refer to and destroy the level playing field we have fought so hard to create. As I (Dan Lyons) understand it, if passed this bill will required that chiropractors refer only to medical doctors. Referrals to massage therapists or acupuncturist would not be possible. Currently, Medical doctors can not provide expert testimony to refute a Chiropractor because Chiropractic is a separate and distinct profession.”*
  
- **Dr. Gerald Hendrickson, Hendrickson Pain Relief Center** opposes “duty to refer.” He does not care for Russ Leonard, doesn’t think he is working for the best interests of the practice.  
*He said that chiropractors are currently taught to refer and do refer when necessary. He does not think it is necessary to make referring a “duty.” He does not think we need to legislative this to death. He is also concerned about the liability that comes with making referring a duty.*
  
- **Dr. Kimberly Johnson Theil, Johnson Chiropractic**, thinks that Chiropractors should refer, however did not object when I told her that you were planning to remove this language.  
*She did say that she believes that Russ Leonard has the best interest of the Chiropractors in mind and will go along with what he says over Dr. Conway.*
  
- **CR planning to offer an amendment to remove the “duty to refer” language.**

*Arguments: Current law is duty to inform, expands scope of practice, chiropractors would not just be recommending that their client see a health care professional, they are building a relationship with the healthcare professional, increases chiropractors' liability...*

#### 4. Continuing Education

- The proposed substitute amendment defines many terms under which continuing education credits can be approved.
- I have tabbed page 6 of the sub. where the "continuing education" begins.
- From what DRL has said, it sounds like this language may mirror language in DRL rules, with some additions. I am looking into this.
- **Dr. Gerald Hendrickson, Hendrickson Pain Relief Center** supports the current system, he does not like the language in the bill. He thinks that Russ Leonard and WCA are trying to squeeze out competition.
  
- **The Department of Regulation and Licensing** testified the following:

*"Existing rules define what entities may sponsor continuing education courses as well as requirements for sponsorship. The proposed legislation would essentially codify existing requirements in statute. The legislation would also require the Dept. to deny approval of all courses sponsored by an organization for 90 days, if the sponsor violates any of the specified requirements, regardless of the nature or seriousness of the violation."*

*"The Dept. opposes this proposal. The Department views the proposal as unnecessary and unduly harsh. This is a solution without a problem. There is no demonstrated need to codify what is essentially already in the administrative rules into statute."*
  
- **Dr. Rosemeyer, Chair of Chiropractic Examining Board** expressed concerns relating to continuing education.

*"By law, we (board) will be forced to withdraw approval of all courses offered by an organization for 90 days if they don't cross their t's and dot their I's on the application...i.e. a procedural violation...we will be left with no CE's to approve."*



*“My (Dr. Rosemeyer) opinion is that this is an issue of free enterprise and ‘show me the money’. The WCA wants more control over the courses offered in the state...it is all about money.”*

- **Daniel Lyons DC. LCP (Hon), President of Alliance of WI Chiropractors** expressed concerns about C.E.

*By tightening the restrictions on who can sponsor continuing education and how the programs are administered, the WCA is positioning themselves to be the only provider of continuing ed in the state. This is very important to the WCA, as they need that money to cover their operating costs. Mr. Leonard also has a significant financial interest in this portion as he receives 35% of all continuing ed fees.”*

- **Dr. Kimberly Johnson Theil, Johnson Chiropractic**, supports the continuing ed language.

- **Alfred Traina, D.C (Northwestern University)** opposes the C.E. language.

*“We (Northwestern Health Sciences University) request that SB 275 be amended to include language that allows school and State Associations such as Minnesota Chiropractic Associations that border Wisconsin and have members with dual licenses to offer continuing education courses. Otherwise, Doctors would be prevented from receiving CE classes at a Hospital or Medical Clinic where they may have a working relationship and from receiving CR credits from a Boarder State CE programs outside of WI.”*

*“We believe the current draft may be flawed with regard to the following:*

- *A violation of civil rights under the Interstate Commerce Act pursuant to 42 USC 1983.*
- *The draft is attempting to do indirectly what it cannot do directly under the commerce Clause. See Pike v. Bruce Church, 397 U.S. 137 (1973). Ark Op, Attorney General No. 91-419 (1991).*
- *The proposed law may be challenged on the grounds that it discriminates within a class of continuing education providers, i.e. WCA can provide CE courses but not Minnesota, Illinois, Michigan, or Iowa Chiropractic Associations.*

**Halbur, Jennifer**

---

**From:** Seaquist, Sara  
**Sent:** Wednesday, November 19, 2003 4:30 PM  
**To:** Halbur, Jennifer  
**Subject:** FW: SB 275

