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HACKING CHIROPRACTORS

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If you have ever wondered why American health insurance is so expensive, coverage so bad, and why we chiropractors are handcuffed by draconian guidelines, the recent passage of the landmark bill, H.R. 1418, The Competitive Health Insurance Reform Act (CHIRA), will change this sordid situation by 'RESTORING THE APPLICATION OF ANTITRUST LAWS TO THE BUSINESS OF HEALTH INSURANCE.'

For many decades, the chiropractic profession has fought two monopolies, the medical cartel, and the lesser-known medical insurance monopoly:

1) There is a long history of chiropractic suppression by the AMA. In 1962 the Iowa Plan was adopted by the Iowa Medical Society with the goal of eradicating chiropractic in that state that was later adopted by the AMA's Committee on Quackery. The Iowa Plan's section 'What Medicine Should Do About the Chiropractic Menace' includes a Part G titled 'Undertake a positive program of "containment". If this 'contain and eliminate' program is successfully pursued, it is entirely likely that chiropractic as a profession will "wither on the vine" and the chiropractic menace will die a natural but somewhat undramatic death.'

   This policy of 'containment' might well be pursued along the following lines:

   - Encourage ethical complaints against doctors of chiropractic;
   - Oppose chiropractic inroads in health insurance;
   - Oppose chiropractic inroads in workmen's compensation;
   - Oppose chiropractic inroads into labor unions;
   - Oppose chiropractic inroads into hospitals; and
   - Contain chiropractic schools.

The AMA's plan included keeping DCs out of BCBS, Medicare/Medicaid, military health services, among other health coverages. The most obvious anticompetitive act to keep DCs out of public hospitals was the crux of the Wilk et al. v. AMA et al. antitrust lawsuit. In 1987 the famous Wilk antitrust case won by Mr. George McAndrews (1) was a breakthrough to end the boycott of

1 Wilk v. American Medical Assn, 671 F. Supp. 1465, N.D. Ill. 1987

chiropractors in public hospitals although to this day only 3.6% of DCs have hospital privileges. (2) When I asked Mr. McAndrews why his landmark victory had such little impact, he abruptly told me, 'Because the damn chiropractors haven't done anything with it.'

2) The new The Competitive Health Insurance Reform Act (CHIRA) amends the original McCarran-Ferguson Act of 1945 exempting certain monopolistic conduct that constituted the 'business of insurance' allowing health insurers to operate beyond the reach of federal antitrust laws enabling insurers to form a virtual monopoly without any legal oversight.

Passage of H.R. 1418 was remarkable considering it passed both chambers of congress unanimously and was signed on Jan. 13, 2021 by President Trump. This huge achievement was surprising considering the power of the medical-industrial complex, the largest lobby on Capitol Hill. The next challenge is implementing this antitrust legislation by removing the shackles on patient care and provider services/remuneration as we now experience from quasi-monopolistic insurers.

Despite the landmark Wilk litigation and the recent CHIRA legislation, implementation will not come without a fight from the AMA or health insurers - they have too many attorneys and there is too much money at stake to play by the rules until we press the point as witnessed in the civil rights movement.

Imagine if Rosa Parks had not kept her seat refusing to move from the front of the bus to the back in 1955. Think what America would be like if Rep. John Lewis had not led a group of protesters across the Edmund Pettus Bridge in Selma, Alabama to 'cause good, necessary trouble' after the 1964 Civil Rights Act. What if Dr. MLK, Jr had not led marches for the Voting Rights Act of 1965 to dramatize the continuing lack of civil rights despite President LBJ's new laws?

So, when will DCs 'act up' to demand chiropractors have equal access to staff privileges in all public hospitals and to highlight the lack of equity in all healthcare programs?

For the moment, our profession seems content in the back of the bus. We have no Rosa Parks, no MLK, Jr, and no John Lewis to lead our way to equality. We have no leaders with strong backbones as we once did in the first half of the 20th century when 12,000+ chiropractors were arrested over 15,000 times, and some 3,300 were sent to jail for practicing medicine without a license. (3)

Draining the health insurance swamp

Reforming American healthcare won't be an easy issue because we face a wealthy white male supremacist status quo, medical-industrial lobby that has dominated congress, the mass media, and monopolized the healthcare delivery market with anticompetitive actions for 75 years. Indeed, there are major players who are well entrenched in the medical swamp and need to be drained.

