

State ex rel. Week v. Wisconsin State Bd. of Examiners in Chiropractic

30 N.W.2d 187

252 Wis. 32

Supreme Court of Wisconsin.

STATE ex rel. WEEK et al.

v.

WISCONSIN STATE BOARD OF EXAMINERS IN CHIROPRACTIC et al.

Dec. 23, 1947.

Appeal from a judgment of the Circuit Court for Dane County; Gerald J. Boileau, Judge Presiding.

Reversed.

Action commenced November 22, 1946, by A. T. Week, I. G. Moe, D. F. Wischer, E. M. Damrow and F. G. Lundy, in their own behalf and behalf of others likewise situated, plaintiffs and appellants, against Wisconsin State Board of Examiners in Chiropractic, E. J. Wollschlaeger, E. M. Cardell, and H. M. Michler, members of said board, Wisconsin Chiropractic Association, a voluntary association, P. S. Peiterson, A. A. Denil, Val Kuhn, officers thereof, defendants and respondents, to enjoin the enforcement of an alleged invalid portion of subsection (7) of sec. 147.23, Stats. From a judgment dated July 31, 1947, dismissing plaintiffs' amended complaint upon the merits and awarding judgment in favor of defendants for their costs and disbursements, plaintiffs appeal.

West Headnotes

[1] Constitutional Law ¶46(2)

92 ----

92II Construction, Operation, and Enforcement of Constitutional Provisions

92k44 Determination of Constitutional Questions

92k46 Necessity of Determination

92k46(2) Form and Sufficiency of Objection or Allegation.

The question of constitutionality of statute was raised where plaintiffs in their amended complaint sought injunctive relief from statute claimed to be unconstitutional and a declaratory judgment of their rights and defendants filed a general demurrer.

[2] Constitutional Law ¶81

92 ----

92IV Police Power in General

92k81 Nature and Scope in General.

[See headnote text below]

[2] Licenses ¶5

238 ----

238I For Occupations and Privileges

238k2 Power to License or Tax

238k5 States.

The state can provide for general welfare of its people, and in so doing can prescribe reasonable qualifications to be complied with before a person may engage in or carry on any trade or profession.

[3] Constitutional Law ¶101

92 ----

92VI Vested Rights

92k101 Franchises and Privileges.

[See headnote text below]

[3] Licenses ¶20

238 ----

238I For Occupations and Privileges
238k20 Eligibility for License.

The fact that a person is once licensed does not create a vested property right in such person, as advancements in the trade or profession may require additional conditions to be complied with if the general welfare of the public is to be protected. U.S.C.A.Const.Amend. 14.

[4] Constitutional Law ~~62~~(12)

92 ----

92III Distribution of Governmental Powers and Functions
92III(A) Legislative Powers and Delegation Thereof
92k59 Delegation of Powers
92k62 To Executive
92k62(5) Particular Matters
92k62(12) Licenses and Regulation of Occupations.

(Formerly 92k62)

[See headnote text below]

[4] Physicians and Surgeons ~~2~~

299 ----

299I In General
299k2 Constitutional and Statutory Provisions.

[See headnote text below]

[4] Physicians and Surgeons ~~4~~

299 ----

299I In General
299k4 Capacity and Qualifications.

The Legislature can decide whether advancements in the chiropractic profession require those engaged therein to attend educational programs in order to continue practicing, but in so providing the Legislature must fix the standard of the program to be attended, or delegate to a board the authority to approve the program to be offered. St.1945, § 147.23(7) (W.S.A.).

[5] Physicians and Surgeons ~~2~~

299 ----

299I In General
299k2 Constitutional and Statutory Provisions.

The statute requiring chiropractors to annually attend one day of a two day educational program conducted by **Wisconsin Chiropractic Association** in order to obtain renewal of their licenses to practice is unconstitutional as being primarily for benefit of a voluntary organization not primarily engaged in the educational field, which is not within the legitimate exercise of police power. St.1945, § 147.23(7) (W.S.A.); U.S.C.A. Const. Amend. 14.

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[252 Wis. 33] Daniel H. Grady, of Portage, for appellant.

John E. Martin, Atty. Gen., and Warren H. Resh, Asst. Atty. Gen., and Honkamp & Hegner, of Appleton, for respondent.

BARLOW, Justice.

[1] All plaintiffs are duly licensed, practicing chiropractors in the state of **Wisconsin** excepting Lundy, the [252 Wis. 34] **Wisconsin** State Board of Examiners in **Chiropractic** having refused to renew his license because he did not attend one of the two-day educational programs conducted by the **Wisconsin** Chiropractic **Association** as required by sec. 147.23(7), Stats. In the amended complaint plaintiffs seek injunctive relief from a statute claimed to be void and unconstitutional and a declaratory judgment of their rights, to which defendants filed a general demurrer. This is sufficient to raise the question of constitutionality of the statute, which is the only question presented for decision. Bonnett v. Vallier, 1908, 136 Wis. 193, 116 N.W. 885, 17 L.R.A., N.S., 486, 128 Am.St.Rep. 1061; Ocean Accident and Guarantee Corporation v. Poulsen, 1943, 244 Wis. 286, 12 N.W.2d 129.

