

February 7, 2008

Michael D. Maves, M.D., MBA,
Executive Vice President
American Medical Association
515 N. State Street
Chicago, IL 60610

RE: Guides to the Evaluation of Permanent Impairment, 6th edition

Dear Dr. Maves:

This office is general counsel to the American Chiropractic Association (ACA). Recently, the above-publication produced and distributed by the AMA was brought to my attention. Page 20 of the publication contains a radical and substantial change in the "Fundamental Principles of the Guides". Specifically, Item 6 of Table 2-1 now provides as follows: "6. A licensed physician must perform impairment evaluations. Chiropractic doctors, if authorized by the appropriate jurisdictional authority to perform ratings under the Guide, should restrict rating to the spine." (emphasis added).

This new standard has a devastating effect on competitive doctors of chiropractic in that it will be used to prevent doctors of chiropractic from performing adequate and complete ratings. It targets doctors of chiropractic for exclusion or elimination from this important service which they currently provide under state law in competition with medical doctors. Most impairment ratings are performed for musculoskeletal painful conditions and therefore the most commonly used chapters will be Chapter 15, The Upper Extremities, Chapter 16, The Lower Extremities, and Chapter 17, The Spine and Pelvis. Chapter 3, Pain Related Impairment, Chapter 13, Central and Peripheral Nervous System and Chapter 14, Mental and Behavioral Disorders, will also frequently be referenced. Chapters 4 to 12 focus on other organ systems and structures. Doctors of chiropractic, based on the new AMA standard, will not be utilized if they can only utilize one of the 17 chapters.

In our view, the action of the AMA in issuing this standard unlawfully restricts competition and excludes a competitive rival, i.e., doctors of chiropractic, from the provision of impairment ratings. We note that neither the ACA, nor any other major chiropractic group, was approached or provided input in the standard setting process that established this new restriction. It is well established under the antitrust laws, that these types of restrictions on competition must be incidental and necessary to the achievement of legitimate overriding procompetitive goals

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and the standard setting should be designed to include competitive safeguards. In this case, the wholesale restriction and limitations placed by the AMA on doctors of chiropractic, a direct competitor to medical doctors, is unjustified and meets no overriding procompetitive goal.

I would also point you to *Wilk v. American Medical Assoc.*, 671 F. Supp. 1465 (N.D. Ill. 1987), *aff'd*, 895 F.2d. 352 (7th Cir. 1990), *cert. denied*, 498 U.S. 982, 111 S. Ct. 513 (1990). (copy attached). You may recall, that the United States District Court for the Northern District of Illinois, following an eight week trial, held that the AMA was guilty of engaging in a nationwide illegal boycott in violation of the Sherman Act and imposed a nation wide injunction that is still in force. (copy enclosed)

One of the prime areas of concern before the Court was that: "In 1964, the Committee's primary goal was to contain and eliminate chiropractic." In fact, one of the early goals of the AMA was to: "Oppose chiropractic inroads in health insurance" and "workmen's compensation."

The District Court subsequently found that the AMA's and its co-conspirators' purpose in their unlawful boycott of chiropractic was to prevent all medical physicians in the United States from referring patients to and accepting patient referrals from chiropractors, to prevent chiropractors from obtaining access to hospital diagnostic services and membership on hospital medical staffs, to prevent medical physicians from teaching at chiropractic colleges and/or engaging in any joint research papers, and to prevent any cooperation whatsoever between the two professional groups in the delivery of health care services.

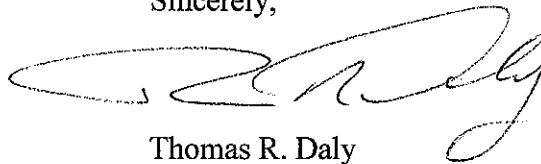
The attached permanent injunction was further viewed by the U.S. Court of Appeals in the following terms: "The district court's [remedy] was a reasonable attempt at eliminating the consequences of the AMA's lengthy, systematic, successful, and unlawful boycott." (emphasis added). It should come to no surprise that the injunction that was imposed against the AMA by the District Court and which was affirmed by the Seventh Circuit in 1990, was absolutely essential.

My client therefore believes and will argue that your recent action which implements a new and onerous restrictive standard on the practice of doctors of chiropractic violates existing antitrust law as well as the provision of the existing permanent Wilk injunction. Your recent action not only serves as a direct limitation on state authorized practice rights but also has severely restricted if not completely eliminated the referral of patients from medical doctors to doctors of chiropractic for evaluation purposes.

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Therefore, this letter is written to request the immediate withdrawal of all restrictive language in the 6th edition of the above referenced Guide which would in any way limit doctors of chiropractic in the performance of impairment ratings other than those that may be applicable under state law.

Sincerely,

A handwritten signature in black ink, appearing to read "T. R. Daly", written over a horizontal line.

Thomas R. Daly
General Counsel to the
American Chiropractic Association

TRD/mah
Enclosures
CC: Kevin P. Corcoran, CAE,
ACA Executive Vice President
ACA Board of Governors

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Daly, Tom

Subject: FW: Wilk Injunction

1. The AMA, its officers, agents and employees, and all persons who act in active concert with any of them and who receive actual notice of this order are hereby permanently enjoined from restricting, regulating or impeding, or aiding and abetting others from restricting, regulating or impeding, the freedom of any AMA member or any institution or hospital to make an individual decision as to whether or not that AMA member, institution, or hospital shall professionally associate with chiropractors, chiropractic students, or chiropractic institutions.
2. This Permanent Injunction does not and shall not be construed to restrict or otherwise interfere with the AMA's right to take positions on any issue, including chiropractic, and to express or publicize those positions, either alone or in conjunction with others. Nor does this Permanent Injunction restrict or otherwise interfere with the AMA's right to petition or testify before any public body on any legislative or regulatory measure or to join or cooperate with any other entity in so petitioning or testifying. The AMA's membership in a recognized accrediting association or society shall not constitute a violation of this Permanent Injunction.
3. The AMA is directed to send a copy of this order to each AMA member and employee, first class mail, postage prepaid, within thirty days of the entry of this order. In the alternative, the AMA shall provide the Clerk of the Court with mailing labels so that the court may send this order to AMA members and employees.
4. The AMA shall cause the publication of this order in JAMA and the indexing of the order under "Chiropractic" so that persons desiring to find the order in the future will be able to do so.
5. The AMA shall prepare a statement of the AMA's present position on chiropractic for inclusion in the current reports and opinions of the Judicial Council with an appropriate heading that refers

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to professional association between medical physicians and chiropractors, and indexed in the some manner that other reports and opinions are indexed. The court imposes no restrictions on the AMA's statement but only requires that it be consistent with the AMA's statements of its present position to the court.

6. The AMA shall file a report with the court evidencing compliance with this order on or before January 10, 1988.

It is so ordered.

August 27, 1987

Susan Getzendanner

United States District Judge

Chiropractic Antitrust Suit Wilk, et al., v. AMA, et al.