

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

**SANDRA GAY NETTE and
DAVID NETTE**

Plaintiffs

- and -

**GREGORY JOHN STILES,
THE SPA AT LIFE STILES,
ALBERTA COLLEGE AND ASSOCIATION OF
CHIROPRACTORS and
HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA
(Minister of Health and Wellness)**

Defendants

Brought under the *Class Proceedings Act*, S.A. 2003 c.C-15.5

STATEMENT OF CLAIM

1. This lawsuit arises from the fact that, once again, a perfectly healthy young woman's life has been irreparably and devastatingly damaged as a result of her exposure to a chiropractor's manipulation of the vertebrae in her upper neck to correct alleged subluxations. The procedure is an ineffective and dangerous one which chiropractors employ routinely. Ideological practitioners of chiropractic masquerading in the white smock of science perpetuate its unregulated indiscriminate use with the condonation and protection of their supposed regulator against all reason. It has got to be stopped.
2. This action concerns the promotion and supply, by members of Alberta College and Association of Chiropractors to the Class Members, for economic gain, of chiropractic

I hereby certify this to be a
true copy of the original.
for Clerk of the Court

interventions directed at the identification and correction of “vertebral subluxations” or involving manipulation of the upper cervical spine during the Class Period and seeks damages for the losses which the plaintiffs and the other Class Members were exposed to and suffered thereby.

DEFINED TERMS

3. For the purpose of this pleading, the following definitions apply:
- (a) “*Class Defendants*” means regulated members of the College licensed to carry on a chiropractic practice in the Province of Alberta, or their professional corporations, who, during the Class Period, provided an Inappropriate and Non-beneficial Adjustment to a patient;
 - (b) “*Class*” and “*Class Members*” means, collectively, all persons who
 - (i) paid for an Inappropriate and Non-beneficial Adjustment supplied by a chiropractor in Alberta during the Class Period or, where such person is deceased, the personal representative of the estate of the deceased person;
 - (ii) received an Inappropriate and Non-beneficial Adjustment from a chiropractor in Alberta during the Class Period and suffered personal injury as a result or, where such person is deceased, the personal representative of the estate of the deceased person; and
 - (iii) the spouse or adult interdependent partner of persons who received Inappropriate and Non-beneficial Adjustment from a chiropractor in Alberta during the Class Period and suffered personal injury as a result.
 - (c) “*Class Period*” means the period beginning on June 12, 1998 through to the present date and continuing until such date as this Honourable Court may determine;
 - (d) “*College*” means Alberta College and Association of Chiropractors and its statutory corporate predecessor known as the Chiropractic College of Alberta;

- (e) ***“Inappropriate and Non-beneficial Adjustment”*** means
- (i) diagnostic procedures or chiropractic adjustment of the spinal column rendered to asymptomatic persons, persons without an identifiable medical condition or persons with vertebral subluxations;
 - (ii) any chiropractic adjustment of the spinal column other than chiropractic adjustment of the lumbar spine based on objective patient assessment finding(s) of mechanical disability in a joint of the lumbar spine, to treat a diagnosis made at the time the adjustment is administered of acute or sub-acute uncomplicated low back pain in an adult.
- (f) ***“Innate”*** refers to an alleged non-material force that, according to chiropractic theory, is said to regulate all body functions including the body’s ability to heal itself, but that in the presence of “vertebral subluxation” cannot function adequately and requires adjustments to various areas of the spine and neck;
- (g) ***“Minister”*** means the Minister of Health and Wellness;

THE PARTIES

4. Sandra and David Nette are spouses of each other and reside in the City of Edmonton in the Province of Alberta. Both Sandra and David were, from time to time during the Class Period, patients of the defendants, Gregory John Stiles and The Spa At Life Stiles.
5. Gregory John Stiles (“Stiles”) is and was at all material times a member and an appointed official of the College with a licence to carry on a chiropractic practice in the Province of Alberta. From time to time during the Class Period Stiles supplied Inappropriate and Non-beneficial Adjustments to both Sandra and David.
6. The College is a corporation pursuant to the laws of Alberta, formerly known as the Alberta Chiropractic Association, continued as a body corporate pursuant to the *Chiropractic Profession Act* as The College of Chiropractors of Alberta, then continued under the *Health Professions Act*, R.S.A. 2000, c. H-7 as Alberta College and

Association of Chiropractors. At all material times the College consisted of its regulated members and was empowered by statute to regulate the practice of chiropractic in Alberta.

7. The Minister of Health is the official of the government of Alberta responsible for the quality and safety of the health care services to which persons are exposed in the province of Alberta, including being responsible for the regulation of chiropractors and the public funding of the services chiropractors provide.
8. Sandra Nette brings this action on her own behalf, and also seeks an order certifying this action as a class proceeding, appointing her as the representative plaintiff on behalf of the Class Members and appointing Stiles, or such other person(s) as the Court may identify and appoint, as the representative(s) of the Class Defendants.

THE CLASS DEFENDANTS AND THEIR DUTIES

9. By reason of the relationship between the Class Members and the Class Defendants there was an express or alternatively an implied contract, one term of which was that the Class Defendants would use reasonable skill and care in advising and providing services to the Class Members who were their patients.
10. Further, or in the alternative, in advising and providing services to the Class Members the Class Defendants owed them a duty, including a fiduciary duty, to use the skill and care expected of competent primary care health care professionals.
11. The Class Defendants owed the Class Members a duty to
 - (a) not advise unsubstantiated procedures that lacked scientific justification or plausible rationale, or disproven procedures, to the Class Members who sought health care services from them nor subject them to such procedures;
 - (b) fairly disclose the demonstrated benefits and the material risks associated with the interventions they advised to the Class Members who sought health care services from them, the comparative risks and benefits of other forms of service(s), or of

non-treatment, and to obtain their informed consent to the service(s) provided to them;

- (c) not to charge them a fee for services that cannot restore, maintain or enhance human health.

THE MINISTER

- 12. During the Class Period the Minister regulated the practice of chiropractic in the province of Alberta to ensure the quality and safety of the health care services chiropractors offered and provided to the public. The Minister did this by delegating its regulation to the College.

THE COLLEGE AND ITS DUTIES

- 13. The College operates as a regulatory body pursuant to legislative enactments designating chiropractic as a health discipline that is required to be regulated and governed. Its primary responsibility and objective is to ensure the competence of its members and the safety of the public. It has control and supervision over members' conduct, having, without limitation, the following statutory duties:
 - (a) carry out its activities and govern its regulated members in a manner that protects and serves the public interest,
 - (b) provide direction to and regulate the practice of chiropractic by its regulated members,
 - (c) establish, maintain and enforce standards for registration and of continuing competence and standards of practice of chiropractic as well as a code of professional ethics.
- 14. The nature of the relationship created by the legislative enactments requiring that the practice of chiropractic be regulated during the Class Period was intended to benefit the public, of whom the plaintiffs and the other Class Members are members, through the

provision by the College of protective regulations and regulatory enforcement activities that ensured the health care services its members provided were appropriate, safe and effective.

15. At all material times the plaintiffs and the Class Members knew that the Minister and the College's functions were to regulate the practice of chiropractic in the province of Alberta and they reasonably expected and relied on the College and the Minister to ensure the quality and safety of the health care services chiropractors offered and provided to the public and to the plaintiffs and the other Class Members, that they could restore, maintain or enhance human health and would be appropriate and beneficial to their condition.
16. In order to direct and regulate the practice of its members, the College was required to
 - (a) ascertain what constitutes the acceptable practice of chiropractors and appropriate services provided by its members,
 - (b) evaluate whether the practices of its members and the services they normally provided came within the scope of practice authorized by an enactment regulating the practice of chiropractic,
 - (c) evaluate the risk to the physical health and the safety of the public from incompetent, unethical, unsubstantiated or disproven practices or services provided by chiropractors;
 - (d) evaluate whether its members should be authorized to provide or should be prohibited from providing certain services and the conditions, if any, that should apply to the provision of those services;
 - (e) ascertain the qualifications and minimum standards of competence that are required for a person applying to practise chiropractic and how the continuing competence of practitioners is to be maintained;
 - (f) establish, and maintain, by setting out policies, guidelines and standards of practice and of competence, an enforceable scope of practice making clear the

activities that its members were and were not entitled to perform and the services its members were and were not entitled to provide, in the practice of chiropractic in Alberta; and

- (g) assist with the development and implementation of regulations and standards of practice relating to the practice of chiropractic as a designated health discipline.

