

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
HON. ISABEL B. STARK, J.S.C.
DOCKET NO.: BER-L-7996-00

HEE SOOK CHUN V. DAVID H. HENICK, JOHN DOE, & ABC COMPANY

MEMORANDUM OF DECISION REGARDING AICRA TRIAL PROOFS

PLAINTIFF: HEE SUK CHUN

PLAINTIFF'S COUNSEL: JALOUDI & LEE (JAE E. LEE, ESQ., APPEARING)

DEFENDANT: DAVID HENICK, JOHN DOE, & ABC COMPANY

DEFENDANT'S COUNSEL: LITVAK, ACCARDI & TREFOLIS, ESQS (ANTHONY J. ACCARDI, ESQ., APPEARING)

MEMORANDUM OF DECISION: DECEMBER 20, 2002

FOR EDUCATIONAL PURPOSES

Chun vs. Henick was an automobile personal injury action filed in the year 2000. It was stipulated that the New Jersey Automobile Insurance Cost Reduction Act (AICRA) applies. N.J.S.A. 39:6A-1 et. seq. In order to satisfy the requirements of that Act, the plaintiff must provide a written certification of permanency of injury within 60 days of the answer¹ and at trial prove that permanency exists. N.J.S.A. 39:6A-8. The proofs must be based on objective clinical evidence as found by a licensed physician. See N.J.S.A. 39:6A-8. Plaintiff never provided a certificate nor an opinion of permanency from anyone but a chiropractor. The issue presented by these facts is can a plaintiff

¹ Konopka v. Foster, 2002 WL 31426038 (App.Div. Nov. 2002) only question addressed was procedural. The case did not squarely address the question whether AICRA includes "chiropractor" within the meaning of "physician" in permanency certification or in trial testimony.

proceed to trial on a claim of permanency when supported only by a chiropractic opinion. For the following reasons the court has determined that the plaintiff cannot.²

Black's Law Dictionary defines physician as a "practitioner of medicine, a person duly authorized to treat diseases." In contrast, a chiropractor is one who employs "... a method of detecting and correcting by manual or mechanical means structural imbalance, distortion and subluxations in the human body." See Black's Law Dictionary, 6th Edition, 1990. These common law distinctions between chiropractors and physicians in terms of education, licensing and oversight are reflected in all statutes relating to human health care. N.J.S.A. 45:9-15 through 27.9 (physician/surgeon); N.J.S.A. 45:9-41.4 through 41.27 (chiropractor).

A medical doctor (N.J.S.A. 45:9-5.1)(N.J.S.A. 45:9-18) or osteopath (N.J.S.A. 45:9-14.1 & 14.3) may provide any method of treatment of human ailment, disease, pain, injury, deformity, mental or physical condition as required under AICRA. N.J.S.A. 39:6A-8. A chiropractor is mentioned only as an exemption for the limited statutory purposes of articulation of the spinal column. N.J.S.A. 45:9-14.5. Chiropractic diagnosis and analysis is for spinal articulation only. X-rays are the only objective medical test that can be used by chiropractors. N.J.S.A. 9:14-5(a); N.J.A.C. 13:44E-2.7 A chiropractor is not permitted to invade the human body (surgery or probes), dispense drugs, nor may they use the title "doctor" unless qualified with the word chiropractor. N.J.S.A. 45:9-14.5.

² Cf. Pensabene v. Straus, 342 N.J.Super. 196 (Law Div. 2001), this court respectfully disagrees with that analysis.

Physicians and chiropractors are so completely distinct in all aspects of training and applied techniques that they require separate licensing boards and licenses in order to practice. N.J.S.A. 45:9-19 et seq.; N.J.S.A. 45:9-41.5 et seq.³

Chiropractors simply are not permitted to diagnose or treat the systems and functions of the body that physicians are trained and statutorily licensed to do. N.J.S.A. 45:9-18; N.J.A.C. 13:44-1, et seq.⁴ Chiropractors are also not permitted to perform the panoply of objective diagnostic tests that physicians are obliged to use and which the AICRA statute requires before an opinion on permanency can be given. N.J.S.A. 45:9-14.5; N.J.S.A. 39:6A-8. See generally, Prudential Property & Casualty v. Nardone D.C., 332 N.J.Super. 126 (Law Div. 2000).⁵

New Jersey statutes in all fields use the word physician only in reference to a medical doctor (M.D.) or osteopath (D.O.). N.J.S.A. 45:9-1 through N.J.S.A. 45:9-58. The New Jersey legislature has explicitly used the word chiropractor in any statute in which they meant to permit a chiropractor and a physician to do certain things. N.J.S.A. 39:6A-2(1) (health care providers); N.J.S.A. 2A:84A-22.10(a)(2) (hospitals & long term health care facilities); N.J.S.A. 34:15-36 (medical services); N.J.S.A. 2C:40-A-4 (contact with victims); N.J.S.A. 45:9-22.4 (testing services); see generally, N.J. Coalition of Health Care Professional, Inc. v. N.J. Dept. of Banking & Insurance 323 N.J.Super. 207, 240 (App.Div. 1999) (separate guidelines for chiropractors and physicians). No statute has

³ Specifically, Title 45:9-41.18 states that there is a valid public purpose served by establishing a separate board to regulate the practice of chiropractic.

⁴ Specifically, N.J.S.A. 13:44E-3.1 defines a medical doctor as one who is an allopathic or osteopathic physician holding a plenary license issued by the New Jersey Board of Medical Examiners, whereas chiropractic physician is defined as a chiropractor holding a license issued by the New Jersey Board of Chiropractic Examiners. Further, N.J.S.A. 13:44E-3.3 states that a chiropractor shall not perform certain tests, but may refer the patient to a trained medical doctor to perform such tests.

⁵ Tietz v. Allstate (App.Div. July 1999) (unreported opinion): court allowed chiropractor to testify about MRI performed by M.D. and used during treatment of plaintiff.

been construed to infer or impute chiropractor into the word physician especially where the objective of the statute is to restrict rights to only medically cognizable objectively permanent injuries to the interior of the body's systems or functions. N.J.S.A. 45:9-18; Davis v. Board of Medical Examiners, DC 497 F.Supp. 525 (1980); N.J.S.A. 39:6A-8.⁶

A chiropractor would be viewed in the same manner as would a lay person, as practicing medicine without a license were he/she to offer the type of opinions required to prove permanency pursuant to AICRA, and thus could be subject to fraud claims. See N.J.S.A. 2C:21- 4.1; 2C:21-20; Heintze v. N.J.State Bd.Of Medical Examiners, 107 NJL 420, aff'd 110 NJL 24 (1931).

The overwhelming evidence in common law and the express reading of the statute compel this court to conclude that a chiropractor is not a "physician" under N.J.S.A. 39:6A-8 and thus cannot offer expert testimony at trial to support a claim for permanent injuries under AICRA.

⁶Cf. Pensabene, 342 N.J.Super. supra.