Sec. 147.23(7), Stats. follows with the portion alleged to be unconstitutional in italics:

'(7) All licenses issued by the board shall expire on the thirty-first day of December following the issue thereof, except that any holder of a license may have the same renewed from year to year by the payment of an annual fee of five dollars; *provided, that satisfactory evidence is presented to the board that said licensee in the year preceding the application for renewal has attended at least one of the two-day educational programs conducted, supervised and directed by the Wisconsin Chiropractic Association and exemption from this requirement shall be granted only upon showing satisfactory to said board that attendance at said educational programs was unavoidably prevented.*'

It is alleged in the amended complaint that there are two state-wide voluntary organizations in the state of Wisconsin which licensed chiropractors may join. One is the Wisconsin Chiropractic Association and the other the Wisconsin Chiropractors Society. Each has a substantial membership and each provides an annual educational program. The Wisconsin Chiropractic Association requires a fee of \$10 from each person who attends its annual educational program, which is the program a chiropractor must attend in order to have his annual license renewed. It is alleged the statute does not authorize the charging of any fee and certainly not a fee in excess of the [252 Wis. 35] cost, which it is claimed this fee is. Plaintiffs state they are ready and willing to pay the annual fee of \$5 to the state for renewal of their licenses, but claim that portion of the statute which requires the annual attendance of the educational program provided in the statute in order to have their licenses renewed is in violation of their constitutional rights under the Fourteenth Amendment of the Constitution of the United States, and deprives them as citizens of their rights and property without due process of law, and denies to them the rights guaranteed by said constitutional provision to practice their profession by denying them the equal protection of the law and the protection of equal laws.

[2][3] The state has the power to provide for the general welfare of its people and in so doing to prescribe reasonable qualifications to be complied with before a person may engage in order to carry on any trade or profession. The fact that a person is once licensed does not create a vested property right in the licensee, as advancements in the trade or profession may require additional conditions to be complied with if the general welfare of the public is to be protected. Dent v. West Virginia, 1889, 129 U.S. 114, 9 S.Ct. 231, 32 L.Ed. 623; Harris v. State Board of Optometric Examiners, 1926, 287 Pa. 531, 135 A. 237; Gamble v. Board of Osteopathic

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Examiners of California, 1942, 21 Cal.2d 215, 130 P.2d 382. This is all subject to the rights guaranteed by the constitution of the United States and the constitution of the state to the person who desires to engage in such trade and profession.

[4][5] Respondents argue the legislature has the right to decide whether advancements in their profession require those engaged in its practice to attend educational programs in order to continue practicing. To this we agree. If the legislature had provided that any chiropractor desiring to have his annual license renewed must attend an educational program approved by the State Board of Examiners in Chiropractic we would have no difficulty with it, or if the legislature had adopted a standard which the program must meet it could well be argued [252 Wis. 36] this would be sufficient. The statute in question goes far beyond this. It provides who shall give the educational program that must be attended and gives them complete control of the nature of the program. Respondent would not argue the legislature may require a person to be a graduate of one certain medical school in Wisconsin or one certain dental school in Wisconsin in order to be able to obtain a license to practice his profession in this state. This statute comparatively so provides. It provides where he must take limited postgraduate work each year if his license to practice is to be renewed. It requires the licensee each year to attend one day of a two-day educational program provided by the Wisconsin Chiropractic Association, a voluntary organization not primarily engaged in the educational field. We do not mean to indicate that the program offered is not an excellent program and well worth attendance by every member of the profession. The difficulty is that the legislature has fixed no standard of a program which must be attended nor has it delegated to any board the authority to approve the program to be offered. It has merely provided by whom the program shall be given. In Ex parte G. B. Gerino, 1904, 143 Cal. 412, 77 P. 166, 66 L.R.A. 249, where the statute provided the State Board of Medical Examiners should be elected from three certain medical societies, while upholding the statute the court said it 'could not be upheld at all if it were put upon the ground that in so doing the state is acting for the benefit of any one or all of the medical societies or schools of medicine existing in the state.' We conclude here the state was acting for the benefit of the association primarily, which is not within the legitimate exercise of police power. See 11 Amer.Jur. 1093.

Judgment reversed and cause remanded with directions to enter judgment in accordance with this opinion.

FOWLER, J., not participating.

Tony Varda

- American Chiro Assoc.
executive committee

] He'll know on 11/4
if he is officially representing
them.