ENACTMENTS REGULATING CHIROPRACTIC'S SCOPE OF PRACTICE

17. The practice of chiropractic was defined by s. 1 of the *Chiropractic Profession Act*, R.S.A. 2000, c. C-13, to mean:

“the branch of the healing arts concerned with the restoration and maintenance of human health by the chiropractic adjustment or manipulation of the spinal column and other articulations of the body.”

18. The chiropractic adjustment was defined by s. 1 of the *Chiropractic Profession Act*, to mean:

“a calculated procedure, force or thrust designed to affect the nervous system, primarily by movement of one structure in relation to another within the spinal column and other articulations.”

19. The practice of chiropractic is defined by s. 3 of the *Health Professions Act* to mean:

“In their practice, chiropractors do one or more of the following:

- (a) examine, diagnose and treat, through chiropractic adjustment and other natural means, to maintain and promote health and wellness, and
- (b) provide restricted activities authorized by the regulations.”

20. Prior to and throughout the Class Period both the Class Defendants and the College knew, based on current leading chiropractic textbooks and adequate scientific study, that there was no scientific evidence, justification or plausible rationale that

- (a) supported the existence of chiropractic subluxations, or as a relevant clinical entity affecting human health;
- (b) linked misalignment in the structures of the spinal column with dysfunction or possible dysfunction in organ systems or organic disease, or that

- (c) supported the notion that the chiropractic adjustment had any effect on organic systems or organic disease;

CHIROPRACTIC'S UNIQUE HISTORY

21. Chiropractic is a hypothetical system of healing that was established in 1895. It evolved from 'energetic' healing traditions that were current at that time, based on a belief that most ailments were caused by "subluxations" of the vertebrae, which, in turn, led to an interruption of the passage of a vital energy, Innate, through the nervous system, weakening the organs served by the nerves and causing disease in them. The historic theory of chiropractic postulated that these ailments required only one treatment: manual adjustments of the spine to correct these subluxations, alleviate the interference of the flow of Innate energy and allow the body to heal itself.
22. The historic theory of chiropractic concerning vertebral subluxations has in more modern times been conclusively discredited as erroneous and rejected by many, but not all, chiropractors as contrary to the public interest for the following reasons:
 - (a) no spinal vertebral subluxation has ever been demonstrated to exist or shown to impinge a nerve so as to interfere with the passage of energy down that nerve, thereby causing disease;
 - (b) scientific investigation had demonstrated that the basic anatomy of the human body as well as its physiology makes it impossible to have vertebral "subluxations" in the human body;
 - (c) scientific investigation had failed to quantify and qualify the chiropractic subluxation as a manipulable lesion and to find a demonstrable outcome capable of predicting manipulative effectiveness;
 - (d) scientific investigation had also failed to identify some other lesion that responds favourably to spinal manipulation or to chiropractic manipulation therapy, or physiological and clinical effects of chiropractic manipulation therapy that can be reliably and reproducibly measured, whether or not a lesion is detected; and

- (e) adjusting the vertebrae of the human spine cannot restore, maintain or enhance general health or the body's general ability to heal, and perpetuating this concept discouraged thoughtful analysis, serious scholarship and research, and further impeded chiropractors' professional development and social acceptance.
23. During the evolution of chiropractic different schools of thought and practice emerged, giving rise to a debate prior to and continuing during the Class Period, both within and outside chiropractic, about whether chiropractic was a musculoskeletal discipline or a treatment approach with a largely undefined, but broad, scope of practice.
24. Prior to and throughout the Class Period many members of the College and other evidence-based health care practitioners urged the College:
- (a) to recognize in its activities to govern its members that Innate had its origins in borrowed mystical and occult practices of a bygone era and was an anachronistic holdover from a time when insufficient scientific understanding existed to explain human physiological processes;
 - (b) to recognize in its activities to govern its members that Innate and vertebral subluxation was harmful to its members' practice of chiropractic because it remained untestable, unverifiable and prevented normal scientific activity;
 - (c) to recognize in its activities to govern its members that Innate and vertebral subluxation had an unacceptably high penalty benefit ratio for chiropractors and for persons receiving chiropractic services, particularly highest neck manipulation.
25. Prior to and throughout the Class Period many members of the College and other evidence-based health care practitioners argued that unless the College adhered to a scientific epistemology it would accept very weak information as scientific "proof" or substantiation, it would be unable to recognize unjustified, unsubstantiated claims for the value of chiropractic services and it would not be able to guide, let alone regulate and police, its members.

26. These members of the College and other evidence-based health care practitioners urged the College to accept the need in its activities and governance of its regulated members to
- (a) emphasize the scientific validation of chiropractic concepts and methods in directing and regulating the practice of chiropractic by its members,
 - (b) reject the validity of the vertebral subluxation as a clinical entity,
 - (c) cease using vertebral subluxation as a justification or rationale for the promotion and supply for economic gain of chiropractic interventions to allegedly correct vertebral subluxation thereby restoring, maintaining or enhancing health or wellness, and
 - (d) restrict its members' scope of practice generally to a credible and scientifically coherent model for spine care focusing primarily on the provision of manipulation of the joints to treat identifiable musculoskeletal complaints.
27. Prior to and throughout the Class Period the Minister advised the College that the government of Alberta intended and expected that the health care services members of the College were licenced to provide should have been established as being safe, have demonstrated benefits and be effective in treating or preventing particular health problems; and that the College would regulate chiropractors and govern its members to ensure the health care services they provided had been established as being safe, have demonstrated benefits and be effective in treating or preventing particular health problems.
28. There were some members of the College, however, including members of its elected Council and other officials, who resisted scientific investigation and evaluation of chiropractic beliefs and treatment. For them, the all-inclusive concept inherent in vertebral subluxation theory that normal transmission and expression of nerve energy is essential to the restoration and maintenance of health broadened the parameters of chiropractic beyond simple manipulative therapy for identifiable musculoskeletal complaints and provided the basis for their claims that chiropractic was effective to treat a broad range of problems that are not related to the musculoskeletal system or joints.

They advocated to the College that the promotional and economic interests of its members would only be damaged by the brutal truth that science was delivering about the chiropractic system of healing as aforesaid, would only expose them to increased competition in the physical therapy services delivery market and that adhering to Innate philosophy was essential to chiropractic's economic wellbeing.

29. Prior to and during the Class Period this contingent of the College's membership advocated that the College should predicate its activities and governance of its regulated members on the perspective that chiropractic's scope of practice was not restricted or limited to the treatment of identifiable musculoskeletal conditions. Rather they contended that the enactments regulating chiropractic's scope of practice permitted an interpretation by the College that was not intended by the legislature or consistent with the public interest: that licensure itself permitted adjustment of the spinal column for the effects of alleged vertebral subluxations, an unlimited scope of practice for its member practitioners to treat virtually any illness that might befall a human being, and did not limit the Chiropractic's power to make claims of benefit and cure.

DISTINCT RISKS POSED BY SOME PRACTITIONERS OF CHIROPRACTIC

30. During the Class Period both the College and the Minister knew of the unique history of chiropractic, the concept of vertebral subluxation that was severely divisive within it, and the lack of consensus amongst its practitioners around what chiropractic is, what its practitioners do and what they cannot do.
31. During the Class Period the health discipline boards, directorates, Committees and advisory committees established by the Minister and other employees of the government under the Minister's administration as aforesaid knew, or ought to have known, concluded and advised the Minister that:
 - (a) many chiropractors ignored or took exception to much of the body of basic scientific knowledge related to health, disease and health care;

- (b) there was no valid evidence that subluxation, if it exists, was a significant factor in disease processes and therefore the broad application to health care of a diagnostic procedure such as spinal analysis and a treatment such as spinal adjustment was not justified.
- (c) the inadequacies of chiropractic education, coupled with the chiropractic's theory that de-emphasizes proven causative factors in disease processes, de-emphasizes proven methods of treatment and de-emphasizes differential diagnosis, made it unlikely that a chiropractor could make an adequate diagnosis and know the appropriate treatment, and subsequently provide the appropriate service or refer the patient;
- (d) lack of these capabilities in independent practitioners was undesirable because appropriate medical treatment could be delayed or prevented entirely; appropriate medical treatment might be interrupted or stopped completely; the chiropractic manipulation and adjustment could be contraindicated; and because all chiropractic manipulations and adjustments have some risk involved with their administration and inappropriate chiropractic manipulation and adjustment exposed the patient to this risk unnecessarily;
- (e) with the possible exception of uncomplicated low back pain, chiropractic manipulation and adjustment was not a valuable technique for relief of pain due to loss of mobility of joints, and until adequate research had been undertaken with respect to spinal manipulation, its generalized use should be limited.