CR email...chiro...not a constituent

-----Original Message-----

From: Tarter Erin J. [mailto:ej.tarter@hosp.wisc.edu]  
Sent: Wednesday, November 19, 2003 4:28 PM  
To: sen.roessler@legis.state.wi.us  
Subject: SB 275

Dear Sen. Roessler,

I am writing to request that Section 10 of Senate Bill 275 be omitted. This bill would allow chiropractors to provide nutritional counseling to their patients. It takes many years of education to become a registered dietitian, at least 5 when you consider the 4 year bachelor's degree in nutrition plus the year long dietetic internship. As a registered dietitian with a master's degree, I actually spent 7 years studying nutritional sciences and training in a clinical environment. In no way does the 48 hours of nutritional coursework required by the chiropractors match this level of study. Currently, a registered dietitian is considered to be the foremost provider of nutritional services and the expert in the field of nutrition. If this bill passed, chiropractors would be also considered "nutrition experts". This would undermine the nutritional sciences degree and the reputations of registered dietitians. It also places the public at risk of receiving faulty, if not dangerous, nutritional advice. Thank you for your consideration in this matter.

Sincerely,  
Erin Tarter, MS, RD, CD  
Clinical Nutritionist  
University of Wisconsin Hospital and Clinics



**KENNY CHIROPRACTIC HEALTH CENTER**

D.G. Kenny, D.C.  
Kay K. Secrest, D.C.

1421 Lake Street  
Algoma, WI 54201-1497  
Telephone: (920) 487-3832  
FAX: (920) 487-5809

November 17, 2003

NOV 19 2003

Senator Carol Roessler  
8 South, State Capitol  
PO Box 7882  
Madison WI 53707-7882

Dear Senator Roessler:

I am writing in reference to the proposed chiropractic bill. Please do not sponsor or support this bill. It would cloud the definition of practice between chiropractors and medical doctors. Each is a distinctive profession of itself with what it offers to the public and this bill would decrease the health benefits available to the people of Wisconsin.

In the past, I have been a member of the Wisconsin Chiropractic Association. My reason for withdrawing membership was that the leadership of the WCA ceased to represent the profession as a whole and by so doing was limiting the availability of benefits to the people of Wisconsin.

Thank you for your attention to this matter.

Sincerely,

KENNY CHIROPRACTIC HEALTH CENTER

Kay K. Secrest, DC

# NORTHWESTERN HEALTH SCIENCES UNIVERSITY

## FACSIMILE TRANSMITTAL SHEET

TO: Senator Carol Roessler	FROM: Al Traina, DC, President, NWHSU
COMPANY: WI State Legislature	DATE: 11/19/02
FAX NUMBER: 608-266-0423	TOTAL NO. OF PAGES INCLUDING COVER: 3
PHONE NUMBER:	
RE: SB 275	SENDER'S PHONE NUMBER 800-888-4777 X213

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

Notes/Comments:

Dear Senator Roessler:

RE: SB 275

Please see attached a letter sent to Senator Schultz regarding Senate Bill 275. Senator Schultz is the chief author of this Bill.

We believe the issues addressed in the attached letter are of critical concern to Northwestern Health Sciences University. The University would like to be involved in the resolution and negotiations of this Bill. Please contact Dr. Al Traina, President, Northwestern Health Sciences University so that the University can be represented in this regard. He can be reached at (800)888-4777 X213.

Sincere,



Diana L. Berg, Director  
Continuing Education  
Northwestern Health Sciences University

November 4, 2003

Senator Dale W. Schultz  
Madison Office, 18 South  
Wisconsin State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

RE: Chief Author of SB 275.

Dear Senator Schultz:

Northwestern Health Sciences University supports quality standards and requirements as long as they do not restrict our ability to offer continuing education (CE) courses in Wisconsin to our graduates or other licensed health care facilities in Wisconsin.

We request that SB 275 be amended to include language that allows schools and State Associations such as Minnesota Chiropractic Association, Iowa Chiropractic Association, Illinois Chiropractic Association, and Michigan Chiropractic Associations that border Wisconsin and have members with dual licenses to offer continuing education courses. Otherwise, Doctors would be prevented from receiving CE classes at a Hospital or Medical Clinic where they may have a working relationship and from receiving CE credits from a Border State CE programs outside of Wisconsin. They will also have added expenses for travel, meals, lodging if they have to travel to Madison for CE classes that they do not have now. Other concerns are with regard to clarification in specific sections of the bill; Under Section 10.446.02 regarding nutrition and the non-specific educational requirements/guidelines for the 48 hours of required Nutrition. Under Section 446.025 regarding CE and the interpretation of the language 'other organizations' as it relates to the delegation of authority to co-sponsoring organizations.