- Colleges are going to write letters]

Halbur, Jennifer

From: Kurtz, Hunter
Sent: Wednesday, October 22, 2003 3:02 PM
To: Halbur, Jennifer
Subject: Phone call

Tony Varda he has been contacted by the American Chiropractic Institute about SB 275 that there is a meeting on tomorrow. 252-9334 wants to know if he can come.

Halbur, Jennifer

From: O'Neill, Eileen
Sent: Friday, October 24, 2003 2:27 PM
To: Halbur, Jennifer
Subject: meeting yesterday

Jennifer,

I just wanted to let you know that I talked with Pat Essie today about Tony Varda, the attorney at the meeting yesterday. After the meeting the Vice President of WCA was talking to a couple of close friends of hers at some of the colleges because she was surprised with what Mr. Varda was saying. They told her that he did not represent them. So they decided to check around. No one that they contacted said that he represented their organization. I don't know which colleges he is claiming to represent but even the American Chiropractic Assoc said that they hadn't heard of him. I just wanted you to be aware of this development.

Eileen O'Neill
Office of Senator Dale Schultz
608-266-0703
800-978-8008

4005E

- 2 main issues -
- ① Duty to refer
 - ② cont education (CRB includes -
net).
- intent is to have actual language (CRB includes -
net).

10-23-03

Agreement

- Dr. Conway + Russ met for Chrs.
- * No changes w/ technique lang or delegation lang.
- nurse duties will only be in the ~~scope~~ scope of prac. of Chrs.
- Duty to refer: Chrs can cont to treat patients, even if not treated by another phys.
- * Have agreed to remove all lang relating to peer review. (attach issue then Chrs exam Bd)
- * no change to sexual abuse lang.
- * prof. conduct lang no change.
- + cont ed 2 changes:
 - Add def of word organization (446, 025, 728) to include people in  (12)

* - add wrds "in a sig manner" after word req. on page 10 line 11.

Anthony Verda - Med Soc also concerned
American Chiro Assoc + Colleges
have issues:

P. 8

Protections they don't need or want under C.E. Section.

* Referral section also concern - duty to refer - if a chiro doesn't recognize some symptoms of something serious - doesn't refer - potential for enormous liability.

Under current law they can refer (no duty to refer) ^{+ should if symptoms true.}

- Russ has looked @ 42 other states that ~~do~~ require duty to refer. Malpractice ~~the~~ claims did not sig. increase.

Russ: Good source Obligation as taught in colleges + contacted malpractice carriers who have said not putting chiros @ sig risk.

Russ: did not used to have duty to inform -
now do - no increase in lawsuits as a
result.

Carver checking on when PT's got duty to refer -
anything happen? - increase in malprac suits.

Varde - System not broke - or if you need to do
this - do it through education / not
statute.

Russ:

Russ: trying to tighten up chiro practice.

Can't ed.

The bill details who & how courses should
be given - many college courses for
CE. can't fit what is laid out in
statute.

* Michigan Chiro Assoc. would not be able to
give seminar.

Why is who is putting on seminar more
important than ~~to~~ quality of seminar.

- This is interfering with the way colleges put on CE req.

P. 10 Im Ce

- Board or oversight group approves courses based on quality + content of courses.
- *Want competition here

- Draconian penalties — who is going to investigate financial administration of who's putting on seminar.

- Bill limits sources of who ^{gives} CE credits to WCA — they can meet req. Other States can not.

Claims that this will raise the bar — No, simply limits who is giving seminar.

- Colleges uniformly against.

Russ: Colleges are selling sponsorship rights for \$100,000. They have nothing to do w/ qual. or content of Seminar.

* shouldn't we add lang. to ~~req.~~ req. colleges to be part of the Seminar (not selling sponsorship).

- Amend. will allow a not qualifying college to delegate to a qualifying organization.
- Commerce Clause violation. - Varda - will be a legal challenge.
- Board shouldn't approve C.E. from colleges that sell sponsorship rights. This should be a board issue.

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.

Taken Care of
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.

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Testimony on SB 275

Before The SENATE COMMITTEE ON HEALTH Senator Carol A. Roessler, Chairwoman

**October 14, 2003
411 South, State Capitol**

Statement of Deputy Secretary Mary Woolsey Schlaefer representing the Department of Regulation and Licensing

Good afternoon, Chairwoman Roessler and members of the Committee. Thank you for the opportunity to appear today. I am the Deputy Secretary for the Department of Regulation and Licensing. I appear on behalf of the Department to comment on SB 275, regarding the regulation of the chiropractic profession in Wisconsin.

As you are aware, the Department of Regulation and Licensing is an umbrella agency, which, among other things, provides administrative services and support for 46 professional regulatory and advisory boards, including the Chiropractic Examining Board.

SB 275 proposes a number of changes affecting the practice of Chiropractic, including adding an additional administrative layer to the determination whether a chiropractor has engaged in professional misconduct and adding more requirements relating to continuing education for chiropractors.