32. During the Class Period, the College knew

- (a) the services normally provided by a significant number of chiropractors included the promotion, offer and supply of Inappropriate and Non-beneficial Adjustments,
- (b) the Inappropriate and Non-beneficial Adjustment they promoted, offered and sold were directed at the identification and corrections of vertebral subluxations and did not come within the scope of practice authorized by the enactments regulating chiropractic in Alberta,

- (c) the Inappropriate and Non-beneficial Adjustments they promoted, offered and sold
 - (i) posed a risk to the physical health and the safety of the public from incompetent, unethical, unsubstantiated or disproven practices or services;
 - (ii) made it impossible for the College and its members to regulate the conditions that were appropriate for chiropractic care and the appropriate parameters for its services, and
 - (iii) were highly conducive to abuse, and
 - (d) the College should establish and maintain, by setting out policies, guidelines and standards of practice and of competence, an enforceable scope of practice making clear that its members were not justified in promoting, offering or supplying Inappropriate and Non-beneficial Adjustments in the practice of chiropractic in Alberta.
33. The College had a duty to ascertain whether it was able to carry out its powers and duties without specifically providing direction to and regulating Inappropriate and Non-beneficial Adjustment by its regulated members.

THE COLLEGE'S STANDARDS OF PRACTICE AND OF COMPETENCE DURING THE CLASS PERIOD

34. The purpose of establishing and maintaining standards of practice and of competence of College's members was to:
- (a) articulate the core elements of clinical knowledge developed using the highest level of clinical scrutiny and define appropriate services based on adequate scientific study;
 - (b) serve the public interest in safe and effective health care services from its regulated members and to protect the health and safety of patients receiving health care services from regulated members by

- (i) providing a starting point from which the clinician and patient could consider experience and expectations in jointly making informed decisions about suitable services;
 - (ii) discouraging and /or preventing its members from making unsubstantiated or disproven claims or engaging in unnecessary and ineffective practices without fear of professional censure;
 - (iii) protecting the public from practitioners who were predisposed and likely to offer and perform services or attempt to manage conditions for which they are neither trained nor competent; and
 - (iv) reinforcing the importance of chiropractic practitioners operating only within the regulated scope of practice, and
- (c) provide members with guidelines for the proper regulation and discipline of members and to raise the level of enforceability to ensure that
- (i) the College's continuing competence requirements could be objectively assessed,
 - (ii) the complaints of persons who made complaints to the College regarding a regulated or former member could be investigated, acted upon and reviewed, and
 - (iii) where the College found that a member's provision of chiropractic services was unsatisfactory, this lack of competence could be effectively remedied to maintain and improve chiropractic standards.
35. In order to establish, and maintain standards of practice and of competence of its members, the College was required to assess
- (a) whether a given service or practice normally provided by its members

- (i) has demonstrated benefits and is useful and / or effective for particular indications in restoring, maintaining or promoting health or wellness;
 - (ii) is safe or associated with risks,
 - (iii) whether the expected benefits outweigh the associated risks,
- (b) whether the equivalent benefit can be delivered at lower risk or cost to the patient through different services, practices, treatment or health professionals;
- (c) identify best practices and provide direction to and regulate the particular practices and services normally provided by its members, including whether, in what the circumstances and how they are to be carried out.
36. The College had to adopt and apply a standard based on adequate scientific study, available research evidence and scientific plausibility in order to
- (a) evaluate the activities and services provided by its members,
 - (b) establish and maintain valid, valuable and enforceable standards of practice, and
 - (c) enforce the profession's scope of practice and standards of practice
- in a manner that protects and serves the public interest.
37. The College was possessed of knowledge, expertise and experience in matters affecting chiropractic not possessed of the Minister. By reason of this knowledge, expertise and experience, which is described herein, the Minister relied during the Class Period on the College to regulate chiropractic in Alberta and govern its members by developing and revising established standards of practice, educational standards and continued competency requirements, and enforcing same.
38. During the Class Period the Minister sought and received advice from the College concerning its activities and its regulation of chiropractic in circumstances where the College knew the Minister would rely on its advice and did in fact rely on the College's

advice to ensure that the objectives of the legislative enactments governing the practice of chiropractic in Alberta were being carried out, in particular concerning

- (a) what constitutes the proper practices of chiropractic, the indications it normally services, the services its members normally provide and the extent to which they are or can be regulated by the College;
 - (b) the existence, adequacy and significance of the totality of the current evidence evaluating the efficacy, safety and demonstrated benefits of the chiropractic services members of the College provided in treating or preventing particular health problems, on their own merits as well as relative to those of other validated therapies for specified conditions and their cost-effectiveness;
 - (c) the health services that may be provided by registered members, including any conditions or restrictions applicable to those services,
 - (d) the qualifications, standards of conduct and of competency for registered members, and
 - (e) the development and implementation of regulations and standards of practice relating to the practice of chiropractic as a designated health discipline.
39. During the Class Period the Minister sought advice from the College specifically concerning its activities and its regulation of Inappropriate and Non-beneficial Adjustment.
40. The College had a duty to deal with the Minister in good faith and provide the Minister with disinterested expertise and full, true and plain information to permit the Minister to ensure that the objectives of the legislative enactments governing the practice of chiropractic in Alberta were properly carried out.

THE CLAIMS

41. During the Class Period the Class Defendants, the College and the Minister knew or wilfully and recklessly blinded themselves to the knowledge that methods of health care

based on vertebral subluxations, and the promotion, offer and supply of Inappropriate and Non-beneficial Adjustments were

- (a) without scientific justification or plausible rationale,
- (b) unsubstantiated, or disproven, and ineffective,
- (c) posed a threat for persons who could not distinguish between appropriate and inappropriate use of spinal manipulation;
- (d) associated with an unreasonable risk of economic and /or personal injury, damage and loss;
- (e) inappropriate for utilization by primary supposed health care providers, including chiropractors, fraudulent and inimical to the public interest.

42. During the Class Period the Class Defendants and the College, to the knowledge of the Minister, offered and promoted to the public and sold to the Class Members who were their patients Inappropriate and Non-beneficial Adjustments.

43. From time to time throughout the Class Period the College and the Minister were made aware and each of them was repeatedly alerted to the fact that the Class Defendants, as an identifiable and prevalent class of members of the College

- (a) refused in their clinical practices to limit their scope of practice and restrict their services to assessment of the spine or other joints of the human body and the treatment of non-organic, musculoskeletal problems that stem directly from a mechanical disability within a joint in the body,
- (b) refused in their clinical practices to restrict their services to methods of examination, diagnosis and treatment that had been demonstrated to be clinically effective to restore, maintain or promote health and wellness,
- (c) engaged in Inappropriate and Non-beneficial Adjustment in their clinical practices and provision of services,

- (d) exposed members of the public, including the Class Members who were their patients and who were provided services based on such methods, to an unreasonable risk of economic and /or personal injury, damage and loss and, in many cases, caused them economic and personal injury, damage and loss.
44. During the Class Period, the College and the Minister were made aware and each of them was repeatedly alerted by means of increasingly strident attempts by concerned hospital departments, medical societies, physicians, patients, parents of patients and others to the facts that
- (a) chiropractic in Alberta was a confused, confusing and poorly regulated set of practices and constituted a major consumer health problem,
 - (b) the College's failure to criticize the pseudoscience in chiropractic and its concentration on public relations, to the exclusion and prejudice of its duty of protection of the public and its duty of promotion of public health, perpetuated chiropractic dogma and failed to challenge chiropractors who exploit spinal manipulation;
 - (c) limiting the scope of practice of ideological practitioners within its membership was key to protecting the public from chiropractic methods, practices and / or services that were inappropriate for utilization because they
 - (i) lacked adequate scientific justification or a plausible rationale,
 - (ii) had not been demonstrated through adequate research and investigation to be therapeutically effective or useful,
 - (iii) had been demonstrated as being generally associated with frequent adverse effects, and in some applications an unequivocal risk of serious injury and death,
 - (iv) exposed members of the public, including those who were provided services based on such methods to an unreasonable risk of economic and /or physical injury, damage and loss;

- (d) the ability of the College to direct and regulate the practice of chiropractors depended on removing the ambiguity the Class Defendants imposed on chiropractic's legally authorized scope of practice;
 - (e) the College's lack of regulation in all the circumstances amounted in practice to a licence to the Class Defendants to use their superior position in their relationships with members of the public for exploitation;
 - (f) consumer protection and the public interest would only be served if chiropractic's scope of practice regulation was designed in terms of proven safety and effectiveness and not designed to further the views of special interest groups; and
 - (g) unless the College established, maintained and enforced standards of practice and guidelines that addressed and regulated vertebral subluxation-based practice by its members, regulation of the Class Defendants was a practical impossibility.
45. The acts alleged in this claim to have been done by the College were authorized, ordered and done by its officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.
46. The acts alleged in this claim to have been done by the Minister were authorized, directed and done by officials appointed by the Minister from time to time during the Class Period to examine, inquire into, study and report to the Minister on matters relating to the practice of chiropractic and its regulation, including health discipline boards, directorates, Committees and advisory committees established by the Minister and other employees of the government under the Minister's administration appointed to provide advice respecting such matters.
47. In addition to its statutory duties the College was governed and operated by a professional association representing the economic interests of Alberta chiropractors and carried out its activities in a manner that represented the promotional and economic interests of Alberta chiropractors, more particularly by