2 *Building Chiropractic Cultural Authority in Hospitals*

3 RW Gibbons, 'Go to Jail for Chiro,' Journal of Chiropractic Humanities 4 (1994): 61–71.

Remarkably, the passage of CHIRA came on the heels of another landmark but lesser-known Executive Order by the Trump administration, the 119-page report, *Reforming America's Healthcare System Through Choice and Competition* that highlighted many of the same problems echoed by the authors of H.R. 1418:

'*We know the United States health care system too often fails to deliver the value it should. This report identifies barriers on the federal and state levels to market competition that stifle innovation, lead to higher prices, and do not incentivize improvements in quality. It recommends policies that will foster a health care system that delivers high-quality care at affordable prices through greater choice, competition, and consumer-directed health care spending*'. (4)

In particular, this report aims to address these issues as crystallized in the following problem statement: 'Many government laws, regulations, guidance, requirements and policies, at both the federal and state level, have reduced incentives for price- and non-price competition, increased barriers to entry, promoted and allowed excessive consolidation, and resulted in healthcare markets that lack the benefits of vigorous competition. Increasing competition and innovation in the healthcare sector will reduce costs and increase quality of care—improving the lives of Americans.' (5)

Presently a free market, competition, fair play, full access, or choice do not exist in the American healthcare as this Trump report mentioned:

'*While American consumers and many providers would significantly benefit from the reforms laid out in this report, there are entrenched and powerful special interest groups that reap large profits from the status quo. It will take bold leadership to confront these incumbents and implement reforms ...*' (6)

Despite the positive Executive Order and Wilk litigation, both chiropractors and their patients continue to sit in the back of the medical bus. However, this segregation will soon change with the passage of *The Competitive Health Insurance Reform Act* (CHIRA).

The author of the CHIRA bill, Rep. Peter DeFazio (D-OR) said in a press release, '*The antitrust exemption has essentially allowed health insurers to act as a monopoly*.'

Rep. DeFazio spoke of the same situation we chiropractors find:

'*... health insurance companies legally can, and do, collude to drive up prices, limit competition, conspire to underpay doctors and hospitals, and overcharge consumers... The resulting squeeze puts pressure on providers to cut corners on service in order to increase the profits the health insurers can extract.*'

Rep. DeFazio said, '*My legislation will protect consumers and make sure the health insurance industry plays by the same rules as virtually every other industry in America.*'

The American Chiropractic Association discussed the double standard of collusion in the commerce of insurance:

'*Such collusive activity is now subject to antitrust scrutiny and is no longer protected by the 'business of insurance' exemption health insurers enjoyed before the new law. Such activity becomes a matter of proof of collusion that can done through direct evidence and expert analysis as, for example, was done in the Wilk v. AMA case.*

[4] Trump Report, pp.4

[5] Trump Report, pp. 16

[6] *The Competitive Health Insurance Reform Act*, pp. 4

'*Federal antitrust laws strictly prohibited such things as discussing with other doctors current or future prices or charges; discounts for cash payments; or any term, condition or requirement upon which a doctor deals or is willing to deal with any existing or proposed participating agreement with any third-party payor or vendor. Health insurance companies, on the other hand, had been free to exchange among themselves suggested price information, terms of service and criteria for the reimbursement of doctors of chiropractic… With certain limited exceptions, this ability of insurance companies now ends with the elimination of the 'business of insurance' exemption to the federal antitrust laws*.'

An example of this double standard of collusion where insurers used the '*business of insurance*' exemption to stifle providers was the 2008 case the FTC brought against the Connecticut Chiropractic Association by American Specialty Health (ASH): *OVERVIEW OF FTC ACTIONS IN HEALTH CARE SERVICES AND PRODUCTS* (7)

The order prohibits the associations and the attorney from negotiating on behalf of any chiropractor with health plans, refusing to deal with or threatening not to deal with health plans, and determining the terms upon which chiropractors will deal with health plans. The respondents also reached a settlement with the Connecticut Attorney General under which the two associations and the attorney agreed to pay civil penalties to the state and agreed not to conspire to refuse to deal or threaten to refuse to deal with any health insurer.

