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## **ACA to Appeal Judge's Decision in Trigon Lawsuit**

### **Process Comparable to Wilk, et al., v. AMA**

By Editorial Staff

*"Filing an appeal is a necessary ... step in ensuring that Trigon's discriminatory schemes are exposed to the light of day." - ACA President Dr. Daryl Wills*

As we go to press, the American Chiropractic Association (ACA) and the other plaintiffs in the federal anti-trust lawsuit against Trigon are poised to "vigorously appeal" U.S. District Court Judge James P. Jones' April 25 decision to dismiss the case before trial.<sup>1</sup>

"We refuse to capitulate," emphasized ACA President Daryl Wills, DC. "Filing an appeal is a necessary - and not unexpected - step in ensuring that Trigon's discriminatory schemes are exposed to the light of day. We are convinced that if this evidence is presented in its entirety to a federal jury, they will have no choice but to find Trigon guilty of antitrust violations against the chiropractic profession."

The ACA, the Virginia Chiropractic Association (VCA), 11 doctors of chiropractic and 15 patients filed the lawsuit against Trigon Blue Cross/Blue Shield (now Anthem Blue Cross/Blue Shield) on Aug. 18, 2000, alleging racketeering; extortion; mail fraud; antitrust violations; and other state and federal law violations.<sup>2</sup> They contended that Trigon imposed a cap on spinal manipulation that penalized chiropractic patients; reimbursed DCs 40 percent less than MDs for the same or similar services; paid DCs the lowest level treatment code possible, even when higher-level treatment was performed; refused to reimburse for the services of chiropractic assistants; and directed patients away from chiropractic by "denigrating chiropractic treatment" through "unreasonably limiting the coverage of chiropractic treatment under health care plans it administers."<sup>2,3</sup>

In his decision, Judge Jones, of the Western District of Virginia, cited "no genuine issue of material fact" sufficient to bring the matter to trial. That decision allows for an immediate appeal by the plaintiffs to the

U.S. District Court of Appeals.

Judge Jones offered the following in his ruling:<sup>3</sup>

**"After careful review of the summary judgment record, I find that the intracorporate immunity doctrine bars the majority of the plaintiffs' conspiracy allegations in this case because Trigon, as a matter of law, cannot conspire with its employees and agents.**

**"While Trigon formally appointed the members of the Managed Care Advisory Panel, there is evidence that in practice members were chosen by the Virginia chapters of the American Academy of Pediatrics, the American Academy of Family Physicians, and the American College of Surgeons, along with the Virginia Society of Internal Medicine, the Virginia Obstetrical and Gynecological Society, the Medical Society of Virginia, the University of Virginia Medical School, Eastern Virginia Medical School, and the Medical College of Virginia. See Letter from J. Lawrence Colley to Craig N. Bash of 5/2/97, Pls.' Ex. 27. As its name implies, the purpose of the Managed Care Advisory Panel was to advise Trigon on clinical issues related to managed care plans. See Norwood Dep. | 6, Defs.' Ex. 7."**

According to the ACA, at the center of the judge's ruling was his legal finding that the Trigon Managed Care Advisory Panel, composed of representatives from various Virginia medical societies, could not, as a matter of law, "conspire" with Trigon to limit coverage of chiropractic services and payments to doctors of chiropractic, and that there was insufficient evidence that members of the panel benefited from the insurance company's discriminatory policies against DCs.

"Judge Jones chose to ignore the 100-plus years of efforts by medical physician groups to prevent competition, the payment of insurance monies, or referrals to or with doctors of chiropractic," commented Dr. Wills.

The ACA and the other plaintiffs were particularly surprised by Judge Jones' conclusion that:

**"... the plaintiffs have not presented any evidence to show that any of the Trigon panel members competed with them for the treatment of neuromus-culoskeletal disorders. At most, the plaintiffs showed that some of the doctor members were designated by their professional organizations. The plaintiffs' contention that other members of these entities may compete with doctors of chiropractic is unavailing absent evidence that Trigon's agents - the members of the Managed Care Advisory Panel - derived some direct economic benefit from the alleged illegal conduct. See Oksanen, 945 F.2d at 705."**

"I am disappointed at the lack of in-depth analysis of the issues by Judge Jones," said Dr. Wills. "He has accepted the trade associations of our medical physician competitors as neutral advisors of how many tens of millions of insurance dollars should be shifted from their medical physician members to competitive doctors of chiropractic and their patients.

"In view of the clear evidence that medical physicians have a competency gap and chiropractors have superior training and skills in musculoskeletal care, not only money, but the health and welfare of Virginia citizens, has been negatively impacted by the activities of the state medical societies working hand in glove with the medical physicians at Trigon. Record-breaking profits for insurance companies should not come at the expense of suffering patients."

ACA Chairman James Edwards, DC, added: "We have been prepared for this ruling for quite some time. Knowing that the *Wilk* case took 16 years to win and went through a similar appeals process, we weren't surprised that the judge came down in Trigon's favor. This is simply a first step in what we believe will be a successful lawsuit of historic proportions for the chiropractic profession."

#### *References*

1. Trigon lawsuit advances to appeals court. ACA press release, May 1, 2003.
2. ACA files major lawsuit against Trigon Blue Cross/Blue Shield. *Dynamic Chiropractic*, Sept. 18, 2000. [www.chiroweb.com/archives/18/20/01.html](http://www.chiroweb.com/archives/18/20/01.html).
3. Filed in U.S. District Court (Western District of Virginia) against Trigon Healthcare, Inc.; Trigon Insurance Co.; Trigon Administrators, Inc.; Mid-South Insurance Company; Trigon Health and Life Insurance Co.; and the national Blue Cross/Blue Shield Association.
4. [www.acatoday.com/legal/trigon/expanded\\_050503.shtml](http://www.acatoday.com/legal/trigon/expanded_050503.shtml).



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