- (a) promoting the effectiveness and benefits of chiropractic, including Inappropriate and Non-beneficial Adjustment,
 - (b) developing and disseminating information and materials to increase public awareness about chiropractic services, including Inappropriate and Non-beneficial Adjustment,
 - (c) advocating for chiropractors' role and integration within Alberta's health care system at the government, regulatory and public levels, and
 - (d) sponsoring and facilitating pseudo-scientific chiropractic research.
48. The College and the Minister failed to ensure that guarantees of the College's independence were established or maintained during the Class Period. They failed to ensure that the College's regulatory activities and procedures operated independently from those of the promotional and economic interests of Alberta chiropractors and were not influenced by those interests so as to impair its institutional effectiveness and objectivity in the discharge of its regulatory functions.
49. In its representation of the promotional and economic interests of Alberta chiropractors during the Class Period, the College co-operated with, combined with and acted in concert with other Canadian chiropractic associations that shared the same objects and participated with them in carrying out its activities and enterprises as aforesaid.
50. The College carried out its activities, governed its members and regulated the practice of chiropractic during the Class Period in a manner that consistently disregarded the public interest and preferred the promotional and economic interests of its members whenever those interests conflicted with the protection and service of the public interest:
- (a) The College failed to limit its members' scope of practice to identifiable musculoskeletal problems and neuromuscular problems stemming directly from mechanical disabilities within the joints in the body,
 - (b) the College established and maintained standards of competence and of practice that studiously failed to address, provide direction to and regulate vertebral

subluxation-based practice, as well as disregarded current, adequate scientific study relating to the efficacy and safety of chiropractic adjustment of the spinal column, by its regulated members;

- (c) the College supplemented chiropractic's legislatively described scope of practice to include subluxation-based therapeutic and diagnostic procedures
 - (i) taught in the core curriculum, post-graduate curriculum or continuing education curriculum at a college accredited by the Council on Chiropractic Education, or
 - (ii) taught by faculty members or post graduate lecturers from such a college, or
 - (iii) otherwise approved of by the College

and promoted the use of these subluxation-based procedures by chiropractors in Alberta.

- 51. The College established and maintained its standards of competence and of practice as aforesaid to enable and encourage the Class Defendants to engage in Inappropriate and Non-beneficial Adjustment.
- 52. During the Class Period the College consistently communicated to its members including the Class Defendants that
 - (a) the College endorsed the validity of the vertebral subluxation as a relevant clinical entity providing a justification or rationale for the promotion and supply for economic gain of Inappropriate and Non-beneficial Adjustment to allegedly restore, maintain or promote health and / or wellness,
 - (b) the College predicated its regulatory activities and governance of its regulated members on the perspective that chiropractic's scope of practice was neither restricted by adequate scientific evidence, nor limited to services for identifiable musculoskeletal conditions, but encompassed services for adjustment of the spinal

column including the upper cervical spine for the alleged effects of vertebral subluxations,

- (c) in its presentations to the profession's external audiences and stakeholders including the Minister, the public, third party payers, health care professionals and the media, the College would, and in fact the College did
 - (i) carefully represent, position and actively promote chiropractic in Alberta as a unified, science-based health discipline whose practitioners practiced a coherent evidence-based model for spine care focusing primarily on the provision of manipulation of the joints of the spine to treat identifiable musculoskeletal complaints, particularly back pain,
 - (ii) misrepresent the existence, extent and the dangers associated with the profession's pseudoscientific foundation and those who adhered to it in their clinical practices, including the Class Defendants.

53. The College's failure to establish, maintain and enforce a scope of practice and standards of practice that addressed and effectively regulated Inappropriate and Non-beneficial Adjustment by its members

- (a) prevented the College from governing its regulated members who engaged in such practices as part of their scope of their practice,
- (b) enabled and encouraged its members to engage in such practices as part of the scope of their practice and facilitated the placement, offer and supply of Inappropriate and Non-beneficial Adjustment in the primary health care marketplace;
- (c) prevented the College from protecting the public who received services from its regulated members who engaged in such practices as part of the scope of their practice, and
- (d) exposed the public, including the plaintiffs and the other Class Members who paid for or received Inappropriate and Non-beneficial Adjustment by its members who

engaged in such practices, the Class Defendants, to the risk of economic and / or personal injury, damage and loss.

54. The Minister's failure to ensure that the College established, maintained and enforced a scope of practice and standards of practice that effectively addressed and regulated Inappropriate and Non-beneficial Adjustment by its members constituted a breach of its duty to the public and
- (a) enabled and encouraged the Class Defendants to engage in such practices as part of the scope of their practice,
 - (b) placed an uncontrolled public health risk into the primary health care marketplace,
 - (c) failed to protect the public who were treated by the Class Defendants who engaged in such practices as part of the scope of their practice, and
 - (d) exposed the public, including the plaintiffs and the other Class Members who paid for or received Inappropriate and Non-beneficial Adjustment by its members who engaged in such practices, the Class Defendants, to a risk of economic and personal injury, damage and loss.
55. Each of the College and the Minister owed a duty of care to the plaintiffs and the other Class Members because:
- (a) it was foreseeable that harm was likely to occur to the plaintiffs and the other Class Members as a result of the incompetent, unethical, unsubstantiated or disproven practices of persons providing chiropractic services, and
 - (b) a lack of effective regulation governing the conduct and practices of the Class Defendants as persons practicing chiropractic whom the College had licenced as members, specifically Inappropriate and Non-beneficial Adjustment, exposed the plaintiffs and the other Class Members to a particular risk of damage which is different in its incidence from the general risk of damage from incompetent, impaired or unsubstantiated practice of a primary health care provider which they shared with all members of the public.

Both the College and the Minister breach this duty of care.

56. Prior to and throughout the Class Period each of the Class Defendants and the College knew that research studying the validity and reliability of tests commonly used by chiropractors to detect vertebral subluxations demonstrated that no minimally reliable or valid manual or visual test had been identified and until such tests were established, the presence of the manipulative lesion remained hypothetical.
57. During the Class Period the Class Defendants represented to the public, and represented to the plaintiffs and the other Class Members who sought health care services from them, that
- (a) there is a functional relationship between the spine and health mediated through the nervous system,
 - (b) vertebral subluxations constituted a relevant clinical entity adversely affecting human health and the body's general ability to heal,
 - (c) the Inappropriate and Non-beneficial Adjustments they offered, promoted and sold could detect, locate and correct vertebral subluxations that existed in them,
 - (d) the Inappropriate and Non-beneficial Adjustments they offered, promoted and sold promised a valuable benefit they would receive if they consumed the services.
58. The Class Defendants made these representations as part of, and as the basis for, unjustified and unsubstantiated claims concerning the safety, demonstrated benefits and efficacy of the services its members provided in treating or preventing particular health problems, including representations that Inappropriate and Non-beneficial Adjustment can be beneficial for musculoskeletal general malaise, promote wellness and good health and can be an effective alternative to drugs and surgery for many visceral disorders and non musculoskeletal problems including respiratory conditions, non spinal injuries, digestive system disorders, menstrual problems, depression, ear infections, pregnancy

related conditions, infections and parasitic conditions, dermatological diseases and acute urinary conditions.

(collectively, the “Representation”).