The frightening part of this FTC ruling prevented providers and their associations the right to meet, communicate, or object in this case against unfair policy by American Specialty Health (ASH). Both the Georgia Chiropractic Association and the American Chiropractic Association warned me of this situation fearing they might be sued by ASH if I met with them to discuss similar grievances.

The Department of Justice also hailed this new law in its press release, '*Justice Department Welcomes Passage of The Competitive Health Insurance Reform Act of 2020*'.

Assistant Attorney General Makan Delrahim of the Department of Justice's Antitrust Division said, '*Limiting the scope of conduct exempt from the antitrust laws will strengthen the Antitrust Division's ability to investigate and prosecute anticompetitive behavior … The McCarran-Ferguson Act exempts certain conduct that constitutes the "business of insurance" from the federal antitrust laws. This exemption has sometimes been interpreted by courts to allow a range of harmful anticompetitive conduct in health insurance markets …*'

This new CHIRA law now will enable patients and DCs to address instances of artificially higher premiums, unfair insurance restrictions, harmful policy exclusions, denial of contracted benefits, and interference with the doctor-patient autonomy, all of which we still see in operation.

The issue of anticompetitive conduct to restrain services was also revealed in a slew of 2018-19 lawsuits in New Jersey, Pennsylania, and Southern California federal courts. The attorney for the New Jersey Chiropractic Association, Jeff Randolph, Esq, summarized ASH's modus operandi in his article, '*A Victory Worth $11.75 Million*,' *showing that ASH 'improperly denied medically necessary care, carried out deceptive business practices, and impeded patients' access to health care*.' The courts fined ASH a de minimis $20 million that was described by an ASH attorney as '*buying peace*' to keep ASH executives out of jail.

Another class action lawsuit [High Street, et al v. Cigna, et al., No. 2:12-cv-07243-NIQA] accused Cigna and ASH as a third-party administrator of violating the Racketeer Influenced and Corrupt Organizations Act (RICO):

7 *Agreements to Obstruct Innovative Forms of Health Care Delivery or Financing, Connecticut Chiropractic Association*, C-4217, FTC File No. 0710074 (final order issued April 14, 2008).

'*Cigna/ASH allegedly engaged in a pattern of racketeering activity that includes embezzlement and conversion of funds, repeatedly and continuously using the mails and wires in furtherance of multiple schemes to defraud.*'

The court found '*ASH adopted utilization review and pre-certification requirements which imposed restrictions on coverage that were not included in the subscriber's insurance plans.*' In other words, gatekeepers were cutting benefits patients had contracted, paid, and expected, only later to be told their benefits were not '*medically necessary.*'

Another cost-shifting lawsuit filed in the U.S. District Court for the Southern District of California in 2018 accused Cigna and the claims processor ASH of colluding to overcharge members of Cigna's employer-sponsored health plans for what appeared to be medical expenses for therapy services, but were actually charges for ASH's services.

The complaint accuses Cigna/ASH of engaging in several '*brazen embezzlement and conversion schemes, through which it maximizes profits by defrauding patients, healthcare providers, and health plans of insurance out of tens of millions of dollars every year.*'

Adequate prediction (8)

Proving white collar crime is not within my purview as a chiropractor, but I believe my report will show there is probable cause to begin an investigation by the Department of Justice into the many issues of deception and fraud committed by ASH against patients and providers.

ASH has weaponized its utilization management, peer review, and credentialing to silence providers who take the ethical and scientific high ground to oppose ASH's exploitation and brazen business practices based on many clinical fallacies that go unchallenged.

While hiding behind '*deceptive business practices*' doubletalk, '*medical necessity*' loopholes, and '*brazen embezzlement and conversion schemes*' that '*impeded patients' access to health care*', ASH has effectively hijacked the chiropractic profession with its '*contain and exploit*' policy that has led to a one-half billion-dollar annual enterprise.

This was not unforeseen by Dr. David Sackett, the Father of Evidence-Base Medicine, who wrote, '*Some fear that evidence-based medicine will be hijacked by purchasers and managers to cut the costs of health care,*' (9) which is exactly what ASH and other insurers have done before the CHIRA passed.

