

1930



2005

September 2005

Vol. 33 No. 1

## Seattle Claims Adjusters Association

### Celebrating 75 years of service to the claims community — 1930-2005

*"A professional organization dedicated to the ongoing education of the claims community.*

*Providing an arena for member interaction and the sharing of resources."*

### Lizzy's Logic

— by Lizzy Adkins, President



Lizzy Adkins  
SCAA President 2005-06

Once again it's fall! The kids are back in school, the flip flops tucked away, and SCAA begins once again. If you read our summer issue in August, this year is very special — it's SCAA's 75th Anniversary. It's hard to believe that 75 years ago, Wendell

Bonesteel, created this organization with the following motto: "A professional organization dedicated to the ongoing education of the claims community. Providing an arena for member interaction and the sharing of resources". And now, 75 years later, we are holding true to what Wendell has begun. So, adjusters and vendors, thank you for supporting this truly wonderful association and let's continue

the tradition for many more years to come. Another tradition we have as Presidents is choosing a name for the President's Column in our monthly newsletter. Thanks to Past-President, Larry Garlinghouse, here's a little history on what some of our Past Presidents called their columns during their tenure:

Larry Garlinghouse - Larry's Lowdown  
Dick Gaither - Gaither's Bulletin

*(See Lizzy's Logic... continued on page 3)*

### Adjusters — it's time to renew your dues!

— See application on our website —

#### Next Meeting of the SCAA

**September 16, 2005**

The Swedish Club, 1920 Dexter Ave North, Seattle, WA

#### Program

**Legal Speaker: Attorney Tim Reid**

#### Menu

**To be announced**

#### Cost

**\$10 Members \$20 Non-Members**

#### Time

**11:30 a.m.**

If you have special dietary needs, please give a 48-hour notice by calling the Swedish Club at (206) 282-5903.

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# ON THE DOCKET

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Date	Speaker/Topic	Menu
Sept 16	<b>SCAA Meeting</b> <b>Membership Drive — Dues Renewal</b> <b>Announcing President's Choice for Charity</b> <b>Legal Speaker — Tim Reid</b> <b>CE Credits offered at this meeting</b>	TBA
Oct 21	<b>SCAA Meeting</b>	TBA
Nov 18	<b>SCAA Meeting</b>	TBA

### Meeting Information

Please keep in mind that we'd like to start and end promptly during our monthly meetings. Here is the timeline for each meeting:

- 11:30 a.m. Registration
- 11:45 a.m. Buffet
- 12:00 p.m. Meeting Called to Order
- 1:00 p.m. End of Meeting

Please arrive on time and have your cash or check (payable to SCAA) ready. We appreciate your cooperation and assistance.



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## The Seattle Adjuster

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**Lizzy's Logic...** *(Continued from front page)*

Sharon Setzler - Sharon's Scene  
 Charlie Bingham - Charlie's Column  
 Gene Key - U-Gene  
 Milt Gustafson - Milt's Memo  
 Frank Lucarelli - Frankly Speaking  
 Walt Stolle - Walt's Notes/Log (after his first article, he changed from Notes to Log)  
 Tom Ewing - Tom's Tidings  
 Bob Jeans - President's Comment  
 Nancy Bryant - Bryant's Byline  
 Pat Wasser - Pat'Spot  
 Mike Radcliff - RealRAD  
 Willie Markey - The Short Story  
 Jay Jared - Buster the Adjuster  
 Bob Haggerty - HagTime  
 Sue Dahlin - Sue's Views  
 Will Markey - Will's Wanderings  
 Kathy Johnson - City Views  
 Keo Capestany - Inner City Views  
 Steve De Koekkoek - Where's the Fire?  
 Carol Green - Hey Mon!  
 Fred Biehl - Maladjusted  
 Janice Howard - Used titles each issue relating to subject at hand.  
 Donna Silver - President's Corner  
 Annette Grace - President's Corner

And now, you can probably guess what I chose for my column title from the title above: Lizzy's Logic (scary, huh?).

