

RECEIVED FEB 15 1991  
**ENDORSED**

FEB 1 1990

By PENNY H. YEE, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

CALIFORNIA MEDICAL ASSOCIATION,  
RICHARD F. CORLIN, M.D., W. BENSON  
HARER, JR., M.D., ROGER W. HOAG,  
M.D., DAVID R. HOLLEY, M.D.,  
HOWARD L. LANG, M.D., W. GORDON  
PEACOCK, M.D., CHARLES W. PLOWS,  
M.D., ROBERT N. SMITH, M.D.,  
GILBERT A. WEBB, M.D., LAURENS P.  
WHITE, M.D.,

No. 354 485  
**Stipulated Judgment**

Plaintiffs and Petitioners,

v.

BOARD OF CHIROPRACTIC EXAMINERS,  
Executive Director of  
Board of Chiropractic Examiners,  
OFFICE OF ADMINISTRATIVE LAW; LINDA  
STOCKDALE BREWER, Director of Office of Administrative Law; and  
DOES I through X, inclusive,

Defendants and Respondents.

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1 The Court having considered the Agreement of Settlement and Release which is attached  
2 hereto, and good cause appearing,

3 IT IS ORDERED, ADJUDGED AND DECREED that:

4 1. Any and all claims in the Second Amended Complaint are hereby dismissed with  
5 prejudice.  
6

7 2. Pursuant to Business and Professions Code Section 2630, a duly licensed  
8 chiropractor in the State of California may practice physical therapy techniques to the extent  
9 those techniques are authorized by Section 7 of the Chiropractic Initiative Act.

10 3. The provisions of the "Amended Section 302"<sup>1</sup> is consistent with and supported  
11 by the holdings and judgments of the trial court and appellate court in CREES v. California  
12 State Board of Medical Examiners (1963) 213 Cal.App.2d 195, 28 Cal.Rptr. 669.  
13

14 4. Chiropractic is not a static system of healing and may advance and change in  
15 techniques, teaching, learning, and mode of treatment within the scope of chiropractic so  
16 long as such advances and changes do not expand beyond that which is authorized in Section  
17 7 of the Act.

18 5. The BCE has the authority to adopt the "Amended Sections 302 and 317".  
19

20 6. The provisions of the "Amended Sections 302 and 317" are consistent with and/or  
21 supported by the Chiropractic Act, all relevant California statutes, and all relevant  
22 California case law.

23 7. The health, safety, and welfare of the people of California will be enhanced by the  
24 adoption of the Amended Section 302 and 317 since it reduces the confusion concerning the  
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<sup>1</sup>All references to Amended Sections 302 and/or 317 shall refer to those which are set  
28 forth in the "Agreement of Settlement and Release".

1 scope of a chiropractor's license.

2 8. The adoption of the Amended Sections 302 and 317 complies with the necessity,  
3 authority, clarity, consistency, reference, and nonduplication standards of the Administrative  
4 Procedures Act, Government Code Section 11340 et. seq.

5 9. Adoption of the Amended Section 302 will not violate any provisions of the  
6 Physical Therapy Practice Act, Business and Professions Code Section 2600, et. seq., the  
7 Medical Practice Act, Business and Professions Code Section 2000, et. seq., or the  
8 Administrative Procedures Act, Government Code Section 11340, et. seq.

9 10. The BCE is collaterally estopped from readopting the Current Section 302.

10 11. The provision of obstetrical care, including, but not limited to monitoring or  
11 managing a pregnancy is outside the legal scope of chiropractic practice as established by  
12 Section 7 of the Chiropractic Act.

13 12. The BCE is collaterally estopped from expanding the scope of chiropractic  
14 practice beyond what is established by the Amended Section 302 [and] by Section 7 of the  
15 Chiropractic Act.

16 13. A duly licensed chiropractor may only practice or attempt to practice or hold  
17 himself or herself out as practicing a system of chiropractic. A duly licensed chiropractor  
18 may also advertise the use of the modalities authorized by Amended Section 302, as it was  
19 adopted and approved as a result of the settlement of the Consolidated Action, as a part  
20 of a course of chiropractic treatment, but is not required to use all of the diagnostic and  
21 treatment modalities set forth in that section. A chiropractor may not hold himself or  
22 herself out as being licensed as anything other than a chiropractor or as holding any other  
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1 healing arts license [or as practicing physical therapy or use the term "physical therapy"]<sup>2</sup>  
2 in advertising unless he or she holds another such license.

3 14. Subsection v is proposed to be added to Section 317 in order to make it  
4 unprofessional conduct for a chiropractor to not refer a patient to an appropriate physician  
5 and surgeon, podiatrist, or dentist if in the course of a diagnostic evaluation, a chiropractor  
6 detects an abnormality that indicates that the patient has a condition, disease or injury that  
7 is not subject to complete treatment by chiropractic methods and techniques.  
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11 Dated: FEB 1 1991

JUDGE STEVEN H. RODDA

Honorable Steven H. Rodda

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24 <sup>2</sup>Any amendments to the bracketed language contained either in a settlement agreement  
25 agreed to by the CCAPTA Plaintiffs or PTEC or in the absence of a settlement, by  
26 subsequent court order, shall prevail to the extent it differs. In the event there is no court  
27 order and/or settlement by the CCAPTA Plaintiffs or PTEC, the bracketed language shall  
28 be deleted.