> *'Some fear that evidence-based medicine will be hijacked by purchasers and managers to cut the costs of health care...*
> *that results in slavish, cookbook approaches to individual patient care…*
> *Without clinical expertise, practice risks becoming tyrannized by evidence.'*
>
> *Dr. David Sackett, the Father of Evidence-Base Medicine*

The brazen scheme used by ASH to defraud patients was worn with pride by ASH in its 2011 Testimony to Health & Human Services on Essential Benefits when ASH boasted of its 'medical necessity' loophole to cut patient visits from '40 or more' to a 'very modest 6-7 encounters':

8 Review the allegations and information collected thus far to determine if there is adequate 'predication' or 'probable cause' to proceed.

9 Sackett, D. L., Rosenberg, W. M., Gray, J. A., Haynes, R. B., & Richardson, W. S. (1996). Evidence based medicine: What it is and what it isn't. British Medical Journal, 312(7023), 71-72.

'*A medical necessity governed chiropractic benefit could allow for coverage of 40 or more chiropractic encounters per benefit year with the resulting population average utilization being very modest* (6, 7) *encounters under an evidence-based, medical necessity reviewed benefit plan*.'

ASH's cookbook approach also routinely denies spinal x-rays for the chiropractic biomechanical diagnosis to detect vertebral subluxations, the mainstay structural diagnosis taught in classic chiropractic colleges and by post-graduate instructors of approximately 23 chiropractic techniques that use spine radiography to guide the clinical management of patients. (10)

ASH's boycott of spinal imaging flies in the face of science, expert opinion, and '*best practices*' by denying the most scientific tool we chiropractors use to analyze patients' spinal problems. Plus, experts agree there is no serious danger, a fact ASH cannot disprove with just one example.

This ASH boycott affirms its stance from the *Choosing Wisely* program aimed to decrease routine imaging by medical professionals, including MRI, CT, and radiographs. The main problem of overutilization stems from medical professionals' abuse of excessive imaging, not chiropractors. Plus, since MDs are trained well in spine conditions with '*outdated models of care*', most of their elementary diagnosis mistakenly lead patients to unnecessary spinal disk surgery according to a Stanford study, MRI abundance may lead to excess in back surgeries, study shows.

If ASH had done its homework on the x-ray prohibition, they would have known there is a huge difference between medical diagnostic and chiropractic therapeutic radiographs. In its zeal to curtail spinal x-rays, ASH exhibits what Dr. Sackett mentions: '*Without clinical expertise, practice risks becoming tyrannised by evidence.*' In this case, the wrong evidence.

I agree that most medical x-rays are worthless to detect the causation of spinal pain since MDs are not schooled in spinal biomechanics or joint dysfunction. Medical analysis simply focuses on pathoanatomical problems like '*bad disks*' often leads to excessive spine surgery for inconsequential reasons as many have mentioned, including *Choosing Wisely*: '*some diagnostic tests generate the detection of mostly incidental findings ('incidentalomas')*' such as '*bad disks*' that often appear in pain-free people.

The prohibition on chiropractic spinal x-rays by ASH seems only to save money for ASH by denying payment to chiropractic providers under the ruse of '*dangerous ionizing radiation.*' This ploy is gaslighting everyone since there is no merit concerning dangerous radiation and no application to chiropractic practice where spinal x-rays have been an essential part of chiropractic practice for over a century to diagnosis and treat biomechanical, pathophysiologic spinal problems, aka, vertebral subluxations.

Inexplicably, ASH VP spokesman Dr. Thomas LaBrot defends ASH's unfounded prohibition on spinal x-rays with his response: '*The diagnostic benefits of performing x-rays must be weighed against the risk of ionizing radiation.*' (11)

Among many experts who repudiates LaBrot's claim is Dr. Jerry Cuttler, PhD, Nuclear Sciences and Engineering: '*… if you go out into the real world, who do you know that's ever been harmed by low-level radiation? There's just no evidence of that.*'

Harvard Health also disagrees with LaBrot's fear-mongering in its article, *Radiation Risk From Medical Imaging*:

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10 Young KJ. Evaluation of publicly available documents to trace chiropractic technique systems that advocate radiography for subluxation analysis: a proposed genealogy. J Chiropr Humanit. 2014;21:1–24.

11 This false claim reminds me of the classic Christmas movie, A Christmas Story about a young boy, Ralphie, who wanted a Red Ryder Carbine Action Air Rifle BB gun but was told no because 'You'll shoot your eye out.'