59. In truth and in fact the Representation was false, untrue, inaccurate and misleading as well as wholly unsupported by any adequate scientific study.
60. The Representation was made to the public via various advertising and marketing means of the Class Defendants designed principally for distribution to and consumption by an external market of new patients, health professionals and employer groups.
61. The Representation was made to the plaintiffs and the other Class Members who were the Class Defendants’ patients orally, knowing that the plaintiffs and the other Class Members who were their patients would rely on the Representation and would be induced thereby to seek and consent to receive Inappropriate and Non-beneficial Adjustment from them, through the dissemination of various practice promotion materials and content designed principally for the Class Defendants’ internal market of patients and/or customers, and by providing Inappropriate and Non-beneficial Adjustment for economic gain to them.
62. In the premises the Class Defendants were under a duty to take care in making of the Representation to the plaintiffs and the other Class Members, including
 - (a) a statutory duty as regulated members of the College not to engage in advertising that was untruthful, inaccurate or otherwise capable of misleading or misinforming the public, and
 - (b) a duty to avoid making representations that
 - (i) were not based on adequate scientific investigation or research done before the representations were made which substantiated the representations and

- (ii) did not accurately or fairly reflect the results of adequate scientific investigation and research which contradicted the representation, which duty the Class Defendants breached.
63. The College knew at all material times that
- (a) the Class Defendants were making the Representation to the public and to their patients as aforesaid,
 - (b) in truth and in fact the Representation was false, untrue, inaccurate and misleading as well as wholly unsupported by any adequate scientific study,
 - (c) the Class Defendants were providing Inappropriate and Non-beneficial Adjustment for economic gain to the plaintiffs and the other Class Members who received such services.
64. Throughout the Class Period the College condoned the offer, provision and sale of Inappropriate and Non-beneficial Adjustment to the public, including the plaintiffs and the Class Members. The College prepared, approved, and published information, advertising and marketing content that made the Representation, as part of, and as the basis for, unjustified and unsubstantiated claims concerning the safety, demonstrated benefits and efficacy of the Inappropriate and Non-beneficial Adjustment its members provided for addressing and preventing particular health problems, for distribution to and consumption by chiropractic's external audiences and stakeholders in Alberta such as the Minister, health care professionals and employer groups, as well as chiropractic practice promotion materials designed for distribution by its members to their market of new and existing patients and customers.
65. As is particularized herein, the College was repeatedly alerted from time to time during the Class Period by formal and informal complaints, expressions of concern, reports, inquiries and other means, about conduct of its members, in their individual practice of chiropractic and as part of an identifiable and prevalent class of its membership who practiced chiropractic in common, that required the College to

- (a) investigate whether its members were or might be
 - (i) making the Representation,
 - (ii) engaging in Inappropriate and Non-beneficial Adjustment,
 - (iii) operating beyond their scope of practice,
 - (b) retain such qualified experts in epidemiology, medicine and scientific research as was required to properly evaluate the adequacy of available studies evaluating the therapeutic utility, benefits, indications and associated risks of the various practices of chiropractic,
 - (c) discourage and act to prevent practices of chiropractors that had no scientific justification or plausible rationale for affecting human health or that were unequivocally established as associated with a risk of serious complication yet of no, or no measurable therapeutic value,
 - (d) develop and provide information to its members and their patients that was accurately and completely reflective of the risks associated with the services offered by chiropractors and their possible benefits,
 - (e) protect the public from practitioners who were likely to perform, or demonstrated an intention to perform unnecessary procedures or attempt to manage conditions for which they were neither trained nor competent nor authorized to provide or manage.
66. The College failed to investigate the circumstances it was aware of respecting its members' making the Representation, engaging in Inappropriate and Non-beneficial Adjustment and operating beyond their scope of practice in good faith, wrongfully preferring and protecting the interests of its regulated members over the protection of the public in general and the plaintiffs and the other Class Members in particular.

THE PROBLEMS ARISING FROM AN UNSCIENTIFIC BELIEF SYSTEM THAT IS NOT REGULATED AND THE COLLEGE'S RESPONSE

67. Despite statements made during the Class Period by the College to chiropractic's external audiences and stakeholders that chiropractic is safe, which its members repeated to their own external market of new and existing patients, other health professionals and employer groups, chiropractic adjustment of the spinal column can cause harm and the College and the Class Defendants trivialized its risks.
68. During the Class Period the totality of adequate prospective investigations into the safety of chiropractic manipulation and adjustment consistently concluded that chiropractic adjustment of the spinal column was associated with an exorbitantly high incidence of minor adverse effects, more particularly that about half of all chiropractic patients who received such procedures experienced mild to moderate transient effects, the most frequently reported being local or radiating pain, headache and tiredness.
69. In an article published in a prominent Canadian chiropractic journal in 2000 titled *Subluxation – the silent killer* chiropractor Ronald Carter, a Calgary-based member of the College and a past President of the Canadian Chiropractic Association, was critical of the subluxation model of chiropractic and the chiropractic leadership that supported it, which his article derided as a “marketing program”. He introduced his comments with the following words:
- Chiropractors in Canada are facing a crisis and responding to it. With any crisis comes opportunities. These crises are challenging our core issues collectively as a profession. It will require the utmost effort and commitment to honesty and integrity to maximize these opportunities. It appears that a small segment of our profession, with some elected leaders, appear intent on answering this crisis with only the 1910 chiropractic subluxation model. Their approach is not only wrong, but it prevents what is right from being done. Dr. Darrell Ladell stated it so well in his report on the Radiology issue: Beware of the enemy for he is us.
70. Chiropractor Carter's commentary article forcefully articulated why the future of chiropractic had to lie in premises based on science and reason and accountability, not the one being shaped by “a segment of the profession and some of its elected leaders”, with these statements:

Do you find yourself asking: Why is there so much division in our profession?
 ...Our own justification of this word [subluxation] allows us to keep, and observe our peers breaking, the Eleventh Commandment: Thou shalt not take advantage of the sick.

...

Again, we need to accept the responsibility of being wardens of this profession, which demands accountability to the patients we treat. ... We are always given a choice. The first choice is to do it right. The other option is to market aggressively as a business, use fire-sale tactics for our own personal gain and overlook our fiduciary responsibility, accept we are businessmen and not professionals and 'if its good for business its good for chiropractic'.

...

Many chiropractors unfortunately attempt to escape their responsibility and accountability with claims of only treating subluxation but also claim for their services under workers compensation, provincial health, insurance companies and MVA – all of which require a diagnosis. Dr. Don Pedersen says most of our issues in chiropractic are either one of economics or ethics. Claiming for a service under a diagnostic code may be one area where one puts aside ethics and their beliefs for an economic consideration – the fee.

71. From time to time during the Class Period the College received numerous expressions of the concerns and complaints made by members of the public, in many cases supported by the results of surveys from visits to chiropractic offices in Alberta, telephone surveys and other forms of simple field tests that investigative journalists had conducted and communicated to the College indicating that it was the practice of many of its members, in their individual practice of chiropractic and / or as part of an identifiable and prevalent class of its membership who practiced chiropractic in common, were making the Representation and false and misleading claims about the validity and effectiveness of chiropractic theories and methods based on the Representation, in order to promote, offer and supply for economic gain Inappropriate and Non-beneficial Adjustment in paediatric patients to treat conditions such as (but without limiting the generality of the following) infantile colic, skin eczema, learning disorders, ear infections, respiratory tract infections, strabismus of the eyes, asthma, infectious disease processes and states of decreased immunity.
72. The College defended these practices as being within the standard of care expected of its members and dismissed the expressions of concern and the complaints it received before inquiring into and without investigating their merits. The College's response varied from

blaming the media for sensational and negative reporting to alleging that chiropractic services were beneficial to children for whom low back pain was a very prevalent condition, and that chiropractic should not be judged by what the College characterized as a small minority of fringe practitioners that inevitably could emerge in any field. The College represented that, so far as it knew, the vast majority of its regulated members were simply treating children for musculoskeletal complaints.

73. These responses of the College deliberately ignored the information it was aware of, including chiropractic web sites and chiropractic studies demonstrating that this was simply not the case, nor the way paediatric chiropractors portray themselves at all.
74. The College was aware of a sociological survey of Canadian chiropractors published in 1997 concerning their attitudes on chiropractic philosophy and scope of practice which informed the College that almost one quarter of respondents, including its own members, were practitioners who subscribed to the historic chiropractic theory, rejected evidence-based validation of chiropractic methods and practices and supported a scope of practice for the use of chiropractic to treat problems beyond simple musculoskeletal issues.
75. The College was aware of pediatric age group statistics and other data maintained by the government of Alberta for the years during the Class Period demonstrating that, in the 1997-1998 year, for example, some of its members had billed the provincial health system for some 46,000 visits to treat patients ranging from newborn to four years of age, 55,750 visits to treat children between the ages of five to nine, 85,500 visits to treat children between the ages of ten to fourteen years, and over 90,000 visits to treat patients aged fifteen to nineteen.
76. The College was aware of a 1999 article published in the Journal of the Canadian Chiropractic Association, *Standards of care: what do they mean to chiropractors and which organizations should develop them*, which informed the College of the results of a survey indicating that one third of Canadian chiropractors, including its own members, subscribed in their beliefs and in their clinical practices to the traditional subluxation-based chiropractic theory and did not accept that standards of care related to the validation of chiropractic methods, even by chiropractic researchers.