We believe the current draft may be flawed with regard to the following:

- A violation of civil rights under the Interstate Commerce Act pursuant to 42 U.S.C. 1983.
- The draft is attempting to do indirectly what it cannot do directly under the Commerce Clause. See *Pike v. Bruce Church*, 397 U.S. 137 (1970). Ark Op, Attorney General No. 91-419 (1991).
- The proposed law may be challenged on the grounds that it discriminates within a class of continuing education providers, i.e. Wisconsin Chiropractic Association can provide CE courses but not Minnesota, Illinois, Michigan, or Iowa Chiropractic Associations.

We are seeking a workable resolution to our concerns and do not oppose other provisions in the bill. We support the bill as long as modifications to the current language are made to protect our rights under the commerce clause. Thank you for this consideration.

Sincerely,

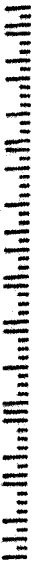
Alfred D. Traina, D.C.  
President

James L. & Shirley A. Greenwald  
2901 Wimbledon Way  
Madison, WI 53713



*Sen. Carol Rossen  
P.O. Box 7882  
Madison, WI 53707-7882*

53707+7882



NOV 12 2003

To Sen. Carol Roessler  
Re W.C.A. Legislation  
From Mr. James L. Greenwald

Sorry to keep bothering you but here are some facts you may not have heard.

Mr Leonard does not represent all the Chiropractors only members of W.C.A.

Personnel + Adm. costs were \$870,000.00

Income from dues \$680,700.00

Mr Leonard's salary is over \$400,000.00 <sup>including</sup> not benefits

His benefits are:

Health ins. - Group Health - Family

Term life - 4 times annual base salary.

Retirement - 15% of base pay.

Use of a van

35% of Cont. Education

Lobbyist

7% raise each year

His 35% of continuing Ed comes right off the top, the Chiropractors pay all the expenses.

I know of no other states that make a profit on cont. ed. They are happy to break even.

The W.C.A. receives \$12 - \$14,000.00 a year to pay for speakers & seminars from the W.C. Chiropractic Foundation. This should take care of expenses.

Mr Leonard's 35% of Cont. Ed is enough to pay the Governor's salary for a year. Something's wrong.

Mr Leonard sent me his wage scale from 1990 to 1997 - He was paid \$1,350,000.00.

He also received a secret bonus of \$245,000.00 in 1997

Mr Leonard has always wanted to control the Board of Ex. + Cont. Ed. He needs it just to pay his salary + benefits. He cant afford to hire himself anymore.

Chiropractors should have the right to take cont. Ed from anyone or anywhere they choose. He should not be given the right to take away our freedom of choice. Cont. Ed has worked fine uptill now, except for the costly fees - so why change it.

They claim to have \$1,381,000.00 on hand. We cant find out where it is, where it would be invested or why it is. If you ask, you can not get an answer or its for a rainy day.

This is not what I call a Non-Profit Org.

For the benefit of the citizens + the chiropractors, please do not allow this legislation to proceed.

Thank You  
James L Greenwald D.C.



NOV 20 2003

ESSIE CONSULTING GROUP

16 N. CARROLL ST. SUITE 900

MADISON, WISCONSIN 53703

TO: Sen. Carol Roessler

FROM: Patrick Essie

DATE: November 20, 2003

RE: Chiropractic legislation

I am forwarding to you a copy of this memo from the Wisconsin Chiropractic Association for your information.





**Wisconsin Chiropractic Association**

521 E. Washington Avenue  
Madison, WI 53703  
Tel. (608) 256-7023 • Fax (608) 256-7123

November 19, 2003

To: All WCA Members  
From: Sherry Walker, DC, President  
Russ Leonard, Executive Director

Re: Allied Health and the WCA Legislation

About a month ago we sent you a memo indicating that the WCA and Allied Health had reached agreement concerning the WCA legislation. After sending the memo, we heard from several members who questioned our judgment about discussing anything with Allied. After all, Allied's legal counsel was the author of "The Rest of the Story" which was a gross misrepresentation of our legislation. But, as happens from time to time, people forget the purpose of the WCA.

Our job is to protect your future. To do that, we need to involve everyone that has a point of view on every subject that affects you. Our board may agree or disagree with the point of view expressed but, a progressive and responsive organization attacks problems, it does not wait for the problem to attack them. So, Russ Leonard met with Allied's legal counsel, Steve Conway, DC, on behalf of our board. Since the communication with Allied has been a little rocky, to say the least, Leonard made sure that Conway had the authority to act on behalf of Allied and had him sign the notes at the end of the meeting.