'*Most of the increased exposure in the United States is due to CT scanning and nuclear imaging, which require larger radiation doses than traditional x-rays. A chest x-ray, for example, delivers 0.1 mSv, while a chest CT delivers 7 mSv - 70 times as much ... The benefits of these tests, when they're appropriate, far outweigh any radiation-associated cancer risks ...*'

The *International Chiropractic Association Best Practices GUIDELINES* noted ASH's deceptive policy to limit spinal x-rays as a ploy to '*increase profits of insurance companies and MCOs, which do not want to pay for chiropractic radiology claims.*' (12)

Other notable research studies also refute LaBrot's assertion:

- *Should Chiropractic Follow the American Chiropractic Association / American Board of Internal Medicine's Recommendations on X-Ray?* - '*Based upon the literature, radiation is not cumulative and has rendered no evidence of long-term effects. Therefore, the doctor of chiropractic must weigh the risk of treating blindly in the presence of clear biomechanical markers. Treating blindly is often done at the expense of our patients and the malpractice carriers, especially in a scenario where little risk exists.*'
- *A Rebuttal to Chiropractic Radiologists' View of the 50-year-old, Linear-No-Threshold Radiation Risk Model* - '*... their main arguments against routine use of radiography in common practice, radiation risks and lack of clinical usefulness are without scientific support.*'
- *The Birth of the Illegitimate Linear No-Threshold Model: An Invalid Paradigm for Estimating Risk Following Low-dose Radiation Exposure*. They suggest *'no associated health effects have been documented to date anywhere in the world.*'

Certainly not all cases require imaging, and some providers using non-traditional techniques do not use radiography. However, the prudent use of spinal x-rays by the majority of classical chiropractors trained in the mainstay spinal adjusting techniques should be at the discretion of the provider, not a gatekeeper with a conflict of interest interfering with the doctor/patient autonomy. This is the '*slavish, cookbook approaches to individual patient care*' that Dr. Sackett warned us.

Follow the money, follow the lies

Rep. DeFazio described the same 'cookbook' situation we see today that led to the passage of CHIRA:

'*The resulting squeeze puts pressure on providers to cut corners on service in order to increase the profits the health insurers can extract.*

'While ordinary Americans are suffering through an unprecedented, deadly pandemic, multi-billion-dollar health insurance companies are boasting record-high profits. It makes little sense that these powerful actors should also benefit from an antiquated exemption allowing them to evade all scrutiny and oversight by our federal antitrust authorities.'

As an example of '*boasting record-high profits*', ASH ballyhooed in a *news release*, '*Inc. Magazine Names American Specialty Health Among America's Fastest-Growing Private Companies for the Ninth Time in the Last Ten Years*,' citing its 99% overall revenue growth in 4 years from $255.90 million in 2014 to $509.89 million in 2018. Another *news article* estimated ASH's annual revenue of $854.9M.

ASH 'extracts' its 'record-high profits' by denying patients their full contracted benefits by the loophole of '*medical necessity*' to limit providers to '*slavish, cookbook*' care as dubbed by Dr. David

12 Routine Plain Film Radiography is the Standard of Practice in Chiropractic, 2008, ICA BEST PRACTICES.

Sackett who foresaw managed care as '… a dangerous innovation, perpetrated by the arrogant to serve cost cutters and suppress clinical freedom.' (13)

This profitability of a 99% increase in a mere 4 years just does not pass the smell test. This is the telltale sign of a quasi-monopoly - a market with a few large suppliers and very little competition considering ASH covers 140 PPO plans covering 36 million people across this nation. (14) Obviously prohibiting spinal x-rays and eliminating the majority of office encounters saves ASH millions if not billions of dollars annually, which means there is more money for ASH employees who squeeze patient care to expand profits and salaries.

According to the *ASH website*: '*The average American Specialty Health executive compensation is $229,807 a year … At American Specialty Health, the most compensated executive makes $700,000.*'

Not unexpectedly, it was impossible to find the compensation for George DeVries, ASH CEO and owner of this privately held firm. But, like other CEOs in healthcare, it may reach into many millions. CEOs at the nation's largest insurance companies earned in 2017 an average of $18 million with the highest-paid executive bringing home $83.2 million. (15)

In comparison to the egregious ASH salary spectrum, the Bureau of Labor and Statistics sets the compensation of a practicing chiropractor around one-third of an ASH executive at $80,000. (16)

This begs the question: why would an accomplished student attend undergrad and graduate schools only to struggle to repay student loans or fight with ASH's '*slavish, cookbook*' clinical restrictions while working at one-third the pay compared to those at ASH who deny care, earn three times more, with a whole lot less responsibility and no investment required to start a business.