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**STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Denise A. Wardlow  
DENISE A. WARDLOW

AGREEMENT OF SETTLEMENT AND RELEASE

Between

BOARD OF CHIROPRACTIC EXAMINERS,  
DENNIS R. MCKOWN, D.C., JOHN DAVID HEMAUER, D.C.,  
LEE J. KAUFFMAN, D.C., RAYMOND A. URSILLO, D.C.,  
EDWARD J. HOEFLING, OFFICE OF ADMINISTRATIVE LAW,  
AND LINDA HURDLE STOCKDALE BREWER

and

CALIFORNIA MEDICAL ASSOCIATION, RICHARD F. CORLIN, M.D.,  
W. BENSON HARER, JR., M.D., ROGER W. HOAG, M.D.,  
DAVID R. HOLLEY, M.D., HOWARD L. LANG, M.D.,  
W. GORDON PEACOCK, M.D., CHARLES W. PLOWS, M.D.,  
ROBERT N. SMITH, M.D., GILBERT A. WEBB, M.D., LAURENS P. WHITE, M.D.,

## AGREEMENT OF SETTLEMENT AND RELEASE

THIS AGREEMENT OF SETTLEMENT AND RELEASE ("Agreement") is made, entered into, and effective as of February 1, 1991, the ("Effective Date"), between the Board of Chiropractic Examiners, an independent agency of the State of California ("BCE"), Dennis R. McKown, D.C. ("McKown"), John David Hemauer, D.C. ("Hemauer"), Lee J. Kauffman, D.C. ("Kauffman"), Raymond A. Ursillo, D.C. ("Ursillo"), Edward J. Hoefling ("Hoefling") (BCE, McKown, Hemauer, Kauffman, Ursillo, and Hoefling are collectively referred to as the "BCE Defendants") the Office of Administrative Law, an agency of the State of California ("OAL"), and Linda Hurdle Stockdale Brewer ("Brewer") (Brewer and OAL are collectively referred to as the "OAL Defendants") (the OAL Defendants and the BCE Defendants are collectively referred to herein as the "Defendants") on the one side, and the California Medical Association a California nonprofit unincorporated association ("CMA"), Richard F. Corlin, M.D. ("Corlin"), W. Benson Harer, Jr., M.D. ("Harer"), Roger W. Hoag, M.D. ("Hoag"), David R. Holley, M.D. ("Holley"), Howard L. Lang, M.D. ("Lang"), W. Gordon Peacock, M.D. ("Peacock"), Charles W. Plows, M.D. ("Plows"), Robert N. Smith, M.D. ("Smith"), Gilbert A. Webb, M.D. ("Webb"), Laurens P. White, M.D. ("White") (CMA, Corlin, Harer, Hoag, Holley, Lang, Peacock, Plows, Smith, Webb, and White are collectively referred to as the "CMA Plaintiffs").

### RECITALS

A. The California Chapter of the American Physical Therapy Association, a California nonprofit mutual benefit corporation ("CCAPTA"), Kathleen Bruneer ("Bruneer"), James Dagostino ("Dagostino"), Dennis Ellingson ("Ellingson"), Patricia R. Evans ("Evans"),



J. Carolyn Hultgren ("Hultgren"), Dennis P. Langton ("Langton"), Judith A. Sebring ("Sebring"), Jay H. Segal ("Segal"), Patricia L. Sinnott ("Sinnott"), Michael Weinper ("Weinper") (CCAPTA, Bruneer, Dagostino, Ellingson, Evans, Hultgren, Langton, Sebring, Segal, Sinnott, and Weinper are collectively referred to as the "CCAPTA Plaintiffs"), have brought a civil action against the Defendants, California Chapter, American Physical Therapy Association, et al. v. The California State Board of Chiropractic Examiners, et al., SCSC Case No. 354214, First Amended Petition for Alternative Writ of Mandate, Writ of Mandate and Complaint for Declaratory Relief, Preliminary Injunction and Permanent Injunction (the "CCAPTA Plaintiffs' Action").

B. The CMA Plaintiffs have brought a civil action against the Defendants, California Medical Association, et al. v. Board of Chiropractic Examiners, et al., SCSC Case No. 354485, Second Amended Petition and Complaint for Mandamus, Declaratory Relief, and Injunction (the "CMA Plaintiffs' Action").

C. The Board of Medical Quality Assurance, an agency of the State of California ("BMQA"), and the Physical Therapy Examining Committee, an agency of the State of California ("PTEC") intervened into both the CCAPTA Plaintiffs' Action and the CMA Plaintiffs' Action.

D. The CMA Plaintiffs' Action and the CCAPTA Plaintiffs' Action were consolidated into a single consolidated action (the "Consolidated Action").

E. The Consolidated Action challenged the validity of Section 302 of Title 16 of the California Code of Regulation, which was adopted by the BCE in August of 1987 (the "Current Section 302"), and sought various other forms of relief.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto hereby agree as follows:

1. Obligations of the BCE Defendants.

(a) On or before March 1, 1991, the BCE shall duly notice regulatory hearings pursuant to the provisions of the California Administrative Procedures Act, proposing adoption of amended versions of Section 302 ("Amended Section 302") and Section 317 (v) ("Amended Section 317") that are worded as follows:

**302. PRACTICE OF CHIROPRACTIC.**

(a) Scope of Practice.

(1) A duly licensed chiropractor may manipulate and adjust the spinal column and other joints of the human body and in the process thereof a chiropractor may manipulate the muscle and connective tissue related thereto.