So...now that we got a little "fun" history, let's start this year off with a "BANG" by increasing adjuster membership and participation. Spread the word and mark your calendars for the third Friday of every month! See ya! ❖

Update**Tanner Jeans Memorial Foundation**

Most of us were saddened at the loss of young Tanner Jeans, grandson of SCAA Past-President, Bob Jeans, June 23, 2004. As a result of his tragic death, friends and family of young Tanner created Tanner Jeans Memorial Foundation, which can be found at [www.tannerjeans.com](http://www.tannerjeans.com). The foundation desires to memorialize Tanner through the development of various scholarship programs

intended to benefit the children of the Snoqualmie Valley area.

This summer, Tanner Field at Azalea Park will be started so that it will be available for next summer's use. On June 18, 2005, a successful Tanner Jeans Bike Rodeo (bicycle safety for kids) in Snoqualmie was completed. The foundation will be providing 10 summer camp scholarships to the Skyhawks Programs for children in the Snoqualmie Valley. In the fall, they will have two fundraisers to support other programs.

Please visit Tanner's website for more information or if you'd like to make a donation to this worthy non-profit organization. ❖

Case Study**Disclosing Expert Witnesses**

**Failure to comply with KCLR 26 may result in the exclusion of expert witnesses at trial**

By **Jeffrey D. Eberhard**

In *Lancaster v. Perry*, 126 Wash. App. 1049 (Div. 1, 2005), the Washington Court of Appeals reminded practitioners in King County that failure to follow local rule (KCLR) 26 and CR 35 will likely result in excluding undisclosed witnesses.

Under King County Local Rule (KCLR) 26(f), witnesses not timely disclosed may not testify at trial, absent a showing of good cause. In *Lancaster*, the defendant failed to disclose his expert witness and did not show good cause for this failure. Moreover, the defendant did not move for a CR 35 examination of the plaintiff until after the disclosure deadlines had passed and the trial court entered an order excluding any undisclosed witnesses.

The case involved a common Plaintiff that sustained injuries as a result of a motor vehicle accident. Sometime after filing his lawsuit, plaintiff delivered a set of interrogatories to defendant in which plaintiff asked defendant to identify any expert witnesses. Defendant responded that it would "identify experts pursuant to the Local Rules."

*(See Case Study... continued on page 4)*

**Case Study...** *(Continued from page 3)*

Four days prior to the deadline for disclosing primary witnesses, defendant filed his disclosure of primary witnesses stating “[d]efendants will call those healthcare professionals who will conduct a CR 35 Examination of the Plaintiff. This CR 35 Examination has not been scheduled at this time and, accordingly, Defendants cannot identify those professionals who may conduct the examination.”

On the day of the rebuttal disclosure deadline, defendant filed the same statement above, but added: “However, it is likely the CR 35 examination will be conducted by either Dr. Robert Price or Dr. Patrick Baze or Dr. Larry Gorman.”

One month later the trial court entered an order striking defendant’s “undisclosed” witnesses. The court specifically found that defendant’s actions were “done intentionally and/or for tactical advantage.”

On appeal from the order, defendant argued he had properly and timely disclosed his expert witness. However, the court noted that these disclosures “shall include ... [n]ame, address, and phone number.” KCLR 26(b)(3)(A). Additionally, for expert witnesses, the disclosure must include a “summary of the expert’s opinions and the basis therefor and a brief description of the expert’s qualifications.” KCLR26(b)(3)(C). The court went on to explain that KCLR 26 sets only a minimum level of disclosure that will be required in all cases, even if one or more parties have not formally requested such disclosure in written discovery. Based on these facts, the court held that the defendant’s disclosure did not meet the minimum requirements of the rules.

On the related CR 35 issue, the court found that no CR 35 examination, which would serve as the basis for the expert’s testimony, had even been requested or ordered, let alone conducted. More importantly, defendant did not have the right to call this witness absent court order. CR 35 is not self-executing. In order to conduct a CR 35 examination a party must obtain the agreement of opposing counsel or must obtain a court order. There was no evidence that defendant sought an agreement to conduct a CR 35 examination. Thus, in order to go forward with the examination, defendant needed a court order. In spite of a clear request to disclose the name of his

expert witness, defendant did not move to conduct a CR 35 examination until after the witness disclosure dates passed and the trial court granted plaintiff’s motion to prevent defendant from calling an expert witness. Allowing disclosures to be made in the manner suggested by defendant, in the absence of good cause, would frustrate the purpose of the scheduling rules. ❖