We were pretty sure this would be enough of a foundation to build our fledging relationship but, as you are about to learn, it apparently was not. The following is a synopsis of the problems we have had since the "agreement". After you are finished reading about the problems, we want to tell you what we are going to do about them.

---

***The problem***

The WCA was unwilling to negotiate the language of the WCA legislative proposal with Allied Health.

***Why?***

- The overwhelming majority of Allied Health members are WCA members. These doctors are already represented through the board members they elect.
- The legislative proposal was created by the current board *plus* approximately 80% of those doctors that had served on the WCA board for the past 14 years.
- Allied Health was offered two representatives to the group that created the WCA legislative proposals. The current President of Allied Health declined the opportunity to participate. The other representative of Allied fully participated and supported the unanimous recommendations of this group.

***What did the WCA do to resolve this problem?***

WCA Executive Director, Russ Leonard, met with Allied's legal counsel, Steve Conway, DC, for 6 1/2 hours on October 17, 2003 at which time both parties signed a written agreement covering all unresolved issues. Initially, Conway stated that he had to check with Allied's President to determine if he had the authority to negotiate on Allied's behalf. After a phone call, Conway stated to Leonard that he had the authority to act on Allied's behalf and signed the agreement.

---

***The problem***

Once the agreement was signed, Allied sought to change the provisions regarding peer review.

***Why?***

It appears that Allied is attempting to renege on the agreement concerning continuing education by writing a memo to leg council disagreeing with the interpretation of our agreement and bringing up new issues about whether the CE language violates the "commerce clause" or the equal protection clause of the Constitution.

***Why?***

In the October 17<sup>th</sup> meeting, Leonard made it explicitly clear that the WCA wanted to eliminate any ambiguity about proposed statute 446.025 (2) (b) which concerns the issue of delegation and continuing education sponsorship. At this meeting, Conway stated that Allied had no real interest in sponsoring CE classes and that their concern was improving the peer review language.

To be absolutely sure this issue would not come up again, the agreement states that the words "sponsoring organization" would be defined and end any ambiguity. The draft accomplishes this objective. When the agreement was discussed in detail at the October 23<sup>rd</sup> "Roessler" meeting, Allied raised no objection. Allied is attempting to renege on the agreement by bringing up issues that had been settled by the agreement.

***What did the WCA do to resolve this problem?***

Leonard called Conway and left messages requesting an immediate meeting to resolve this "misunderstanding". There was no response from Conway. WCA's legal counsel researched the issues raised by Allied and determined that the statutory change will not violate the "commerce clause" or the "equal protection clause" of the Constitution (a copy of this memo has been provided to legislative counsel). The WCA continued to keep their end of the agreement.

---

***The problem***

It appears that Allied is attempting to renege on the agreement concerning the professional conduct standards and the penalty by writing a memo to leg council claiming that this should have been removed.

***Why?***

While the reason is unknown, this point was explicitly covered in the October 17<sup>th</sup> meeting and the agreement between the WCA and Allied. When the agreement was discussed in detail at the October 23<sup>rd</sup> "Roessler" meeting, Allied raised no objection. Allied's claim that this language was supposed to be removed is not supported by their written agreement or previous public statements.

***What did the WCA do to resolve this problem?***

Leonard called Conway and left messages requesting an immediate meeting. There was no response from Conway. The WCA continued to keep their end of the agreement.

---

***What are we going to do from this point forward?***

You never really know what is going to happen to a piece of legislation because of the politics involved. Believe us when we tell you it is the worst part of our job. If we could just sit down and discuss the merits of our legislation, it would have been passed months ago.

Because Allied has now written the memos detailed above, another meeting is scheduled next week with the committees representing the Senate and Assembly. We are going to ask the people attending this meeting if they think Allied has treated them and the WCA fairly and honestly. And then, we are going to ask them to pass our bill so we can get on with the business of growing the chiropractic profession.

We know our job is to protect your future, and we you deserve to know why this job is taking so long to get accomplished.

Conway called Leonard and informed him that, after thinking about it, "Allied" was not comfortable with the revisions to the peer review language and wanted the peer review language removed. The fact that Allied had already agreed in writing did not seem to matter.

***What did the WCA do to resolve this problem?***

During the October 17<sup>th</sup> negotiations with Allied, Leonard had offered to delete the peer review section and address the issue of peer review through rulemaking only if the Department of Regulation & Licensing (DRL) had any problems with the language changes agreed to by the WCA and Allied. DRL had not raised an objection; yet, Allied wanted a change. In good faith and, despite the fact that there was a written agreement, the WCA agreed to drop the peer review language and address this issue through rulemaking even though DRL had raised no objection.