The Chairman of the Chiropractic Examining Board has appeared before the Committee to provide the Board's comments on the proposed legislation. I am here to comment on behalf of the Department. I will focus my comments on the impact the proposal would have on the Department's role in the regulation of the chiropractic profession.

The proposed legislation contains some provisions that the Department agrees could benefit consumers of chiropractic services in Wisconsin, including the patient evaluation, treatment and referral requirements and the provisions related to sexual misconduct. There are,

however, other provisions in the proposal that are of significant concern to the Department either because the provisions are contrary to the public interest or simply unrealistic.

I am prepared to answer questions about each of the items in the proposed legislation. However, in the interest of time, I would like to focus my comments on the two items in the proposed legislation that most concern the Department.

Peer Review Panel

The first item of concern is the proposal to establish a system of peer review for complaints against chiropractors. The proposal would create another procedural layer in the processing of complaints against chiropractors, which would require significant additional staff resources in the Department that are not now available and are not adequately provided for in the proposal.

The Department strongly opposes the peer review proposal for a number of reasons. **First**, it is duplicative. The peer review panel would be charged with determining essentially the same issues as the existing Chiropractic Examining Board, *i.e.*, whether a chiropractor has engaged in professional misconduct. **Second**, the proposed process, which is limited to a paper review, is inadequate to fully and fairly decide issues of professional misconduct and disadvantages complainants who do not write well or have access to essential documents. **Third**, access to the process would be limited to complainants who could afford the initial \$275 filing fee and \$750 appeal fee. (Out of the initial \$275 filing fee, \$235 would be paid to the person designated as the peer reviewer. By contrast, members of the Chiropractic Examining Board are reimbursed just \$25 per day. The remaining \$40 would go to the Department for administrative support). **Finally**, the proposal would place significant burdens on the Department without providing the resources necessary to meet those burdens. The added responsibilities would include advising complainants and respondents about the process, collecting and processing the initial complaint, notifying each patient, chiropractor and insurer named in the complaint, collecting responses from each person named in the complaint, redacting information from the documents, disseminating the documents to the peer review panel member and disseminating the decision to all patients and parties named in the complaint. The

costs of providing these and other required services would exceed the \$40 fee provided to the Department under the proposal.

Continuing Education Requirements

The proposed legislation also includes a number of additional requirements relating to continuing education. Chiropractors are currently required to complete 40 hours of continuing education every two years. 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 Department to deny approval of all courses sponsored by an organization for ninety days, if the sponsor violates any of the specified requirements, regardless of the nature or seriousness of the violation.

The Department 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. Moreover, the requirement that all courses of a sponsor be denied for ninety days if the sponsor fails to meet any requirement, no matter how technical, is unnecessarily harsh and could significantly inconvenience individuals making a good faith attempt to comply with continuing education requirements.

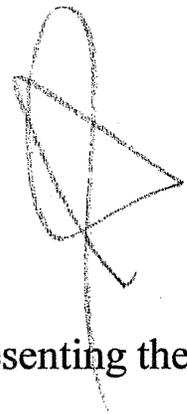
The proposed legislation also requires that chiropractors list the continuing education courses they have completed on their license renewal form and that the Department audit a percentage of all renewal applications for compliance with continuing education requirements. The Department supports continuing education requirements as an effective, pro-active means to prevent public harm. The Board and Department currently conduct an audit of a random sample of chiropractors to determine and enforce compliance with existing continuing education requirements. The Department would like to increase its efforts to enforce continuing education requirements for chiropractors as well as the other 20 professions that have continuing education requirements. However, we are unable to do so with existing resources. We currently have a staff of 23.5 FTE employees available for processing an average of approximately 170,294 license applications and renewals each year, as well as to answer literally thousands of calls regarding the process and regulations affecting the professions. The applications and renewals

for many professions require extensive information gathering and review, including but not limited to, determining compliance with initial degree and/or coursework requirements, work experience requirements that necessitate verifying the hours and nature of work conducted, tabulating and tracking exam scores on a series of tests taken over a period of time, reviewing building floor plans to confirm compliance with regulatory requirements, and verifying and investigating license status in other states. Given the limited resources currently available, the Department is not able to undertake additional information tracking and review responsibilities. The proposal that chiropractors list their continuing education programs on their renewal forms would be of marginal value at best, without resources to undertake efforts to confirm that the information provided is accurate and complete. The continuing education reporting proposal is one that the Department would support, if it had the resources meaningfully to enforce the requirement. However, because the proposed legislation does not provide the necessary resources, the Department must oppose the proposal as an empty reporting requirement.

In sum, the proposed legislation includes some items that would advance public protection. The proposal includes other items that either would not be in the public interest or cannot be enforced effectively with existing resources. We respectfully ask the Committee to review the current proposal carefully in light of the concerns expressed above. The Department welcomes the opportunity to work with the Committee and interested parties to design proposed legislation that would effectively promote public protection. However, the Department opposes the proposed legislation as currently written because portions of it are not in the public interest and other portions do not provide the resources necessary to enable the Department to administer the proposed law effectively.