Obviously, chiropractors are on the wrong end of the healthcare spectrum.

CHIRA is a legislative blessing necessary to end such insidious exploitation of the health care delivery system by insurers. But the chiropractic profession cannot sit back and fail to act on this new CHIRA law. Just as George McAndrews chastised our profession for not doing a '*damn thing*' with his victory in the Wilk trial, will we see the same non-action again? Now that CHIRA allows DCs and their associations to collude, what is the plan to '*make some noise*' to '*get in good trouble*' by confronting and changing the draconian policies we now see?

Keep in mind: '*It will take bold leadership to confront these incumbents and implement reforms …*' (17) It is time for state and national chiropractic associations to stop fearing the legal wrath of ASH since the passage of *The Competitive Health Insurance Reform Act* (CHIRA) is game-changer.

13 *Evidence based medicine: what it is and what it isn't*

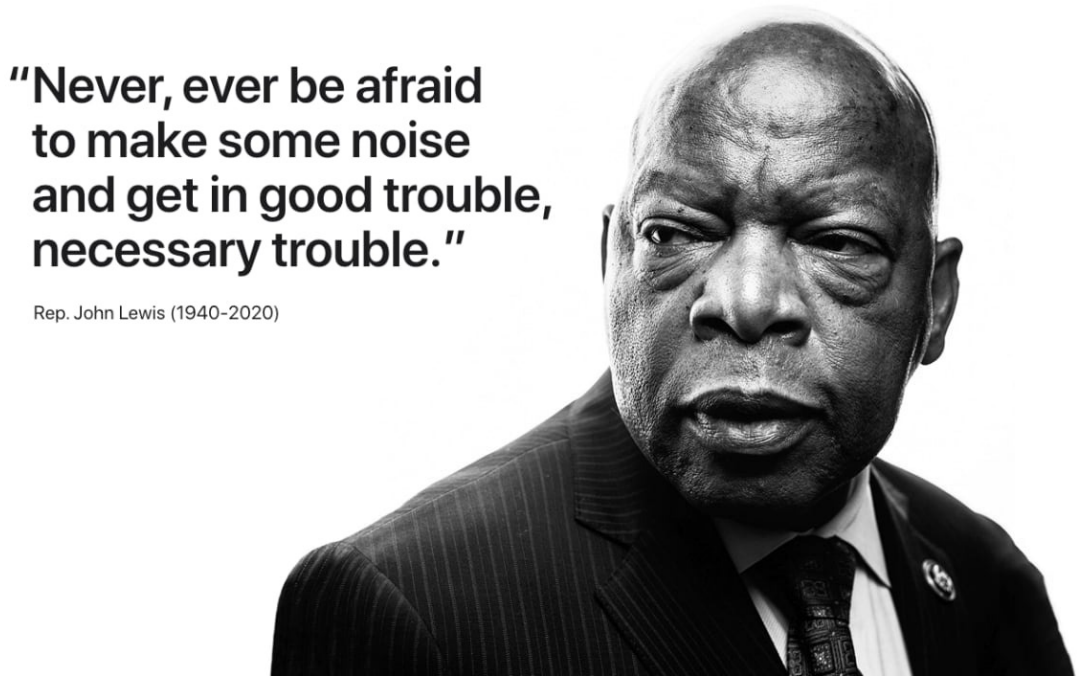
14 *American Specialty Health National Accounts*.

15 *Health insurance CEOs earned $342.6M in 2017* by *Evan Sweeney*, *Mike Stankiewicz*, May 7, 2018

16 *Chiropractic Salary: How much money can you make as a chiropractor? Chiropractic Marketing*, February 14, 2019

17 *Reforming America's Healthcare System Through Choice and Competition*

As well, the F4CP should plan a PR campaign inform the public and press of this landmark CHIRA legislation, Wilk litigation, and existing Informed Consent laws. As Rep. John Lewis might have said to the chiropractic profession:



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