---

***The problem***

Senator Carol Roessler had set up a meeting for October 23<sup>rd</sup> between Allied, the WCA, and other interested parties to attempt to resolve the outstanding issues. Allied agreed to come to Madison early in the week of October 20<sup>th</sup> to do a "walk-around" with WCA lobbyist Pat Essie to announce the agreement to legislative leaders and to inform Sen. Carol Roessler that, for the purposes of Allied and the WCA, the meeting scheduled for October 23<sup>rd</sup> was not necessary. Allied did not keep their agreement to do the "walk-around" prior to the October 23<sup>rd</sup> meeting.

***Why?***

Conway would not explain his failure to keep this promise; however, an indication may be found in the next problem.

***What did the WCA do to resolve this problem?***

The WCA kept its commitment to attend the October 23<sup>rd</sup> meeting.

---

***The problem***

Lobbyist Tony Varda appeared at the October 23<sup>rd</sup> meeting representing "the chiropractic colleges and the ACA" on the "duty to refer" and the continuing education (CE) issues.

***Why?***

When Varda appeared at the meeting, he stated he was representing "the chiropractic colleges and the ACA" on the "duty to refer" and the CE issues. When pressed on who exactly he represented, he named 3 colleges and the ACA. The WCA contacted the named colleges and the ACA and learned that Varda did not represent any of them. Moreover, those that had a position on "duty to refer" explicitly rejected what Varda had stated was their position on the "duty to refer" issue.

"Coincidentally," the position that Varda represented on the "duty to refer" issue was nearly identical to that of Allied's before their agreement with the WCA (in which they agreed to support the WCA's position). It appears that after signing a written agreement with the WCA, Conway found a way to have Varda represent Allied's point of view on the "duty to refer" and the CE issues – thus getting around their agreement with the WCA.

***What did the WCA do to resolve this problem?***

The WCA called Conway to discuss what had occurred. There has been no response. The WCA continued to keep their end of the agreement.

---

***The problem***

Dr.

~~Dr.~~ Dan Lyons - Chiro

By Feb of  
least 400  
members

President of Alliance of W<sup>S</sup> Chiropractors

Articles of incorporation almost complete

- WCA acting w/out asking opinions on legislation.
- Yet to find someone who agrees w/ all parts of log.
- Russ does not speak for everyone.  
70% of state Chros in WCA
- WCA Board decides things w/out asking members opinions or keeping them informed.
- People feel intimidated by Russ Leonard.
- Makes people feel pigeonholed / hung on people who asked him about it.

POINTS TO USE IN TALKING POINTS FOR CR ON "DUTY TO REFER"  
AMENDMENT

- Current law is duty to inform.
- Expands scope of practice
- They are not just recommending that their client see a health care professional
- They are building a relationship with the health care professional
- Assuming they have medical knowledge to detect certain conditions.
- Increases liability on chiropractors
- Supreme Court ruling: See Med Society testimony.
- Info from Grapentine e-mail re: the WCA publication indicating expansion of practice.

**Halbur, Jennifer**

---

**From:** Mark Grapentine [MarkG@WISMED.ORG]  
**Sent:** Monday, November 10, 2003 5:28 PM  
**To:** amy.ferris@legis.state.wi.us; Brad.Boycks@legis.state.wi.us; Bruce.Pfaff@legis.state.wi.us; Eileen.ONeill@legis.state.wi.us; Jennifer.Halbur@legis.state.wi.us; Katie.Mnuk@legis.state.wi.us; Marianne.Foster@legis.state.wi.us  
**Cc:** Alice O'Connor  
**Subject:** SB 275: chiros expanding scope of practice

Just another thought on SB 275, the chiro bill up for exec Tuesday morning...

Aside from the 15-year Wisconsin Supreme Court precedent that chiropractors are not equipped to have the duty to refer, there is the more general point on another attempt by chiropractors to expand their profession's scope of practice through legislation, rather than through the appropriate oversight board at the Dept. of Regulation and Licensing.

In their own *The Wisconsin Chiropractor* newsletter (tabbed "The Official Publication of the Wisconsin Chiropractic Association") hailing AB 356, the ill-fated chiro omnibus bill abandoned after one Assembly Health public hearing, the WCA touts the bring-in-the-dollars value of their bill. While SB 275 does not include the more onerous AB 356 provisions such as allowing chiros to call themselves "physicians," the "duty to refer" language in SB 275 is the same as in AB 356.