(2) As part of a course of chiropractic treatment, a duly licensed chiropractor may use all necessary mechanical, hygienic, and sanitary measures incident to the care of the body, including, but not limited to, air, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound, water, and physical therapy [techniques in the course of chiropractic manipulation and/or adjustment.]<sup>1</sup>

(3) Other than as explicitly set forth in Section 10(b) of the Act, a duly licensed chiropractor may 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 as set forth in this section.

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<sup>1</sup>[Any amendments to the bracketed language contained either in a settlement agreed to by the CCAPTA Plaintiffs or PTEC or in the absence of a settlement, by court order shall prevail to the extent it differs. In the event there is no court order and/or settlement by the CCAPTA Plaintiffs or PTEC, the bracketed language shall be deleted.]

(4) A chiropractic license issued in the State of California does not authorize the holder thereof:

- (A) to practice surgery or to sever or penetrate tissues of human beings, including, but not limited to severing the umbilical cord;
- (B) to deliver a human child or practice obstetrics;
- (C) to practice dentistry;
- (D) to practice optometry;
- (E) to use any drug or medicine included in materia medica;
- (F) to use a lithotripter;
- (G) to use ultrasound on a fetus for either diagnostic or treatment purposes; or
- (H) to perform a mammography.

(5) A duly licensed chiropractor may employ the use of vitamins, food supplements, foods for special dietary use, or proprietary medicines, if the above substances are also included in Section 4052 of the Business and Professions Code, so long as such substances are not included in materia medica as defined in Section 13 of the Business and Professions Code.

The use of such substances by a licensed chiropractor in the treatment of illness or injury must be within the scope of the practice of chiropractic as defined in Section 7 of the Act.

(6) Except as specifically provided in Section 302(a)(4), a duly licensed chiropractor may make use of X-ray and thermography equipment for the purposes of diagnosis but not for the purposes of treatment. A duly licensed chiropractor may make use of diagnostic ultrasound equipment for the purposes of neuromuscular skeletal diagnosis.

(7) A duly licensed chiropractor may only practice or attempt to practice or hold himself or herself out as practicing a system of chiropractic. A duly licensed chiropractor may also advertise the use of the modalities authorized by this section as a part of a course of chiropractic treatment, but is not required to use all of the diagnostic and treatment modalities set forth in this section. A chiropractor may not hold himself or herself out as being licensed as anything other than a chiropractor or as holding any other healing

arts license [or as practicing physical therapy or use the term "physical therapy"]<sup>2</sup> in advertising unless he or she holds another such license.

(b) Definitions.

(1) Board. The term "board" means the State Board of Chiropractic Examiners.

(2) Act. The term "act" means the Chiropractic Initiative Act of California as amended.

(3) Duly licensed chiropractor. The term "duly licensed chiropractor" means any chiropractor in the State of California holding an unrevoked certificate to practice chiropractic, as that term is defined in Section 7 of the Act, that has been issued by the board.

317(v) UNPROFESSIONAL CONDUCT

Not referring a patient to an appropriate physician, surgeon, podiatrist, or dentist if in the course of a diagnostic evaluation, a chiropractor detects an abnormality that indicates that the patient has a condition, disease, or injury that is not subject to complete treatment by chiropractic methods and techniques.

(b) After the BCE conducts regulatory hearings regarding the amended versions of Section 302 and Section 317, BCE shall act promptly and use its best efforts to approve the versions of Section 302 and 317 that are identical to the Amended Section 302 and Amended Section 317 and send it on to the Office of Administrative Law. Changes to Amended Section 302 and Amended Section 317 shall only be made if necessary to comply with by the California Administrative Procedures Act.

(c) If any change is made to the language of the Amended versions of Sections 302 and 317 as set forth above, the BCE shall forward the amended versions of Sections 302

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<sup>2</sup>[Any amendments to the bracketed language contained either in a settlement agreed to by the CCAPTA Plaintiffs or PTEC or in the absence of a settlement, by court order shall prevail to the extent it differs. In the event there is no court order and/or settlement by the CCAPTA Plaintiffs or PTEC, the bracketed language shall be deleted.]

and 317, as adopted by the BCE, to the CMA Plaintiffs for concurrence with a written explanation demonstrating the need for the change and/or why the change is necessary to comply with the California Administrative Procedure Act. If concurrence is not received by the BCE within 30 days of receipt by the CMA Plaintiffs, the BCE shall withdraw the amended versions of Sections 302 and 317 from the regulatory process, and shall work with the CMA Plaintiffs to the Consolidated Action in amending Sections 302 and 317 in a manner which conforms to this "Agreement of Settlement and Release." For the purposes of the paragraph, the time of "receipt" shall be deemed five days after mailing by the BCE. If no change to the Amended versions of Sections 302 and 317 is made, the BCE shall promptly forward such versions to the Office of Administrative Law for approval or disapproval. In the event Amended versions of sections 302 and 317 are not signed by the Secretary of State, this "Agreement of Settlement and Release" shall be void and of no effect. The court shall retain jurisdiction over this Consolidated Action until the Amended versions of Sections 302 and 317 are signed by the Secretary of State.

(d) When OAL receives the Amended Section 302 or 317 from the BCE, OAL shall promptly act to either approve or disapprove the Amended Section 302.