Thank you for your time. I would be happy to respond to your questions.

I am.....Dr. Rosemeyer
Chair of Chiropractic Examining BD for the state of WI
Reside in Platteville
In practice for 18 years
Been on the B for 5 years and chair for 10 mo



I will attempt to preface my comments to signify whether I am representing the B or my opinion.

Senate Bill 275

I would like to first applaud Sen Shultz intentions for representing this Bill. In conversations over the last couple months, he has made it clear that it is important to "raise the Bar" for health providers, not just chiropractors but all health care professionals and ~~that it is important to work at keeping health costs down and get the most for our tax dollar out of our government agencies.~~

It is my B opinion that this Bill will fall short of these objectives and will in fact increase cost to the patient, allow offending Chiropractors to receive less than or no disciplinary action compared to the current system, increase health care costs and increase the possibilities of endangerment to the public.

~~Sec 8 does not allow graduates of a foreign chiropractic college admittance to WI.~~

Sec 11 Duty to Refer

Not violating to necessity

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 B addressed this with a hearing...created duty to inform. It seems silly to have to refer a patient w/ ~~FBI~~ *Foot* or bunions to an MD...increase health care cost and patient costs

Pass this section as is: Inc cost to patient, Inc health care cost, Damages patient's right to confidentiality, Very questionable if it will inc patient safety.

Sec 13 CE

*shall / may ***

Our B is concerned that by law, we 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...ie a procedural violation...we will be left with no CE's to approve.

My opinion is that this an issue of free enterprise and 'show me the \$'. The WCA wants more control over the courses offered in the state...it is all about \$...that's OK for them, but for my B or for you or the DCs or the public. If your goal is to provide less quality courses offered and increase in WCA's bank account...pass this section.

Sec 16 Peer review:

B shall consider recommendations of the WCA regarding nominations to the peer review...MAY. The language shortchanges the B AUTHORITY AND INCREASES A TRADE ORGANIZATIONS authority over the B confirmed by you.

Does not allow patient to ask for an investigation as it happens now. Or to participate in the process...just paper review. ←

Says that the doctor's name should be removed to prevent prejudice by reviewer but does not provide same courtesy to the patient.

My lay members especially feel that there should be no financial roadblocks to the patient to file a complaint. \$275, \$750.

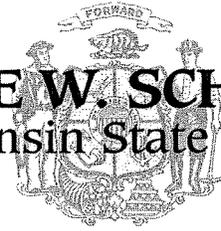
The B is forced by the language to adopt the determination of the peer review and the discipline set out in this Bill.

Anything that helps us as a B to speed up...fielding a complaint, investigating the charges, and disciplining the offender...we are all for it...this Bill is a start...But one of the problems is that it ties our hands in regard to the severity of the discipline. Recently we handed out a tougher sentence than this Bill would have allowed for a sex offense. You have confirmed us to protect the public... let us do it. Starting with our Lay appointees, you would not want to come before our B having damaged a Patient in any way shape or form. In fact, I have seen a continual increase in severity of penalties since being appointed 5 years ago. Continue to CHARGE the B with selecting the proper course of investigation and discipline. Our screening committee made up of tw doctors, a lay member and two lawyers screen complaints that enter the department. If we have a peer review that is well thought out, our screening committee can direct the complaint to the appropriate investigation procedure and the B should make the final discipline decisions with possibly minimal penalties set for in the rules.

If you would like less severe penalties for offenders, pass this section as written. Thank You for your Attention.



DALE W. SCHULTZ
Wisconsin State Senator



Date: October 14, 2003

**To: Senator Roessler, Chair & Members
Senate Committee on Health, Children, Families, Aging and Long-Term Care**

From: Senator Dale Schultz

Subject: Senate Bill 275

I am pleased to be able to testify today on behalf of SB 275, which is modeled on the excellent work done by the Chair of the Assembly Health Committee, Gregg Underheim. SB 275 is significant reform on the part of the chiropractic profession that recognizes that health care professions must continuously improve themselves in an environment where increasing attention is being paid to both the cost and quality of health care.

With care and consideration, Representative Underheim laid the foundation for a piece of legislation that will make chiropractors more accountable to the patients they treat and to those that pay for their services. It raises the bar for chiropractors, their chiropractic colleges and universities, and the Department of Regulation & Licensing.

As legislators and especially as members of the Senate Health Committee, we are faced with the dilemma of ever accelerating costs at a time when resources are increasingly scarce. SB 275 is an important step where the chiropractic profession has recognized that they themselves must make changes that will reform the practices of a minority of their members to contain costs and aid us in the continuing reform of the health care industry.

Once again, I extend my thanks for the leadership of Representative Underheim, and I ask for your support of this important legislation.

Thank you.



Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Senate Health Committee

FROM: Alice O'Connor & Mark Grapentine, JD
Wisconsin Medical Society

DATE: October 14, 2003

RE: Oppose SB 275

On behalf of more than 10,000 members statewide, the Wisconsin Medical Society thanks you for this opportunity to provide written testimony on Senate Bill 275. Due to problems with the dramatic addition of a "duty to refer" in chiropractic practice where the Wisconsin Supreme Court has directly held that chiropractors are not qualified to hold such a duty, we oppose SB 275 as currently drafted.

Under the bill (page 8, beginning with line 6), chiropractors would have the duty to refer patients to physicians if the chiropractor determines that the patient has a condition not treatable by chiropractic means or will not respond to further chiropractic treatment. Having a duty to refer may at first seem acceptable on its face, but that referral duty would instantly and dramatically broaden chiropractor power with the ability to diagnose specific non-chiropractic medical problems – a power Wisconsin's judiciary has recognized is distinct to physicians only as currently defined.

The Wisconsin Supreme Court has ruled that a chiropractor expressly does not have a duty to refer, for fundamental policy reasons:

...because implicit in 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. Because a chiropractor is not licensed to make such a determination, we hold that a chiropractor does not have a duty to refer a patient who is not treatable through chiropractic means to a medical doctor.

See Kerkman v. Hintz, 142 Wis. 2d 404, 421 (1988).

Relying on Kerkman, the Wisconsin Court of Appeals ruled that chiropractors have no duty to recognize medical problems. To do so "would require chiropractors to make medical determinations which, under Wisconsin law, they are not licensed to make." See Goldstein v. Janusz, 218 Wis.2d 683, 686 (Ct. App. 1998).

Senate Health – SB 275

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Both the Kerkman and Janusz cases held in favor of chiropractors defending themselves against lawsuits brought by injured patients. With this in mind, we fear that the true goal of the “Duty to Refer” provision is to allow chiropractors to diagnose medical conditions beyond the scope of their current practice. The Society believes this major policy change would not be in the best interest of patient safety, and supports maintaining current law.

Thank you again for this opportunity to appear before you. Please feel free to contact Alice O’Connor at aliceo@wismed.org or Mark Grapentine at markg@wismed.org. Both can be reached at (608) 442-3800.



Wisconsin Chiropractic Association

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

November 10, 2003

To: Members of the Senate Health Committee
From: Russ Leonard, Executive Director
Pat Essie

Re: Duty to Refer

SB 275 is scheduled for action at tomorrow's health committee hearing. **The WCA respectfully requests your support of the substitute amendment.** We understand that there may be an amendment to delete the "duty to refer" language. The WCA would not support that amendment.

In a memo to the Senate Health Committee, the Wisconsin Medical Society (WMS) objects to a chiropractor having a "duty to refer". Their position is wrong for the following reasons:

- A chiropractor's "duty to refer" is taught in every chiropractic college in the country. Most chiropractors routinely make referrals to physicians when necessary.
- Under current law, when a patient's condition is not treatable through chiropractic means, a chiropractor is required to inform the patient of that fact. This change to "duty to refer" merely increases consumer protection by insuring that the patient's physician also knows of the patient's condition so that a problem gets the attention it deserves.
- Health care costs are rapidly increasing. A patient ought to receive treatment from the most appropriate health care provider. If that should not be a chiropractor, a patient deserves to know that they will be referred into the medical system. Our bill specifically does not state which type of medical doctor the patient should see – the patient will be referred to their primary health care physician.
- WMS claims that a chiropractic "duty to refer" would allow chiropractors to diagnose medical conditions beyond their scope of practice. The language of the bill clearly demonstrates that this is not true. As the bill states, a chiropractor obligation to refer only occurs that "the patient's condition will not respond to further treatment by chiropractic means".
- Chiropractors in 22 states have a duty to refer. This includes the largest states in the country representing over 50% of the chiropractors practicing in the United States. To our knowledge, there has never been a single reported instance of a chiropractor using their "duty to refer" to diagnose medical conditions beyond their scope of practice.
- What WMS does not tell you in their memo is that the only reason we do not have a duty to refer is that we have never given ourselves this responsibility. Both medical doctors and physical therapists have a "duty to refer". In an era of rising health care costs, we must work towards more, not less, inter-disciplinary cooperation.

Thank you very much for your support of the substitute amendment for SB 275.

To: Senator Carol Roessler

RE: Testimony - Hearing Chiropractic Bill Oct. 14, 2003

James L. Greenwald D.C. 2901 Wimbledon Way, Madison WI 53713

Licensed for 48 years in Wisconsin

Member of Wisconsin Chiropractic Assoc. for 47 years.

Resigned over policy issues & apparent one man organization.

I was involved in legislation involving inclusion of Chiropractic into Medicaid, Workmans Comp & insurance

I was a member of Board of Exam. for 11 years

My responsibility was reviewing & approving Continuing

Ed courses, assisted by a dept. rep. If an error

was found, every effort was made to correct the

data, if it was not corrected, application was denied.