Reading the *Chiropractor* is telling as to the true reasons behind the "duty to refer" language:

"The addition of a duty to refer . . . will expand the opportunity of a chiropractor to serve as a **primary health care provider**, qualify a chiropractor to serve as a **managed care gatekeeper**, and increase the clinical credibility of the profession." (*WI Chiropractor*, 02/2003, p.4) (emphasis supplied).

As the WCA tells you that their "duty to refer" language has nothing to do with scope of practice, I ask you to keep the above quote in mind as you counsel your boss on SB 275.

If you have any questions, I can be reached by cell: 575-2514.

mg

Mark M. Grapentine, JD  
 Vice President  
 Government Relations  
 Wisconsin Medical Society  
 608.442.3768 (ofc)  
 608.575.2514 (cell)  
 608.442.3802 (fax)  
<http://www.wisconsinmedicalsociety.org/>

Carol -

11-11-03

1 has  
2 bear Senator Jauch has a  
3 concern about the highlighted  
4 section below. He plans to  
5 exam talk to you about this on  
6 the the senate floor today  
7 phy: Jennifer  
8 und

9 has \* AKO - I looked through the  
10 or c testimony on the bill. Aberle  
11 pro: Chiropractic Clinic was the  
12 cou: only one to speak on the  
13 the nutritional postgraduate courses.  
14 ider They want the language out  
15 app because they feel Chiro's already  
16 min have enough training in this area.  
This is the opposite reason Jauch wants it out

**SECTION 10. 446.02 (6m) of the statutes is created to read:**

18 446.02 (6m) (a) Except as provided in par. (b), a chiropractor who is granted  
19 a license under this chapter on or before January 1, 2003, may provide counsel,  
20 guidance, direction, advice, or recommendations to a patient regarding the health  
21 benefits of vitamins, herbs, or nutritional supplements only if the chiropractor has  
22 completed 48 hours in a postgraduate course of study in nutrition that is approved  
23 by the examining board.

24 (b) Paragraph (a) does not apply to a chiropractor licensed under this chapter  
25 who is certified as a dietitian under subch. V of ch. 448.

the examining  
cessor.  
granted by the  
on for renewal,  
l under ch. 441,  
rainer licensed  
xamining board  
aining program  
icant shall also  
ing program or  
d in sub. (1) (b),  
ant for renewal  
ucation courses  
l to satisfy the



October 24, 2003



Dear Senator Roessler:

I wanted to point out some concerns about the new Wisconsin Chiropractic legislation that you are reviewing. I am personally concerned about many parts of this legislation and I know you have heard many of these several times, but I wanted to draw attention to a few not so frequently mentioned items.

The first involves the sexual misconduct paragraph. I do not agree with the new legislative statement of "Sexual misconduct is ... *dating a patient while the patient is under the chiropractor's professional care or treatment or within six months after discharge from care or treatment, or other sexual behavior with or in the presence of a patient under the chiropractor's professional care or treatment.*" This broad definition is much too restrictive. Chiropractors should never date patients, however if they date first and then choose to treat, this should be acceptable.

*Alan  
Cavoy*  
\*The second problem with the proposed new legislation saying, "In addition, if the Peer Review Panel makes certain findings, the bill requires the Chiropractic Examining Board to assess a forfeiture against a chiropractor who provides inappropriate, unnecessary, or substandard care in an amount equal to three times the amount billed for the care or \$5000, whichever is less." Once again this is a very broad statement that could be used against any doctor because the three criteria of inappropriate, unnecessary or substandard are subjective and open to interpretation. I am not making excuses for the few in our profession who are blatantly billing high charges but to put a piece of language such as this into law is not the answer in my opinion. It could also lead to doctors giving up on patients because they are afraid that their care might be deemed inappropriate or unnecessary when in reality it is just what the patient needs to solve their health problem.

*A*  
The third problem involves nutritional guidance. Under current law chiropractors can talk to and suggest nutritional supplements to their patients provided we tell them that it is for overall wellness and not for the purpose of treating a disease. Chiropractors have educational requirements regarding supplementation and nutritional guidance included in our chiropractic training. The language being proposed states that, "This bill requires certain chiropractors licensed by the Chiropractic Examining Board to complete a postgraduate course of study in nutrition before they may provide counsel, guidance, direction, advice, or recommendations to patients regarding the health benefits of vitamins, herbs, or nutritional supplements." Once again this language is a detriment to our patients that come to us looking for other ways of improving their health besides chiropractic treatment. Chiropractors are trained in biochemistry, digestive physiology and nutrition totaling fourteen credit hours. I regularly talk to my patients about their nutrition and they appreciate my opinions and often follow my suggestions with great results. To put limiting language such as that being suggested is not needed and only hurting the public not protecting them.