(e) The BCE shall jointly co-sponsor with the CMA in the 1991 California legislative session, legislation to amend the Health and Safety Code, a copy of which is attached hereto as Exhibit "A" and which is incorporated herein by this reference, and will make all reasonable and appropriate efforts to obtain passage of such legislation. The BCE shall be consulted by the CMA when selecting an author for the legislation. The BCE, with the CMA, shall meet with that author to get him or her to carry the legislation and to agree

to drop the legislation if it becomes compromised in a way that either the CMA or the BCE does not support it. The BCE agrees that any amendments to the legislation must be authorized by both the CMA and the BCE.

## 2. Obligations of the Plaintiffs

(a) To the fullest extent authorized by the law, the CMA Plaintiffs on behalf of themselves and all members, hereby relinquish, release, disclaim, renounce, and forever waive any and all claims for damages, including attorneys' fees, or causes of action for mandamus, injunctive, and/or declaratory relief, arising out of (1) the Current Section 302, including but not limited to all claims raised in the consolidated action, and/or (2) the Amended Section 302. This release shall not prevent the CMA Plaintiffs from bringing actions in the future challenging the BCE defendants interpretation or application of Amended Section 302.

(b) The CMA shall jointly co-sponsor with the BCE in the 1991 legislative session, the legislation relating to colonics and enemas that is set forth in Exhibit "A" and will make all reasonable and appropriate efforts to obtain passage of such legislation. CMA shall consult with the BCE to select an author of the legislation who agrees to drop the legislation if it becomes compromised in a way that either the CMA or BCE do not support it. CMA agrees that any amendments to the legislation must be authorized by both the CMA and BCE.

## 3. Release of Claims by the Plaintiffs.

To the fullest extent authorized by the law the CMA Plaintiffs, and each of them, for and on behalf of themselves and their past, present, and future officers, directors,

members, shareholders, executors, guardians, conservators, trustees, heirs, predecessors, beneficiaries, legatees, devisees, successors, assigns, agents, employees, representatives, and attorneys, including, but not limited to Catherine I. Hanson and Astrid G. Meghriyan and their respective executors, guardians, conservators, trustees, heirs, predecessors, beneficiaries, legatees, devisees, successors, assigns, agents, attorneys and employees, (collectively the "Plaintiffs' Affiliates") do hereby fully and forever remise, release and discharge the Defendants and each and all of their past, present, and future officers, directors, members, licentiates, shareholders, executors, guardians, conservators, trustees, heirs, predecessors, successors, beneficiaries, legatees, devisees, agents, attorneys, partners, corporations in which any of the Defendants were or are an officer, director or shareholder, any partnership in which any Defendants were a partner, and any officers, directors and shareholders of any of the foregoing, employees, successors, assigns, insurers and their respective executors, guardians, conservators, trustees, heirs, predecessors, successors, assigns, agents, employees, representatives, beneficiaries, legatees, partners, corporations, officers, directors, shareholders, partnerships, devisees and attorneys, including, but not limited to Case, Schroeder, Knowlson, Mobley & Burnett, A Partnership Including Professional Corporations, Michael J. Schroeder, Michael J. Schroeder, A Professional Corporation, Rick A. Cigel, John D. Smith, and Joseph Garcia (collectively all are named the "Defendants' Affiliates"), of and from any and all claims, demands, agreements, allowances, inheritances, contracts, rights, covenants, actions, suits, causes of action for damages, declaratory, mandamus or injunctive relief, dispositions, distributions, obligations, controversies, debts, costs, expenses, accounts, damages including attorneys' fees, judgments, losses and liabilities, of whatever

kind or nature, in law, equity or otherwise, whether known or unknown, which the Plaintiffs or the Plaintiffs' Affiliates, may have or now has or which any of them hereafter can, shall or may in the future have, for or by reason of any matter, cause or thing whatsoever relating in any manner to the parties herein, including but not limited to, (1) the Current Section 302, including but not limited to all claims in the Consolidated Action and (2) the Amended Section 302. This Agreement of Settlement and Release shall not prevent the CMA Plaintiffs from bringing actions in the future challenging the BCE Defendants' interpretation or application of Amended Section 302.

4. Release of Claims by the Defendants.

To the fullest extent authorized by the law, the Defendants, and each of them, for and on behalf of themselves and the Defendants' Affiliates, do hereby fully and forever remise, release and discharge the Plaintiffs' and the Plaintiffs' Affiliates, of and from any and all claims, demands, agreements, allowances, inheritances, contracts, rights, covenants, actions, suits, causes of action for damages, declaratory, injunctive and/or mandamus relief, dispositions, distributions, obligations, controversies, debts, costs, expenses, accounts, damages, attorneys' fees, judgments, losses and liabilities, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, which the Defendants or the Defendants' Affiliates, may have or now has or which any of them hereafter can, shall or may in the future have, for or by reason of any matter, cause or thing whatsoever relating in any manner to the parties herein, including but not limited to, (1) the Current Section 302, including but not limited to all claims raised in the Consolidated Action and (2) the Amended Section 302. This Agreement of Settlement and Release shall not prevent the



CMA Plaintiffs from bringing actions in the future challenging the BCE's interpretation or application of Amended Section 302.

5. No Prior Assignment.

Each of the parties hereto represents and warrants that he, she, or it has the full right, power and authority to enter into the releases set forth in Sections 2, 3, and 4 above, and that he, she, or it has not assigned, conveyed, encumbered, or in any manner transferred all or any portion of the claims covered by such releases. Each party acknowledges and agrees that this warranty and representation is an essential and material term of such releases, without which the consideration relating hereto would not have been delivered by any party to any other.