The Dept. made every effort to act in a reasonable

and responsible manner. The new legislation does

not leave room for any error. The ninety day

suspension is a great concern. One example is

Northwestern College puts on 3 seminars

Oct. 2 - 9 & 30th. A month after the Oct. 2nd seminar,

an error is found. If 300 D.C.'s attended any of

the 3 seminars, they would lose their Cont. Ed. credits

plus seminar fees, travel expense & time from office.

The ninety day suspension eliminates competition

but increases the income of W.C.A & Mr. Leonard -

because he receives 35% of the net. The present

system has worked fine all these years. No

Problems. Leave it alone.

Within the past year, the WCA & Mr Leonard sued the Bd of Ex. & Hlpt. over the Cont. Ed. issue. The WCA finally dropped the lawsuit because there was no evidence of wrong doing. Very long & costly. So now the WCA has dumped it into your lap. Hoping you will do their dirty work. In my opinion, if you allow this legislation to become law, you are helping to line Mr. Leonard's pockets.

While we are on the subject of money, lets look at the past legislative session. The Bd of Ex. proposed rule changes to mandate CPR - ethics - Boundary & radiology training. The WCA - Mr Leonard, Mr Walker, Wilder & others testified against these changes, stating they were unnecessary & would create a financial burden to the chiropractors. I received a flyer from the WCA, outlining all the seminars being offered by the WCA on CPR, ethics, boundary training & radiology 11 seminars around the state.

149.00 if you take 8 hours & a WCA member

189.00 if you take 8 hours & not a member

90.00 if you take 4 hours & a member

115.00 if you take 4 hours & not a member

Mr Leonard was totally against the legislation, now he is teaching the seminars. By the rules he established, he is not qualified to teach ethics & boundary. He probably gets a speaker fee plus his usual 35% of the net. He should be given the "Hypocrite of The Year Award."

The State of Wisconsin grants me a license to provide health care to patients - but the WCA wants a law that mandates how I care for my patients - taking away my right to decide what type of health care they need. That I have the "Duty to Refer" to an MD & no one else - not even a dentist, podiatrist, acupuncturist (that is not an MD), optometrist etc. The MD does not have the "Duty to Refer" to Chiropractors

The final issue is "Peer Review". Lets make this a level playing field. Anyone who serves on a Peer Review Panel should be paid the same as Bd. Ex. member. \$0. Each board member that spends time reviewing cases gets \$0. They are paid \$25.00 a day for attending the Board meeting. That is it.

The Aurora Health Care Org. Milwaukee is sponsoring a Pain Management Seminar, given by MD's, Chiropractor & attorney. Chiropractors can not receive Cont. Ed. credit because of the present rules. Mr Leonard stated they were a Management Co. for profit. If the seminar presents good material & you can learn from it, what is the difference if it is profit or non profit. It certainly appears to me that Mr Leonard is the Ex-Director of a "Profit Making Org." He certainly profits from it.

The WCA must make money above & beyond the dues income to pay his \$400,000.00 plus salary. Every seminar must make a profit - that means D.C.s must raise their fees - those health care costs go up. Any increase in the cost of health care is the business of the Legislature. Thank You.

Registration form must be returned by October 24, 2003
(Please print or type information)

Name _____

Mailing Address _____

City _____

State _____

Zip _____

Phone _____

Registration Fees:

- Medical Professionals (MD, DO, PhD, DC) \$95.00
 Allied Health Professionals \$50.00

Make check payable to Aurora Health Care and return to:

Marcia Wiseman
St. Luke's Pain Management Center
4570 S. 27th St., Milwaukee, WI 53221

For further information about the conference, please call 414-325-8726. Course fax number: 414-325-8780.

Accommodations

Hilton Milwaukee City Center
509 West Wisconsin Avenue, Milwaukee, WI 53203
Phone: 1-800-445-8667 or 414-271-7250

For your convenience, a block of rooms has been reserved at the Hilton Milwaukee City Center at the following rates:

Room: **Single \$99**
Double \$99

To ensure hotel availability and the rates shown above, reservations must be made by October 1, 2003.

From Chicago/Airport

Take Highway I-94 to Highway I-43 North. Exit at Civic Center/Kilbourn. Merge right onto 6th Street. At third stop light, Michigan Avenue, turn left. Go one block to 5th Street. Turn left onto 5th Street. Parking structure entrance is located on the West side of the street.

From Green Bay

Take Highway I-43 South. Exit at Civic Center/Wells. Follow Wells Street to 6th Street. Turn right onto 6th Street. Follow 6th Street two blocks to Michigan Avenue, turn left. Go one block to 5th Street, turn left. Parking structure entrance is located on the West side of the street.