If you have any further questions, please do not hesitate to contact me directly.

Sincerely,

*Jeffrey M. Aberle, D.C.*

Jeffrey M. Aberle, D.C.  
5780 Seminole Ridge Cir  
Fitchburg, WI 53711  
(608) 270-6221

Jeffrey M. Aberle, D.C.

5950 Seminole Centre Court  
Fitchburg, WI 53711  
At the corner of Seminole Hwy. & PD  
Phone: 608-277-1975

aberlechiropractic.com

met w/ Russ today

- Called Dr. Luedke - understands Conway - opposed  
↓  
Medison

- Leonard sent letter - Gen. + Allied trying to take over state, don't believe them.

- Conway felt like he needed to pull back.

Continuing ed - problem.

- Once avg. chiro know what's in here - they'll be upset.

- Starting new chiro assoc. because of this.

\* Don't forward bill - cancel EXEC

\* Rumblings within membership / conflicting reports that there is no agreement.

Cancelled

# WCA

## Wisconsin Chiropractic Association

521 E. Washington Avenue  
Madison, WI 53703  
Tel. (608) 256-7023 • Fax (608) 256-7123

EILEEN,

HERE IS THE E-MAIL AND A COPY OF THE  
ORIGINAL SIGNED DEAL SHEET.

THANKS,

Russ

Russ LEONARD

Subj: **FW: Chiropractic draft**  
Date: 11/11/2003 9:34:28 AM Central Standard Time  
From: [Eileen.ONeill@legis.state.wi.us](mailto:Eileen.ONeill@legis.state.wi.us)  
To: [RLeonard@aol.com](mailto:RLeonard@aol.com), [pessie@patrickessie.com](mailto:pessie@patrickessie.com)

-----Original Message-----

**From:** ChiroLaw@aol.com [mailto:ChiroLaw@aol.com]  
**Sent:** Monday, November 10, 2003 4:27 PM  
**To:** Richard.Sweet@legis.state.wi.us  
**Cc:** Randy.Thorson@legis.state.wi.us  
**Subject:** Re: Chiropractic draft

Hello Richard:

Thank you for the information..

Peer review

The deletion of the peer review language is accomplished with the information that I received.

CE

The written agreement between Allied and the WCA on the CE section states as follows: "OK with language except the sponsoring organization will be changed to a definition and add in a significant manner after the word requirement on page 10 line 11."

The proposed language changes appear to be more related to delegation restrictions in paragraph (b) than the "definition of sponsoring organizations" which is found in paragraph (a). This might have been what Russ meant when he wrote the agreement as we had discussions on delegation, but I don't believe it was fully clear in the written agreement that he would be making such major changes to the delegation part of the bill. I have discussed this with Pat Essie. In either case, my preliminary review of the new proposed language changes would tend to indicate potential legal problems with restraint of trade and other issues. Is this something that you can run through legislative legal counsel channels to make sure that there are no legal problems that could arise from this proposed language that could create any additional issues for Rep Underheim?

Penalties

The addition of the language on page 15 lines 8-12 was additional to our agreement. While I agree that the concepts of billing for services that are inappropriate, unnecessary or substandard chiropractic are not positive for the profession, the problem is that they are also very arbitrary and with no set guidelines to follow, the new language could be abused against the profession in ways it was not meant to be. The concepts were part of the peer review section and I was not aware of any agreement to move them forward. The language was supposed to have been removed under the peer review section.

Delegation to RN's

I did not have any information on that section with this e-mail although it was referenced.

Please review my thoughts and let me know of your responses.

thank you for your assistance

Dr. Conway

TRULY  
SOUNDLY FAX

715-848-2225

OCT 17 2003

TECHNIQUE - OK WITH LANGUAGE

DELEGATION - 446.02(4) OK WITH LANGUAGE

NOTATION 446.02(6M)(A) OK WITH LANGUAGE

DUTY TO REVIEW 446.02(7)(a)

PCRA Review - SCREENING COMMITTEE WILL GET AN OPPORTUNITY TO REVIEW CASES BEFORE THEY ARE SENT TO PCRA REVIEW

PAGE 14 TO CHANGE FROM DEPARTMENT TO BOARD IF NECESSARY

PAGE 14 TO OUR PRESENCE IF IT IS OK WITH OUR FOR "SHALL ADD AT THE DETERMINATIONS UNLESS THERE IS CLEAR & CONVINCING EVIDENCE"