6. No Waiver of Right to Subsequently Amend or to Challenge Such Amendment.

Notwithstanding any other provision of this Agreement, the BCE is permitted in the future to modify and/or revoke the Amended Section 302 so long as such modifications do not violate the terms of the Stipulated Judgment set forth in Paragraph 13 of this "Agreement of Settlement and Release". Similarly, no provision of this Agreement in any way prevents Plaintiffs from challenging any subsequent amendments to the Amended Section 302, so long as such challenge is limited only to any future amendments to the Amended Section 302, where the amendments were not a part of Amended Section 302 or where amendments which were a part of Amended Section 302 are modified by the context of the new amendments, such challenge shall not constitute a breach of this Agreement.

CMA Plaintiffs from bringing actions in the future challenging the BCE's interpretation or application of Amended Section 302.

5. No Prior Assignment.

Each of the parties hereto represents and warrants that he, she, or it has the full right, power and authority to enter into the releases set forth in Sections 2, 3, and 4 above, and that he, she, or it has not assigned, conveyed, encumbered, or in any manner transferred all or any portion of the claims covered by such releases. Each party acknowledges and agrees that this warranty and representation is an essential and material term of such releases, without which the consideration relating hereto would not have been delivered by any party to any other.

6. No Waiver of Right to Subsequently Amend or to Challenge Such Amendment.

Notwithstanding any other provision of this Agreement, the BCE is permitted in the future to modify and/or revoke the Amended Section 302 so long as such modifications do not violate the terms of the Stipulated Judgment set forth in Paragraph 13 of this "Agreement of Settlement and Release". Similarly, no provision of this Agreement in any way prevents Plaintiffs from challenging any subsequent amendments to the Amended Section 302, so long as such challenge is limited only to any future amendments to the Amended Section 302, where the amendments were not a part of Amended Section 302 or where amendments which were a part of Amended Section 302 are modified by the context of the new amendments, such challenge shall not constitute a breach of this Agreement.

7. Legal Advice.

Each of the parties hereto has received independent legal advice from his, her, or its attorneys with respect to the advisability of making the settlement provided for herein and with respect to the advisability of executing this Agreement and the releases set forth above.

8. Waiver Under Section 1542 of the California Civil Code.

It is expressly understood that Section 1542 of the Civil Code of California provides as follows:

1542. General Releases; Extent

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him, must have materially affected his settlement with the debtor.

The provisions of Section 1542 of the Civil Code of California and any similar provisions in other jurisdictions, if in any way applicable, are hereby waived by the parties to the Agreement, and each of them, and they acknowledge that this waiver is an essential and material term of the releases set forth above, without which the consideration relating hereto would not have been delivered by any party to any other.

9. Discovery of Additional Facts.

The parties hereto agree and acknowledge that they, or any of them, may hereafter discover facts different from or in addition to those they, or any of them, now know or believe to be true with respect to the matters released herein, and the parties agree

that these releases shall be and will remain effective in all respects notwithstanding such different or additional facts. Except as otherwise expressly provided herein, it is the intention hereby fully, finally and forever to settle and release all such matters, and all claims relative thereto, which do now exist, may exist, or heretofore have existed between the parties hereto and the matters specified herein. In furtherance of such intention, except as otherwise expressly provided herein, the releases given herein shall be and will remain in effect as full and complete mutual releases of any such matters notwithstanding the discovery or existence of any such additional claims or facts relative thereto.

10. No Representations.

Except as expressly provided in this Agreement, no party or any officer, agent, employee, representative, or attorney of or for any party, has made any statement or representation to any other party regarding any fact relied upon by the other party in entering into this Agreement, and no party has relied upon any statement, representation or promise of any other party, or of any other officer, agent, employee or attorney for the other party, in executing this Agreement or in making the settlement provided for herein, except as expressly stated herein. To the extent that any party relies upon any statement, representation or fact not set forth in this Agreement, it does so at its own risk.

11. Factual Investigation.

Each party has made such investigation of the facts pertaining to this settlement and the releases set forth herein and all matters pertaining hereto as it deems necessary. In entering into this Agreement, each party assumes the risk of any mistake. The releases set forth in this Agreement are intended to be final and binding between the parties

hereto, regardless of any claims of misrepresentations, mistake of fact or law, or any other circumstances whatsoever.

#### 12. Representations by the Parties

The Parties hereby represent, warrant, and guarantee the following matters as a material inducement to the agreement of the Defendants set forth herein:

(a) No consent, approval, or authorization of any other person or entity except those persons and entities signing hereto is required as a condition to the effectiveness of this Agreement. It is a condition of this agreement, however, that the court sign a stipulated judgment setting forth the provisions of paragraph 13 of this Agreement, and shall retain jurisdiction over this matter as set forth in paragraph 20.

(b) No bankruptcy or insolvency proceeding is pending against the Plaintiffs or any entity to which they are a general partner, officer, or director.

#### 13. Stipulated Judgment by Court

The parties hereby stipulate that they shall request the court to enter a stipulated judgment stating the following:

(a) Pursuant to Business and Professions Code Section 2630, a duly licensed chiropractor in the State of California may practice physical therapy techniques to the extent those techniques are authorized by Section 7 of the Chiropractic Initiative Act

(b) The provisions of the "Amended Section 302" are consistent with and supported by the holdings and judgments and of the trial court and appellate court in CREES v. California State Board of Medical Examiners (1963) 213 Cal.App.2d 195, 28 Cal.Rptr. 669.

(c) Chiropractic is not a static system of healing and may advance and change in techniques, teaching, learning, and mode of treatment within the scope of chiropractic so long as such advances and changes do not expand beyond that which is authorized in Section 7 of the Act.