77. The College was aware of a survey of twelve hundred Canadian chiropractors published in the Journal of the Canadian Chiropractic Association in 1999 which informed the College that many chiropractors actively solicited and were treating patients under the age of eighteen years of age for conditions that were not related to the musculoskeletal system, the nervous system, or the joints:
- (a) 84.5 percent of those surveyed treated children under the age of two years old,
 - (b) on average, the vast majority of respondents (some 92 %) treated patients under eighteen, for musculoskeletal conditions (96.8 %), headache (89.5 %), muscular sprains and strains (89.1 %) articular / joint conditions (82.9 %), gait/posture (77.6 %), asthma (60.5 %), earache (51.8 %), colic (46.1 %) menstrual complaints (44.8 %), immune system complaints (43.4 %), gastrointestinal complaints (37.2 %), hyperactivity and learning disorders (34.2 %), and bed-wetting (31.3 %);
 - (c) the top three reasons surveyed for treatment in patients under the age of two were prevention (31.3 %), colic (16.1 %) and earache (16.1 %) in children up to the age of eleven years of age, the top reason was simply prevention.
78. The College was possessed of and aware of various other surveys, reports or other information obtained from or concerning its members during the Class Period indicating and informing it that many of its members, in their individual practice of chiropractic and / or as part of an identifiable and prevalent class of its membership who practiced chiropractic in common, rejected evidence-based practice, actively solicited babies, infants and children as patients and treated paediatric conditions that were not related to the musculoskeletal system, the nervous system or the joints.
79. To the contrary, during the Class Period, to the knowledge of the College and the Class Defendants, there was and there is still no adequate research, scientific justification or plausible rationale supporting the claim that chiropractic adjustments of the spinal column can be used to treat, alter the course of or prevent any childhood disorder, or restore, enhance, maintain or otherwise affect their general health or the body's general ability to heal.

80. Prior to and from time to time during the Class Period, each of the Minister and the College received or was made aware of expressions of concern and complaints from various medical associations and societies, individual physicians as well as researchers complaining that both the College and certain of its members were making the Representation as well as false claims based on the Representation for the purpose of soliciting babies, infants and children as patients and treating vertebral subluxations and pediatric conditions that were not related to the musculoskeletal system, the nervous system or the joints. Some particulars include, but are not limited to the following:
- (a) The Chairmen of the Departments of Pediatrics of Pediatric Hospitals in Canada issued a public statement in 1994 expressing their significant concern over the unscientific claims that were being made in textbooks taught in the curricula of colleges accredited by the Council on Chiropractic Education, and by the Canadian Chiropractic Association, its member Associations, and some of their member chiropractors regarding the care of infants and children by chiropractors. The Statement warned that, contrary to information they were being provided by any chiropractors and their Colleges and Associations,,
 - (i) the chiropractic spinal adjustments chiropractors recommended could not restore, enhance, maintain or otherwise affect their general health or their body's general ability to heal and were useless and ineffective;
 - (ii) the chiropractic spinal adjustments chiropractors recommended did not alter the course of nor prevent in any way childhood illnesses such as ear infections, asthma attacks, bed-wetting or infantile colic;
 - (iii) the chiropractic use of x-rays of infants and children to diagnose vertebral subluxations was unscientific, of no value whatsoever but exposed the child to an increased risk of cancers and genetic damage.
 - (b) The aforesaid statement of the Chairmen of the Departments of Pediatrics of Pediatric Hospitals in Canada was endorsed and reiterated by the Canadian Pediatric Society in 1998.

- (c) In the fall of 1998 an Albertan radiologist concerned that many x-rays ordered by chiropractors, particularly for children, seemed to be, in his opinion and the opinion of other experts, unnecessary and inappropriate, wrote to the Deputy Minister of Health and met with that official and several other Ministry of Health officials during which meeting those officials were briefed on pediatric chiropractic, and provided with chiropractic textbook material, articles and pediatric chiropractic material outlining the false claims that were being made regarding childhood illnesses.
- (d) In September 1998 the Alberta Society of Radiologists the Alberta Society of Radiologists voted unanimously to return hundreds of thousands of dollars worth of X-ray referrals back to chiropractors because of concerns for patient health and radiation exposure.
- (e) The aforesaid statement of the Chairmen of the Departments of Pediatrics and of the Pediatric Hospitals in Canada was endorsed and reiterated by the Assembly of the Canadian Pediatric Department Heads in January 2000.
- (f) In a October 2001 review of unsubstantiated claims in chiropractic brochures, *Unsubstantiated Claims in Patient Brochures From the Largest State, Provincial and National Chiropractic Associations and Research Agencies*, published in the Journal of Manipulative and Physiological Therapeutics, chiropractic researchers demonstrated that currently available data did not justify any claim for the value of chiropractic care in populations of children.
- (g) In February 2002, the Canadian Pediatric Society issued a strong warning to physicians about chiropractors who used spinal adjustments on young children to treat asthma, colic, bed-wetting, ear infections, learning disabilities and the host of other disorders or ailments that it felt had nothing to do with musculoskeletal complaints. It issued a position paper stating, among other things, that
 - (i) there was no evidence that chiropractic care was effective for those indications and the host of other disorders or ailments that chiropractors

claimed to be able to treat, benefit and cure notwithstanding that they were not related to the musculoskeletal system, the nervous system, or joints.

- (ii) children did not need chiropractic adjustments to stay healthy, pointing out that, besides the lack of scientific evidence to support these adjustments, the adjustments went well beyond chiropractors' licenced scope of practice in all provinces in Canada.

81. The College rejected and dismissed these expressions of concern out of hand without investigating them and either ignored them, or issued denials misrepresenting facts it knew existed to support these expressions of concern and threatened the persons or entities making them with litigation.
82. The College generally claimed that the medical persons or entities expressing the concerns as aforesaid had historically acted in a malicious and defamatory manner toward chiropractic which had manifested itself in various attempts to discredit the College and its members, of which their expressions of concern as aforesaid were but the latest examples.
83. The College demanded retractions and threatened the medical persons or entities raising the concerns with litigation on the basis, *inter alia*, that the College was solely responsible for enforcement of standards for chiropractic and their concerns as stated and published were defamatory insofar as they implied the College did not maintain or enforce adequate standards within the profession it was required to oversee.
84. During the Class Period the College received various complaints alleging that particular members' promotion, offer or supply of Inappropriate and Non-beneficial Adjustment constituted professional misconduct or unskilled practice.
85. The absence of a scope of practice and standards of practice regulating against the promotion, offer or supply of Inappropriate and Non-beneficial Adjustment in the practice of the profession rendered the College's legislatively mandated complaints and discipline process of the College a sham. In each case of a complaint alleging professional misconduct or unskilled practice by a member of the College in relation to

the member's promotion, offer or supply of Inappropriate and Non-beneficial Adjustment the College arbitrarily and irrationally dismissed the complaint, often without referring the complaint to the Discipline Committee for a hearing, citing insufficient evidence to support an allegation of professional misconduct or unskilled practice.

86. In one case known to the plaintiffs, in response to an appeal that the Registrar's decision had failed to consider or to investigate the lack of justification for or validity of the Inappropriate and Non-beneficial Adjustment that had been provided as "treatment", and that the Registrar's decision was an arbitrary and irrational dismissal of the complaint, the Registrar responded that the concerns the complainant had raised did not warrant an investigation as they were "straight-forward and, as noted, meet the necessary Standards of Practice for Chiropractic in Alberta."

SAFETY OF NECK MANIPULATION

87. Chiropractic adjustment of the cervical spine, particularly adjustment of the upper cervical spine, carries with it the danger of numerous types of adverse complications, including injury to the intervertebral disc, ligaments and nerves, as well as the danger of damaging the extra cranial arteries in the neck, leading to adverse neurovascular events, interruption of the blood supply to the various parts of the brain and over twenty different kinds of embolic stroke.
88. In *Current Concepts in Vertebrobasilar Complications following Spinal Manipulation*, 2001, ISBN 1-892734-03-6 chiropractor Allan G.J. Terrett describes six types of vertebral artery wall trauma all related to neck manipulation.

In most cases of VBS [vertebrobasilar stroke] following Spinal Manipulation Therapy where angiography or autopsy findings are available, there is found to be damage to the artery wall, one of the following mechanisms may occur. These run the gamut from:

- A) Compression and/or stretching leading to subintimal hematoma. The fenestrations of the intima unfold and may become scarred or even tear.
- B) A simple intimal tear leading to an endothelial reaction. This can lead to a cascade of thrombus and embolus.
- C) An intimal tear with a thrombus that restricts the lumen.