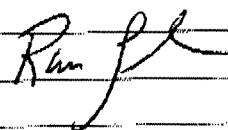
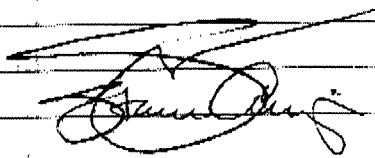
LINE 20 - WE WILL ACCEPT THE WORD MAY INSTEAD OF SHALL BASED ON THE DETERMINATION OF THE DEPARTMENT

SEVERAL ABOVE - OK WITH LANGUAGE

PROFESSIONAL CONDUCT - OK WITH LANGUAGE

CE - OK WITH LANGUAGE EXCEPT THE SPONSORING ORGANIZATION WILL BE CHANGED TO A DEFINITION AND ADD "IN A SIGNIFICANT MANNER AFFECT THE WORD REQUIREMENT ON PAGE 10 LINE 11"

ALLIED & WCA WILL SOUNDLY RECOMMEND THESE CHANGES TO THE RESPECTIVE COMMITTEE CHAIRS AND AUTHORITIES



Alice O'Connor

[ p. 8  
lines 6-19 ]

duty to refer  
- Yes, CR agrees

Karavas - Yes  
Robson - Yes

expansion of practice - not within scope of bill

not just recommending they see a doc →

current law duty to inform

Committee amendment



Committee amendment

Obto on it being a C

expansion of practice

## Halbur, Jennifer

---

**To:** Senate Committee on Health, Children, Families, Aging and Long Term Care  
**Subject:** Proposed Substitute Amendment to SB 275



03s0262/1

Hi,

Senator Schultz will offer the attached substitute amendment to SB 275 at the Executive Session tomorrow.

The Substitute Amendment does the following:

1. Removes the language relating to peer review.
  - Page 5: lines 1-4 and 11-15 are deleted.
  - Page 11: Line 6 through line 15 on page 7 are deleted.
  - Page 15: Lines 10 to 12, (6) is replaced with the following...(6) Billing for chiropractic services that were in appropriate, unnecessary, or of substandard quality.
  - Page 19: Line 6, reference to 446.035 was deleted.
2. Page 8: lines 3 and 4 are deleted and substituted with, "except that a chiropractor may provide supportive care to a patient after making a referral under par. (b)."
3. Page 10: Line 7: "under par. (a)1" was inserted after the word "organization."
4. Page 10: Line 9: "under par. (a)1" was inserted after the word "organization."
5. Page 10: lines 11 and 15: after the word "requirement," the phrase, "in a significant manner" was inserted.
6. SECTIONS 96 and 97 from AB 356 were inserted.

Senator Roessler will likely introduce an amendment to remove the "duty to refer" language from the substitute amendment. The amendment would delete lines 12-25 on page 5. This amendment has not yet been drafted. This is why I can't send a copy at this time.

If you have any questions regarding the proposed substitute amendment, please contact Eileen in Senator Schultz's office.

Thank you,

Jennifer



**Wisconsin Chiropractic Association**

521 E. Washington Avenue  
Madison, WI 53703  
Tel. (608) 256-7023 • Fax (608) 256-7123

*Eileen  
has  
drafted*

stitutes the agreement reached between the WCA and Allied over language  
A legislative proposal on October 17, 2003

- Delegation OK with language
- Nutrition OK with language
- Duty to Refer OK with language<sup>1</sup>
- Peer Review Screening committee will get an opportunity to review cases before they are sent to peer review.
  - Page 14 Line 20 Change from department to board if necessary.
  - Page 14 Line 20 Our preference, if it is OK with DRL is for the language "shall adopt the determination unless there is clear and convincing evidence..."
  - Page 14 Line 20 We will accept the word "may" instead of "shall" based on the determination of the department.
- Sexual Abuse OK with language
- Professional Conduct OK with language
- CE OK with language except that the list of sponsoring organizations will be changed to a definition and the words "in a significant manner" will be inserted after the word "requirement" on Page 10, Line 11.

Allied and the WCA will jointly recommend these changes to the respective committee chairs and authors.

Steve Conway, DC

Russell A. Leonard

In a conversation on October 20<sup>th</sup> Steve Conway, DC indicated that, upon reflection, Allied did not believe the changes in the peer review language would be sufficient to address all of their concerns. As a result, Russ Leonard agreed to delete the peer review language from the bill. Allied and the WCA agreed to work cooperatively through the Chiropractic Examining Board to develop a peer review system as a stand alone measure.

<sup>1</sup> The attached signed copy of this agreement should have included the words "OK with language". This was confirmed in a conversation between Conway and Leonard on October 20, 2003.