(d) The BCE has the authority to adopt the "Amended Sections 302 and 317".

(e) The provisions of the "Amended Sections 302 and 317" are consistent with and/or supported by the Chiropractic Act, all relevant California statutes, and all relevant California case law.

(f) The health, safety, and welfare of the people of California will be enhanced by the adoption of the Amended Sections 302 and 317 since it reduces the confusion concerning the scope of a chiropractor's license.

(g) The adoption of the Amended Sections 302 and 317 complies with the necessity, authority, clarity, consistency, reference, and nonduplication standards of the Administrative Procedures Act, Government Code Section 11340 *et seq.*

(h) Adoption of the Amended Sections 302 and 317 will not violate any provisions of the Physical Therapy Practice Act, Business and Professions Code Section 2600, *et seq.*, the Medical Practice Act, Business and Professions Code Section 2000, *et seq.*, or the Administrative Procedures Act, Government Code Section 11340, *et seq.*

(i) The BCE is collaterally estopped from readopting the Current Section 302.

(j) The provision of obstetrical care, including, but not limited to monitoring or managing a pregnancy is outside the legal scope of chiropractic practice as established by Section 7 of the Chiropractic Act.

(k) The BCE is collaterally estopped from expanding the scope of chiropractic practice beyond what is established by the Amended Section 302 and by Section 7 of the Chiropractic Act.

(l) A duly licensed chiropractor may only practice or attempt to practice or hold himself or herself out as practicing a system of chiropractic. A duly licensed chiropractor may also advertise the use of the modalities authorized by Amended Section 302, as it was adopted and approved as a result of the settlement of the Consolidated Action, as a part of a course of chiropractic treatment, but is not required to use all of the diagnostic and treatment modalities set forth in that section. A chiropractor may not hold himself or herself out as being licensed as anything other than a chiropractor or as holding any other healing arts license [or as practicing physical therapy or use the term "physical therapy"]<sup>3</sup> in advertising unless he or she holds another such license.

(m) Subsection v is proposed to be added to Section 317 in order to make it unprofessional conduct for a chiropractor to not refer a patient to an appropriate physician and surgeon, podiatrist, or dentist if in the course of a diagnostic evaluation, a chiropractor

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<sup>3</sup>[Any amendments to the bracketed language contained either in a settlement agreed to by the CCAPTA Plaintiffs or PTEC or in the absence of a settlement, by court order shall prevail to the extent it differs. In the event there is no court order and/or settlement by the CCAPTA Plaintiffs or PTEC, the bracketed language shall be deleted.]

detects an abnormality that indicates that the patient has a condition, disease or injury that is not subject to complete treatment by chiropractic methods and techniques.

14. Inconsistency Between Amended Section 302 and Agreement.

To the extent that it is ever established or determined by any court of competent jurisdiction that there is any inconsistency between the provisions of the Amended Section 302 and this Agreement, the provisions of the Amended Section 302 will be controlling in all eventualities and circumstances.

15. Form of Documents.

All instruments, certificates, and other documents to be executed and delivered under this Agreement by any party to another party shall be in a form reasonably satisfactory to the other party.

16. Calendar Days; Close of Business.

Unless the context otherwise requires, all periods terminating on a given day, period of days, or date shall terminate on the close of business on that day or date and references to "days" shall refer to calendar days.

17. Binding Effect.

The court shall retain jurisdiction of this Consolidated Action until the parties agree that the obligations of defendants and plaintiffs have been satisfied. The dismissal statutes of California Code of Civil Procedure sections 583.301 through 583.430 are waived. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective executors, trustees, guardians, conservators, agents, devisees, legatees, heirs,



legal representatives, successors, and permitted assigns. The preceding sentence shall not affect any restriction on assignment set forth elsewhere in this Agreement.

18. Notices.

Any notice, request, demand, or other communication given pursuant to the terms of this Agreement shall be deemed given upon delivery, if hand delivered, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, and sent certified or registered mail, return receipt requested, correctly addressed to the addresses of the parties indicated below or at such other address as such party shall in writing have advised the other party. Notices may also be given by transmittal over electronic transmitting devices, such as IBM System 6, WAY, RapiFax, TWIX, Telex, or telecopy machine, if the party to whom the notice is being sent has such a device in his or her office, provided a complete copy of any such notice so transmitted shall also be mailed in the same manner as required for mailed notice. Notices electronically transmitted shall be deemed given upon receipt or forty-eight (48) hours after deposit in the mail as required above.

To the BCE Defendants:

HART, KING & COLDREN  
200 E. Sandpointe  
4th Floor  
Santa Ana, California 92707

Attention: Michael J. Schroeder, Esq.

To the OAL Defendants:

OFFICE OF ADMINISTRATIVE LAW  
555 Capital Mall, Suite 1290  
Sacramento, California 95814

Attention: John D. Smith, Esq.

To the CMA Plaintiffs:

CALIFORNIA MEDICAL ASSOCIATION  
221 Main Street  
P.O. Box 7690  
San Francisco, California 94120-7690

Attention: Catherine I. Hanson, Esq.  
Astrid G. Meghrijian, Esq.

19. Choice of Law.

This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of California including all matters of construction, validity, performance, and enforcement and without giving effect to the principles of conflict of laws.

20. Jurisdiction.

The parties submit to the jurisdiction of the Courts of the State of California for the resolution of all legal disputes arising under the terms of this Agreement, including, but not limited to, enforcement of any arbitration award.