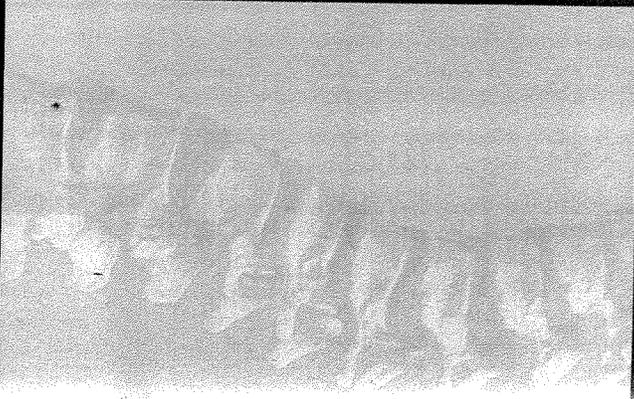
From Madison

Take Highway I-94 East. Exit at James Lovell Street/Civic Center. Follow James Lovell Street two blocks to Michigan Avenue. Turn right onto Michigan Avenue. Go two blocks to 5th Street, turn left. Parking structure entrance is located on the West side of the street.

Pain Management
Symposium

Improving Function

By Controlling Pain



Saturday, November 1, 2003

8:00 am – 3:00 pm

Hilton Milwaukee City Center


Aurora Health Care®

www.AuroraHealthCare.org

Objective

This conference has been designed to improve the awareness of physicians and health care providers of pain management options and alternative treatments available to restore patients' function and decrease their pain, as well as address the employee and employer guidelines for return to work.

Accreditation

Aurora Health Care is accredited by the Wisconsin Medical Society to provide continuing medical education for physicians.

Aurora Health Care designates this educational activity for a maximum of 5 category 1 credits towards the AMA Physician's Recognition Award. Each physician should claim only those credits that he/she actually spent in the activity.

Target Audience

This program is designed for Physicians and Allied Health Staff in Pain, Internal Medicine, Family Practice, General Practice, Physical Medicine & Rehabilitation, Psychology, Occupational Medicine, Orthopedic Surgery, Neurology, Rheumatology and Chiropractic.

Program Agenda

Saturday, November 1, 2003

8:00 – 9:00 am

Registration, Exhibit Time and Continental Breakfast

9:00 – 9:30

Life in the Trench: Pain-Free, Healthy People are More Productive People!
William May

9:30 – 10:00

Employment Law Aspects of Pain
Charles Stevens, JD

10:00 – 10:30

Psychological Assessment: The Starting Point of Assessing Functionality Potential
Michael Jorn, PhD

10:30 – 10:45

Break

10:45 – 11:15

Function and Pain: A Psychiatrist's Perspective
Scott Hardin, MD

11:15 – 11:45

Using the Magic Wand: Sympathetic Block for Chronic Regional Pain Syndrome
Jonathan Kay, MD

11:45 – 12:00 pm

Morning Wrap Up: Questions/Answers

12:00 – 1:00

Lunch

1:00 – 1:30

The Role of Discography in the Evaluation of Low Back Pain
John Brusky, MD

1:30 – 2:00

Low Back Pain: When Surgery is the Only Option
Cully White, MD

2:00 – 2:30

Functional Assessments in the Injured Worker
Paula Benes, MD

2:30 – 3:00

The Role of Spinal Manipulation and Active Stretching Techniques in Pain Relief and Functional Restoration to the Musculoskeletal System
Eric Kirk, BS, DC

3:00-3:15

Afternoon Wrap Up Questions/Answers

Course Director

Igor Levin, MD
Pain Management
St. Luke's Pain Management Center
Milwaukee, WI

Guest Faculty

Paula Benes, MD
Physical Medicine and Rehabilitation
St. Luke's Medical Center
Milwaukee, WI

Scott Hardin, MD
Physical Medicine and Rehabilitation
Milwaukee, WI

Michael Jorn, PhD
Clinical Psychologist
St. Luke's Medical Center
Milwaukee, WI

Eric Kirk, BS, DC
Clinical Director of Chiropractic
Aurora Health Care

William May
Unified Solutions

Charles P. Stevens, JD
Michael Best & Friedrich LLP

Cully White, MD
Neurosurgeon
St. Luke's Medical Center
Milwaukee, WI

Course Faculty

Jonathan Kay, MD
Associate Clinical Professor of Medicine
St. Luke's Pain Management Center
Milwaukee, WI

John Brusky, MD
Pain Management
St. Luke's Pain Management Center
Milwaukee, WI

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Pfizer Pharmaceuticals
Merck & Co., Inc.
Ortho-McNeil Pharmaceutical, Inc.
Elian Pharmaceuticals, Inc.
Medtronics, Inc.
Janssen Pharmaceutica, Inc.
Purdue Pharma L.P.
Organon Pharmaceuticals USA, Inc.

Any additional program funding through educational grants will be disclosed at the conference.