**Claims Pointer: In King County, conduct CR 35 examinations early enough in the case to ensure compliance with KCLR 26 disclosure schedules. Failure to comply with KCLR 26 will likely result in excluding an undisclosed expert witnesses at trial.**

— *If you want to be notified of new cases, please send an email to [caseupdate@smithfreed.com](mailto:caseupdate@smithfreed.com).*

— *This article is intended to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.*



## Seattle Claims Adjusters Association

**75 Years of Service**  
to the  
Claims Community



**1930 - 2005**

**SCAA**



Medical Notes

## Chiropractic Scope of Practice: Oregon, Washington and California

Article provided by Health Cost Management

— by **J. Michael Burke, D.C.**

The practice of chiropractic is licensed and regulated in all 50 states. However, unlike the practice of medicine which varies little from one state to another, the chiropractic scope of practice can differ widely from state to state. The dissimilarities between states is often confusing to those outside of the profession whose functions may require them to encounter or interact with chiropractors. These may include insurance personnel, claims adjudicators, and attorneys. The reasons for the variety of state laws governing the practice of chiropractic are many, and a discussion of them is outside the scope of this brief paper, but the interested reader is referred to sociologist Walter Wardwell's *Chiropractic: History and Evolution of a New Profession*<sup>1</sup> for further reading. The purpose of this paper is to review the licensing laws of Oregon, Washington, and California as they pertain to the chiropractic scope of practice.

### Oregon

The broadest legal spectrum of chiropractic practice can be found in Oregon. Chiropractors in Oregon may refer to themselves as chiropractic physicians. Drs. Ruth Sandefur and Ian Coulter<sup>2</sup> have described the Oregon scope of practice thusly:

In Oregon, chiropractors are allowed to perform minor surgery, proctology, and obstetrical procedures. They also employ "chiropractic diagnosis, treatment and prevention of body dysfunctions, correction, maintenance of the structural and functional integrity of the neuromusculoskeletal system and the effects thereof or interferences therewith by the utilization of all recognized and accepted chiropractic diagnostic procedures and the employment of all rational therapeutic meas-

ures as taught in approved chiropractic colleges." ... Chiropractors practicing in Oregon may utilize physiotherapy devices, perform venipuncture to collect blood specimens for laboratory diagnosis, give nutritional advice, and dispense nutritional supplements from their offices.

The law governing chiropractic practice in Oregon is contained in chapter 684 of the Oregon Revised Statutes.<sup>3</sup> ORS 684.010 states:

(2) "Chiropractic" is defined as:

(a) That system of adjusting with the hands the articulations of the bony framework of the human body, and the employment and practice of physiotherapy, electrotherapy, hydrotherapy and minor surgery.

(b) The chiropractic diagnosis, treatment and prevention of body dysfunction; correction, maintenance of the structural and functional integrity of the neuro-musculoskeletal system and the effects thereof or interferences therewith by the utilization of all recognized and accepted chiropractic diagnostic procedures and the employment of all rational therapeutic measures as taught in approved chiropractic colleges.

The appropriateness of many diagnostic and treatment procedures and techniques are determined by whether they are taught in "approved chiropractic colleges." For example, manipulation under anesthesia (MUA) is within the scope of practice because "the Board found that Texas Chiropractic

*(See Scope of Practice... continued on page 6)*



"What has two legs and can be seen running fast every third Friday of the month? An adjuster on their way to an SCAA meeting!"

**September 16 — Be there!**

Visit SCAA on the web at: [www.seattleadjuster.org](http://www.seattleadjuster.org)

#### What you'll find:

- Web version of monthly newsletter
- Meeting announcements
- Calendar of Events w/registration forms
- How to contact us
- Resource page listing our Vendor Partners—and how to become one ...and more!