21. Entire Agreement.

Except as provided herein, this Agreement, including exhibits, contains the entire agreement of the parties, and supersedes all existing negotiations, representations or agreements and all other oral, written, or other communications between them concerning the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein.

22. Captions.

The captions in this Agreement are inserted only as a matter of convenience and for reference and shall not be deemed to define, limit, enlarge, or describe the scope of this Agreement or the relationship of the parties, and shall not affect this Agreement or the construction of any provisions herein.

23. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

24. Modification.

No change, modification, addition, or amendment to this Agreement shall be valid unless in writing and signed by all parties hereto.

25. Negotiations.

The parties mutually agree and warrant that all negotiations relative to this Agreement have been carried on by them directly without the intervention of any third person, and that no brokerage, finder's fee, or other commission will be due relative to this Agreement or the transaction contemplated hereby by reason of the act or omission of the warranting party.

26. Waiver.

Either party may, by written notice to the other:

(a) Waive any of the conditions to its obligations hereunder or extend the time for the performance of any of the obligations or other actions of the other;

(b) Waive any inaccuracies or representations of the other contained in this Agreement or any document delivered pursuant to this Agreement;

(c) Waive compliance of the other with any of the covenants contained herein;

or

(d) Waive or modify performance of any of the obligations of the other.

No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, provision, or condition of this Agreement.

27. Pronouns.

Whenever the context so requires, the masculine shall include the feminine and neuter, and the singular shall include the plural, and conversely.

28. Time is of the Essence.

Time is of the essence of and under this Agreement.

29. Additional Documents.

The parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and to that end, agree to execute and/or deliver from time to time such other and further instruments and documents as may be necessary or convenient to the fulfillment of these purposes.

30. Not an Admission of Liability.

The parties hereto acknowledge and agree that this is part of a compromise settlement which is not in any respect, nor for any purpose, to be deemed or construed to

be an admission or concession of any liability whatsoever, on the part of any person, trustee, firm, entity, or corporation whatsoever and all the parties expressly deny any such liability.

31. Not for the Benefit of Creditors or Third Parties.

The provisions of this Agreement are intended only for the regulation of relations among the parties. This Agreement is not intended for the benefit of creditors of the parties or other third parties and no rights are granted to creditors of the parties or other third parties under this Agreement. Under no circumstances shall any third party, who is a minor, be deemed to have accepted, adopted, or acted in reliance upon this Agreement.

32. Cross-References.

All cross-references, unless specifically directed to another agreement or document, refer to provisions within the Agreement, and shall not be deemed to be references to the overall transaction or to any other agreement or document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the Effective Date.

"BCE"

Board of Chiropractic Examiners, an independent agency of the State of California

By: Bruce A. Reyes, D.C.  
Bruce A. Reyes, D.C., Chairperson

"McKown"

Dennis R. McKown, D.C.  
Dennis R. McKown, D.C.

"Hemauer"

John David Hemauer, D.C.  
John David Hemauer, D.C.

"Kauffman"

Lee J. Kauffman, D.C.  
Lee J. Kauffman, D.C.

"Ursillo"

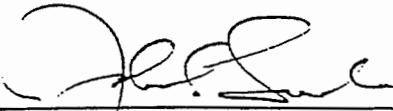
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Raymond A. Ursillo, D.C.

"Hoefling"

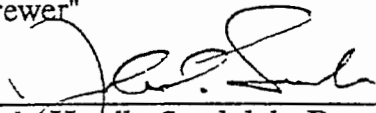
Edward J. Hoefling  
Edward J. Hoefling

"OAL"

Office of Administrative Law, an agency of the State of California

By:   
\_\_\_\_\_  
John Smith, Director

"Brewer"

  
\_\_\_\_\_  
Linda Hurdle Stockdale Brewer by John Smith

"CMA"

California Medical Association, an unincorporated professional association

By: \_\_\_\_\_

"Corlin"

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Richard F. Corlin

"Harer"

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W. Benson Harer, Jr., M.D.

"Hoag"

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Roger W. Hoag, M.D.

"Holley"

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\_\_\_\_\_  
Linda Hurdle Stockdale Brewer by John Smith

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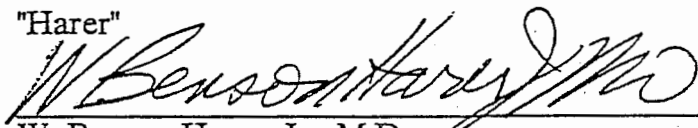
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By: \_\_\_\_\_

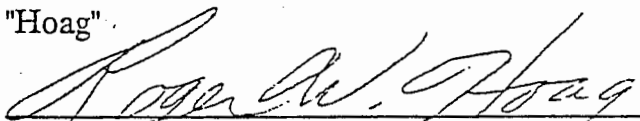

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"Lang"

Howard L. Lang, M.D.

"Peacock"

W. Gordon Peacock, M.D.

"Plows"

Charles W. Plows, M.D.

"Smith"

Robert N. Smith, M.D.

"Webb"

Gilbert A. Webb, M.D.