- D) Vessel wall dissection, the most common type being between the endothelial layer and the internal elastica lamina.
 - E) Vessel wall dissection with psuedo-anurysm. The muscularis as well as the intima and internal elastic lamina are disrupted.
 - F) Perivascular bleeding.
89. Prior to and during the Class period, leading scientific journals published studies evaluating the benefits and risks associated with manipulation of the upper cervical spine. They established that the medical consequences of neck manipulation ranged from simple spells of nausea, loss of balance, visual loss, to tremors, paralysis, “locked in syndrome” and death, occurring in all ages from babies to the very elderly but most commonly observed in young adults.
90. Adjusting the upper cervical vertebrae, no matter what their patients’ complaints, has continued to be a routine practice amongst subluxation-based practitioners of chiropractic during the Class Period and indeed ever since chiropractic’s original promoter introduced the Hole in One theory.
91. The Hole in One theory postulated that it wasn’t necessary to adjust every vertebra in the spine to remove spinal subluxations; rather, the only level of the spine where “occlusion of a foramen” could result in spinal cord or nerve pressure from a subluxation were the vertebrae in the upper neck, the atlas and the axis, and upon adjusting them all other vertebrae would disappear in sympathy. The Hole in One adjustive technique purported to reduce chiropractic to its essence and any chiropractor not using it was incapable of practicing honestly.
92. Each of the College and the Minister owed the Class Members who received chiropractic services from a chiropractor a heightened duty of care in regulating its members because
- (a) it was foreseeable that personal injury, including devastating neurological complications and death, was likely to occur to some of these Class Members as a result of the incompetent, unethical or unsubstantiated practices of persons practicing chiropractic, and because

- (b) the lack of regulation governing the conduct and practices of the Class Defendants as persons practicing chiropractic whom the College had licenced as members exposed these Class Members to a particular risk of damage which is different in its incidence from the general risk of damage from incompetent, impaired or unsubstantiated practice of a primary health care provider which they shared with all members of the public.
93. The College, in co-operation with other chiropractic colleges and associations with whom the College co-ordinates its activities, downplayed the risk of injury from chiropractic adjustment of the cervical spine, against all reason, throughout the Class Period.

DEATHS

94. On each of February 3 and 4, 1998 a chiropractor adjusted the vertebrae in the upper neck of a 20 year old Saskatchewan woman named Laurie Mathiason to treat her complaints of low-back pain. On February 4, 1998, when the chiropractor manipulated her neck, Laurie Mathiason immediately began to cry, her left eye rolled up into her head, her right eye roamed around randomly and she went into convulsions, foaming at the mouth. She went into a coma on the chiropractor's table and died three days later.
95. News of Ms. Mathiason's death spread throughout the chiropractic community shortly afterwards and the media and observers of chiropractic in Canada, including scientists who relied on medical literature and scientific research, delivered the message to the general public that chiropractic neck manipulation, particularly upper cervical adjustments that utilize extension and rotation maneuvers, was unsafe.
96. When the safety of chiropractic neck manipulation was challenged, the College, in concert with other Canadian chiropractic associations maintained that, as far as they knew, these procedures were safe and effective.
97. In September 1998 a four day coroner's inquest was held into Laurie Mathiason's death. The coroner's jury found as a fact that the strokes Laurie Mathiason suffered and her

death was caused by traumatic rupture of the left vertebral artery as a result of the chiropractic adjustment of her neck on February 3, 1998.

98. At the conclusion of the coroner's inquest into the death of Laurie Mathiason, the jury made recommendations geared toward avoiding future adverse events through, *inter alia*, posted warnings in chiropractic offices, development of screening procedures and future research considerations.
99. The jury recommended that the Ministries of Health in Canada including the Minister provide funding immediately to implement studies to
 - (a) determine the incidence of strokes associated with cervical spine manipulations;
 - (b) determine the benefits and harmful side effects that are associated with single and multiple cervical manipulations.
 - (c) pursue the development of effective screening tests that will identify patients who are at high risk of complications when receiving cervical spinal manipulations.
100. The jury called on chiropractors to inform their patients about the risks of chiropractic neck manipulation.
101. The jury recommended that government collaborate with chiropractic associations to ensure that literature indicating the risk of strokes and other risks associated with chiropractic services be clearly visible and available in the reception area of every chiropractic clinic and that government work with chiropractic associations to ensure that the risks associated with chiropractic services be discussed between chiropractor and patient and documented in writing.
102. The College, like other chiropractic colleges and associations with whom the College coordinates its activities, was aware of, informed itself about and followed the developments relating to the circumstances surrounding Laurie Mathiason's chiropractic adjustment to her upper neck, the dissection of her vertebral artery it caused, the coroner's inquest into her death and the recommendations of the coroner's jury.

103. Once the issue of safety had been cogently raised, the College had a new obligation to the public, including the Class Members, the patients of members of the College, to investigate the allegation that chiropractic adjustment of the neck, particularly upper cervical adjustments that involve extension and rotation maneuvers, carried a danger. The allegation that a prevalent quintessentially chiropractic procedure was unsafe made it incumbent upon the deliverers of that procedure and the regulatory body governing them to demonstrate both the safety and the benefits of the procedure and to ascertain methods of limiting its risks and to ensure reasonable changes are made to procedures to avoid foreseeable harms.
104. Once the issue of safety had been cogently raised, the Class Defendants had an obligation to limit or eliminate chiropractic adjustment of the neck, particularly upper cervical adjustments that involved extension and rotation maneuvers, in order to minimize risk to the public and the Class Members until sound evidence demonstrated the procedure was safe, or was clinically necessary and restricted to situations that managed the risk of foreseeable harms.
105. The College acted in bad faith and did not investigate, properly or at all, whether chiropractic adjustment of the cervical spine, particularly upper cervical adjustments that involved extension and rotation maneuvers, was unsafe or associated with potential dangers, nor to what extent the procedure had demonstrated benefits and was useful or effective in alleviating particular health problems.
106. The College acted in bad faith and failed to reasonably evaluate, based upon adequate scientific study, the risk to patients, including the plaintiffs and other Class Members, associated with chiropractic adjustment of the cervical spine, particularly upper cervical adjustments that involved extension and rotation maneuvers, as well as whether such procedures were worth the benefit to patients, including the plaintiffs and the other Class Members.
107. The College acted in bad faith and did not ascertain methods of limiting its risks or ensure reasonable changes were made to procedures to avoid foreseeable harms.

108. The College acted in bad faith and did not update or apply best-practice standards in relation to chiropractic neck manipulation, particularly upper cervical adjustments that involved extension and rotation maneuvers, in its ongoing obligation to self-regulate and self-govern the practice of chiropractic.
109. The College acted in bad faith and took the absolute position, before adequate research evidence supporting its position was completed or available, and in the face of existing evidence that contradicted the merits of its position, that chiropractic manipulation of the neck was inherently safe.
110. The College's response was to embark on a bad faith quest to convince the public and its other stakeholders that neck manipulation was safe and effective by mounting a public relations campaign
 - (a) obfuscating and casting doubt on the outcome of the Mathiason Inquiry by discounting Ms. Mathiason's death as an unfortunate statistic that was unrelated to the chiropractic services she received,
 - (b) misrepresenting the Coroner's jury findings as vindication of the practice of chiropractic adjustment of the neck,
 - (c) inappropriately drawing upon the safety record of the medical profession to deflect criticism of the practice of chiropractors, the Class Defendants and the College.
111. Following the coroner's inquest into the death of Laurie Mathiason the College failed to act in good faith and represented in its public statements and materials intended for chiropractic's external audiences and stakeholder's consumption that
 - (a) Laurie Jean Mathiason's death was the first such event associated with chiropractic adjustment in the history of Canadian chiropractic,
 - (b) the coroner's jury did not conclude that the chiropractic adjustment of Laurie Mathiason's neck caused her death,

- (c) a substantial body of research, investigation and study demonstrated that chiropractic treatment was safe and effective,
 - (d) scientific study of the risk of injury after neck adjustment indicated the possibility of such injury resulting from chiropractic neck adjustment was “extremely remote”, somewhere between one in a million and one in two or three million, and
 - (e) chiropractors took every precaution, including pre-testing procedures to screen, identify and eliminate patients who were at risk for stroke.
112. In truth and in fact each of these representations were, to the College’s knowledge, false, untrue, inaccurate and misleading and misrepresented both the outcome of the Mathiason inquest and the state of knowledge relating to the risks associated with chiropractic adjustment of the upper cervical spine.
113. In making the aforesaid misrepresentations the College and the Class Defendants relied on sources of information that did not evaluate the safety and / or effectiveness of chiropractic adjustment of the upper cervical spine, or that was inadequate to qualify as useful or reliable research. Further, in the alternative, the College and the Class Defendants concocted evidence and distorted scientifically sound findings to support their misrepresentations, and ignored or misrepresented the conclusions and effect of research data that did evaluate the safety or effectiveness of chiropractic neck manipulation and did not validate it.
114. The College was aware, when it was distributed and during the Class Period of a confidential Malpractice Alert from the International Chiropractic Association, warning chiropractors, the Class Defendants and the College against the use of neck manipulations. That Malpractice Alert stated:



MALPRACTICE ALERT

Volume II, Number 1 November 1981

STROKES

by James D. Harrison
ICA General Counsel

Evidence has now accumulated to the point that the chiropractic profession can no longer ignore the increasing incidents of strokes occurring concomitant with cervical manipulation. The reports of chiropractors, the statements of patients, and the results of medical examinations and autopsies cumulatively compel serious consideration of the problem. Possible injury to the patient overshadows the cost element and demands that we take immediate and decisive action to curtail the number and severity of these incidents.