## Scope of Practice... *(Continued from page 5)*

College teaches a continuing education course in Manipulation Under Anesthesia and offers a preceptorship program.”<sup>4</sup> (However, the administration of anesthesia for this procedure is not within the chiropractor’s scope.) ORS 684.040 (2)(d) states that an approved chiropractic college is either a college “approved by the board under the board’s academic standards” or a school accredited by the Council on Chiropractic Education.<sup>3</sup>

It may be easier to understand chiropractic in Oregon by listing which medical procedures lie outside the legal scope. This list includes:

1. Prescribing medications. Not only are chiropractors prohibited from prescribing or dispensing prescription drugs, but chiropractors are similarly proscribed from recommending that patients discontinue taking drugs that have been prescribed to them. Chiropractors can, however, recommend or prescribe over-the-counter (OTC) drugs and may do so in doses equivalent to a prescription medication, e.g., 600 mg ibuprofen every six hours.
2. Acupuncture. Although some states allow chiropractors to perform needle acupuncture, it is outside the Oregon scope of practice despite Oregon’s otherwise broad scope. Aside from needling, chiropractors are allowed to stimulate acupuncture points by a variety of methods including manually (e.g., acupressure or acupuncture massage) and electrically
3. Major surgery. While this prohibition might seem obvious, in Oregon it is legal for chiropractors to perform minor surgery. ORS 684.010(6) defines minor surgery as “the use of electrical or other methods for the surgical repair and care incident thereto of superficial lacerations and abrasions, benign superficial lesions, and the removal of foreign bodies located in the superficial structures; and the use of antiseptics and local anesthetics in connection therewith.”<sup>3</sup> Postgraduate certification in minor surgery is required.
4. Injections. Chiropractors may not provide therapy by injection including the administration of vitamins and other nutritional substances. Chiropractors may also not perform trigger point injections.

The administration of local anesthesia in order to perform minor surgery is an exception. Chiropractors may also perform venipuncture to draw blood for diagnostic testing purposes. (Laboratory analysis of serum and urine is allowed.) Intradermal injections for allergy testing are within the scope of practice.

The use of x-ray for diagnostic purposes is allowed in Oregon as it is in Washington and California. Many chiropractic offices maintain their own x-ray equipment.

The practice of obstetrics, gynecology, and proctology by chiropractors is allowed in Oregon, subject to the proscriptions previously described. As with minor surgery, postgraduate certification is required.

The Oregon Board of Chiropractic Examiners (OBCE) maintains a very informative website to which the reader is referred for more information.<sup>5</sup> The OBCE’s Guide to Policy and Practice Questions contains a detailed listing of approved and proscribed devices, procedures, and substances.<sup>4</sup>

### Washington

Washington state’s scope of chiropractic practice used to stand in stark contrast to that of its neighbor state to the south. Chiropractic in Washington is still restrictive compared to Oregon and other states with more expansive scopes. The Chiropractic Quality Assurance Commission, part of the Washington State Department of Health, oversees the chiropractic profession.<sup>6</sup> The chapter of the Revised Code of Washington governing the chiropractic profession is RCW 18.25.<sup>7</sup> RCW 18.25.005 states in part:

(1) Chiropractic is the practice of health care that deals with the diagnosis or analysis and care or treatment of the vertebral subluxation complex and its effects, articular dysfunction, and musculoskeletal disorders, all for the restoration and maintenance of health and recognizing the recuperative powers of the body.

(2) Chiropractic treatment or care includes the use of procedures involving spinal adjustments and extremity manipulation. Chi-

*(See Scope of Practice... continued on page 7)*

## Scope of Practice... *(Continued from page 6)*

ropractic treatment also includes the use of heat, cold, water, exercise, massage, trigger point therapy, dietary advice and recommendation of nutritional supplementation, the normal regimen and rehabilitation of the patient, first aid, and counseling on hygiene, sanitation, and preventive measures. Chiropractic care also includes such physiological therapeutic procedures as traction and light, but does not include procedures involving the application of sound, diathermy, or electricity.

Note that chiropractors in Washington are prohibited from performing such commonly used physical therapies as ultrasound, diathermy, and electrical stimulation. Chiropractors also cannot prescribe or dispense drugs, practice obstetrics or any form of surgery, perform colonic irrigations (legal for chiropractors in Oregon and California), use x-rays or other forms of radiation for therapeutic purposes, or perform venipuncture. Washington is one of the few states, perhaps the only state, that prohibits health care providers other than chiropractors from performing “adjustments by hand of any articulation of the spine.”