"White"

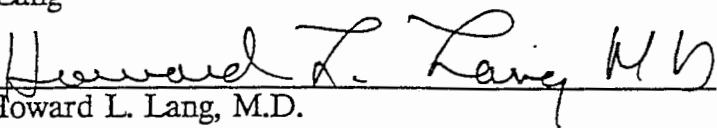
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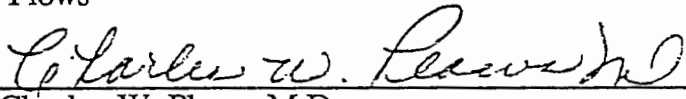
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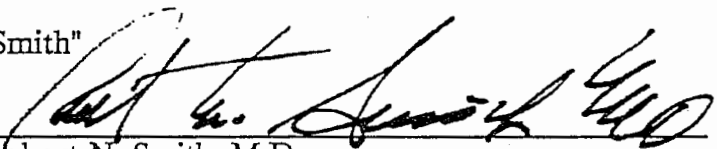
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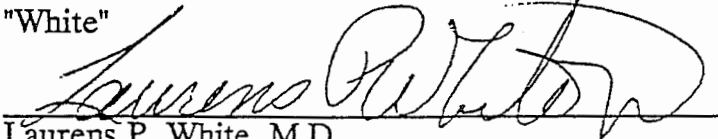
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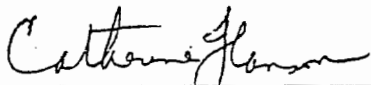
  
Laurens P. White, M.D.

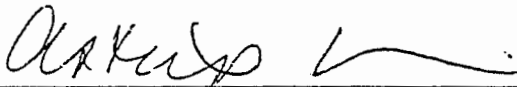
APPROVED AS TO FORM AND CONTENT:

HART, KING & COLDREN

By: \_\_\_\_\_  
Michael J. Schroeder, Esq.  
Attorneys for the BCE Defendants

CALIFORNIA MEDICAL ASSOCIATION

By:  \_\_\_\_\_  
Catherine I. Hanson, Esq.  
Attorneys for the CMA Plaintiffs

By:  \_\_\_\_\_  
Astrid G. Meghrigian, Esq.  
Attorneys for the CMA Plaintiffs

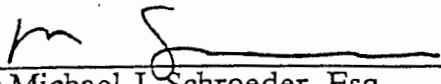
IT IS SO ORDERED.

\_\_\_\_\_  
HON. STEVEN H. RODDA

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APPROVED AS TO FORM AND CONTENT:

HART, KING & COLDREN

By:   
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Attorneys for the BCE Defendants

CALIFORNIA MEDICAL ASSOCIATION

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Attorneys for the CMA Plaintiffs

By: \_\_\_\_\_  
Astrid G. Meghrigian, Esq.  
Attorneys for the CMA Plaintiffs

IT IS SO ORDERED.

\_\_\_\_\_  
HON. STEVEN H. RODDA

bcestlmt.fnl

## EXHIBIT A

Chapter 7.5 is added to Division 2 of the Health and Safety Code to read:

### **Colonic Irrigations and Enemas**

Section 1722. The Legislature finds and declares that the treatment of patients by colonic irrigations or the indiscriminate use of enemas can cause serious injuries and illnesses, such as infection, bowel perforation, bowel necrosis, and even death. It is established that, with certain exceptions, the treatment of patients by colonic irrigations and enemas is not scientifically sound and can materially increase the likelihood of injury and death to patients.

Despite intensive campaigns of public education, there is a lack of adequate and accurate information among the public with respect to the dangers of colonic irrigations and enemas. Various persons in this state have represented and continue to represent that colonic irrigations and enemas are safe and effective for the treatment and cure of injuries, diseases and conditions and have therefore performed and continue to perform these dangerous procedures. These representations and activities are misleading and injurious to the public.

It is, therefore, in the public interest to protect the public by prohibiting the performance of colonic irrigations by all individuals under all and any circumstances and the administration of enemas by all individuals, except where administered under certain specified medically indicated circumstances by or under the supervision of physicians and surgeons who are licensed under Division 2 (commencing with Section 2000) of the Business and Professions Code.

Section 1723. For the purposes of this chapter, "colonic irrigation" means a method of hydrotherapy used to cleanse the colon with the aid of a mechanical device utilizing fluid and/or air and an "enema" means an injection of a fluid through the rectum.

Section 1724. The offering of or performance of colonic irrigations is unlawful and prohibited. The offering or performance of enemas is unlawful and prohibited unless done so and/or ordered by a physician and surgeon licensed pursuant to Division 2 (commencing with Section 2000) of the Business and Professions Code under the following circumstances:

- (a) In preparation for a diagnostic test or therapeutic procedure including, but not limited to, a sigmoidoscopy or colonoscopy, or the performance of a radiologic procedure using barium or another radiopaque substance, or colonic surgery;
- (b) To a woman who is in labor in order to empty her colon prior to the delivery of an infant;
- (c) For the treatment of high fevers in minors;
- (d) For the administration of pharmacological agents included in materia medica;
- (e) For the treatment of fecal impaction due to a mechanical obstruction;

(f) In association with gastrointestinal bleeding in a person with liver disease to reduce ammonia absorption;

(g) To assist evacuation of the rectum after delivery of a baby or after certain abdominal or pelvic operations;

(h) For the treatment of acute constipation.

Section 1724.5 (a) A violation of this chapter is punishable by imprisonment in the county jail for a period not exceeding one year, or in state prison, or a fine not exceeding ten thousand dollars (\$10,000) or by both such imprisonment and fine.

(b) A violation of this chapter may also be enjoined by the Superior Court in any county, on application of the Department or any licensing agency established under Division 2 (commencing with Section 500) of the Business and Professions Code or any initiative act referred to in that Division. Proceedings under this subsection shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.