MUA is not mentioned in the current regulations, but the procedure is currently under consideration by the Chiropractic Quality Assurance Commission.

### **California**

The “Laws and Regulations Relating to the Practice of Chiropractic” defines the scope of chiropractic practice in California.<sup>8</sup> According to section 302, Practice of Chiropractic, a duly licensed chiropractor may:

- manipulate and adjust the spinal column and other joints of the human body;
- manipulate muscle and connective tissue;
- use “necessary mechanical, hygienic, and sanitary measures ... including air, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound, water, and physical therapy techniques in the course of chiropractic manipulations and/or adjustments” (emphasis added);

- “treat any condition, disease, or injury in any patient, including a pregnant woman, and may diagnose, so long as such treatment or diagnosis is done in a manner consistent with chiropractic methods and techniques and so long as such methods and treatment do not constitute the practice of medicine by exceeding the legal scope of chiropractic practice; ...”
- use “vitamins, food supplements, foods for special dietary use, or proprietary medicines, if [they] are also included in section 4057 of the Business and Professions Code, so long as such substances are not included in materia medica; ...”
- employ the “use of X-ray and thermography equipment for the purposes of diagnosis but not for the purposes of treatment.” Diagnostic ultrasound equipment may be used for neuromuscular skeletal diagnosis.

Chiropractors are specifically proscribed from:

- practicing surgery “or to sever or penetrate tissues of human beings, including, but not limited to severing the umbilical cord;”
- practicing obstetrics, dentistry, or optometry;
- using any drug or medicine included in materia medica;
- the use of a lithotripter;
- the use of ultrasound on a fetus for either diagnostic or treatment purposes;

*(See Scope of Practice... continued on page 8)*

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## Scope of Practice... *(Continued from page 7)*

- performing mammography.

MUA is currently allowed in California as there is no prohibition against its use by chiropractors. The California Board of Chiropractic Examiners is considering the adoption of a regulation which specifies the training required of licensees performing MUA procedures and defines conditions under which the procedures may be performed.<sup>9</sup> ❖

### Bibliography

1. Wardwell, W.I. *Chiropractic: History and Evolution of a New Profession*. St. Louis, MO: Mosby Year Book, 1992.
  2. *Chiropractic in the United States: Training, Practice, and Research*. Chapter V: "Licensure and Legal Scope of Practice," Ruth Sandefur, D.C., Ph.D., Ian D. Coulter, Ph.D., <http://www.chirobase.org/05RB/AHCPR/05.html>.
  3. Oregon Revised Statutes, 2003 edition, <http://landru.leg.state.or.us/ors/684.html>.
  4. Oregon Board of Chiropractic Examiners, *Guide to Policy and Practice Questions*, [http://egov.oregon.gov/OBCE/laws\\_guidepolicy.shtml](http://egov.oregon.gov/OBCE/laws_guidepolicy.shtml).
  5. OBCE website, <http://egov.oregon.gov/OBCE/index.shtml>.
  6. Chiropractic Quality Assurance Commission, <https://fortress.wa.gov/doh/hpqa1/hps3/Chiropractic/default.htm>.
  7. Washington State Legislature, <http://www.leg.wa.gov/RCW/index.cfm?fuseaction=chapterdigest&chapter=18.25>.
  8. California Board of Chiropractic Examiners, <http://www.chiro.ca.gov/regulations/chiroregulations.mst.pdf>.
  9. California Board of Chiropractic Examiners, "History of Proposed Regulation 361: Manipulation Under Anesthesia (MUA)," available on the Board's website, <http://www.chiro.ca.gov/regulations/>.
- J. Michael Burke, D.C., SpineCare Chiropractic Group, 9735 SW Shady Lane, Suite 103, Tigard, OR 97223.



— Upcoming Meeting —

**September 9, 2005**

11:30 am - 1:00 pm

LaQuinta Inn

1425 East 27th Street

Tacoma, WA

*For more information visit:*

[www.tacomaadjusters.org](http://www.tacomaadjusters.org)

### **Blue Bucket Drawing**



Who will be the next winner? Remember, you must be a member who has paid their dues for 2005-06 and must be present to win! Next drawing is September 16.