Almost all techniques in the atlas-axis region have been the subject of stroke complaints. A few cases have been reported involving the HIO technique and one case, the mild Grostic technique. Far more often, however, accusing fingers have been pointed to the cervical break and rotary maneuvers, done by other practitioners as well as D.C.s

In an article dealing with "vertebrobasilar injuries following cervical manipulation," the *Journal of the American Medical Association* carried this comment:

"Chiropractic cervical manipulation may include abrupt, forceful rotational movements of the neck with the head hyperextended or neutral. Slower, more deliberate hyperextension and rotation with flexion extension have also been described. All of these efforts may result in serious vascular compromise in both normal subjects and persons with particular vulnerability such as, atherosclerosis or degenerative osteoarthritis."

"The pathological alterations of the vertebral arteries following cervical manipulation have been established with post-mortem examination in some cases and arteriography in those patients fortunate to survive the insult."¹

In stroke incidents, it is common for the patient to have sudden symptoms which may include occipital pain, dizziness, slurring speech, incoordination, and vomiting. Any or all such symptoms may occur at the time of manipulation or later. Chiropractors who are not familiar with stroke symptoms are often tempted to continue manipulative procedures to relieve a stroke victim. Once the symptoms appear, however, such procedures are contraindicated and could result in injury to the patient. The report of a study made at the University of California, San Francisco, complained of certain doctors as follows:

"premonitory symptoms of vertebrobasilar ischemia during neck manipulation were simply not recognized as an absolute contraindication to further mechanotherapy."

The facts as above stated are fairly common knowledge to most plaintiffs' trial lawyers. Consequently, YOU are increasingly vulnerable to substantial judgments for stroke ensuing as the alleged result of cervical manipulation.

The stroke incident involving manipulation can no longer be considered a freak accident. Therefore, a D.C. must consider his or her options.

(continues on back)

¹ *Journal of the American Medical Association*, September 26, 1980. Volume 244, pp 1432-1453.

STROKES (continued)**Screening Measures**

One of these options is in its infancy, and involves the careful preadjustment examination of the patient in accordance with methodology being developed to identify patients susceptible to stroke. Research in stroke prevention through physical examination is being conducted at Palmer College and elsewhere. It is reported by the college that considerable progress has been made in this area and that methodology is now available to identify stroke candidates. It is early to assess the impact of this procedure but the prospects are exciting. This could be a major achievement in the field of prophylactic care. We urge you to give immediate attention to an article written by Dr. Philip E. George, entitled "New Techniques to Identify the Potential Stroke Victim," which appears in the ICA's *International Review of Chiropractic*, Volume 35, Number 1.

Another option some doctors are using is "informed consent." This legal technicality means the patient is forewarned that this manipulative procedure could, by minimal chance, result in stroke. This could greatly lessen the liability of the doctor in such instances, but would not excuse him or her for failure to use reasonable screening measures commonly known and available to the profession. Neither would it excuse a doctor from negligence or improper care in providing services.

There is much room for debate as to the cause of strokes occurring in the doctor's office. Can they result from maladjustment or manipulation? Does a latent or physical infirmity render the patient susceptible to stroke, no matter how correct and skillful the procedure? It seems likely that either or both of these conditions could prevail.

In consideration of these facts, doctors may choose to re-evaluate their adjusting techniques. Are they knowledgeable and skillful in giving the cervical adjustment? Can they learn more about the proper screening of patients in an effort to identify potential stroke victims? Do they give the cervical manipulations routinely or only in cases where its use is justifiable? Constant fine tuning of adjustive procedures is desirable.

The ICA legal department realizes the seriousness of the issues raised in this bulletin. The fact that a doctor may never have had a malpractice case during many years of practice, means little. The stroke case usually comes as a surprise. The time you take to properly screen the patient is insignificant when weighed against the life this patient has entrusted to your care.

Causes of Strokes**Your Notes**

The ICA Malpractice Alert is mailed monthly to association members. If you have questions or suggestions concerning this issue or related topics, please send your comments to the ICA Legal Department, 777 Chamber of Commerce Building, Indianapolis, Indiana 46204.

115. The College was aware

- (a) that on September 12, 1996 a forty five year old Toronto woman named Lana Dale Lewis suffered a stroke and thrombosis of her left vertebral artery with occipital and cerebellar infarction six days after having her neck adjusted by a chiropractor, and had died in hospital 11 days later;
- (b) that the Regional coroner for Metropolitan Toronto, the investigating coroner into her death and the neuropathological examiner of her body concluded that the chiropractic adjustment of her neck was the cause of the stroke and communicated this conclusion to the Ontario Chiropractic College and through it to chiropractic the College;
- (c) upon the undertaking of chiropractors Jean Moss, the president of the Canadian Memorial Chiropractic College, Paul Carey, the President of the Canadian Chiropractic Protective Association and Jaroslaw Grod, the deputy registrar of the College of Chiropractors of Ontario given at a meeting on December 5, 1996 at the coroner's office to
 - (i) inform their members of the risks associated with chiropractic adjustment of the upper cervical spine, and
 - (ii) to post a form of notice to warn the public in chiropractors' offices for the benefit of patients,

the coroner would not order an inquest.

116. The College was aware of, informed itself about and followed the publicized developments relating to Lana Dale Lewis's death, the coroners' conclusion that the chiropractic neck adjustment she received was the cause of her stroke and, upon the failure of the chiropractic representatives to comply with their agreement, the coroners' decision in May 2000 to hold an inquest into her death to focus on the association between high cervical manipulation and stroke.

117. In addition to the foregoing both the College and the Class Defendants knew there were unreasonable risks to patients of economic and personal injury, damage and loss associated with adjustment of the upper cervical spine, based on controlled studies evaluating published scientific literature confirming that
- (a) controlled studies evaluating chiropractic adjustment of the upper cervical spine had failed to demonstrate that it was effective for any indication,
 - (b) upper cervical manipulation was frequently associated with serious vascular accidents, complications and increased disability due to trauma, paralysis, strokes and in some cases death,
 - (c) the incidence of underreporting of complications related to upper cervical manipulation was one hundred percent,
 - (d) the true incidence of complication related to upper cervical manipulation was not reliably known,
 - (e) the incidence of complication related to upper cervical manipulation was confidently known to be significantly greater than the incidence represented by and reflected in the available research literature, and the risk ratio used by the College, many of its members and its associates, and
 - (f) given the possibility of the many serious adverse complications the interest of patient safety militated against upper cervical manipulation as a recommendable service.
118. When the foregoing facts and the other clear evidence that the safety of upper cervical manipulation was in question was distinctly and repeatedly put in issue, the College failed to act in good faith and failed to respond as a health discipline regulator whose obligation was to re-evaluate the risks and benefit of a particular therapeutic procedure in a manner that protects and serves the public interest.

119. Although the College knew of the hazards associated with upper cervical manipulation and the potential of injury and death to chiropractic patients receiving it, it acted in bad faith and suppressed this knowledge.
120. Similarly, when the foregoing facts and the other clear evidence that the safety of neck manipulation was in question, distinctly and repeatedly put in issue, the Class Defendants responded not as evidence-based practitioners that needed to re-evaluate the risks and benefit of a particular therapeutic procedure by reference to adequate scientific study in their patients' interests, but as self-interested members of a group whose beliefs, and whose personal economic interests those beliefs sustained, had been challenged by outsiders.
121. After the Mathiason coroner's inquiry and the negative media reports that surrounded it, the College issued various communications to the public as well as prepared, approved and published information, advertising and marketing content for use by its members stressing that their procedures were safe, had demonstrated benefits and were effective in treating or preventing particular health problems and, with respect to chiropractic neck adjustments in particular, that
 - (a) its member chiropractors would only treat patients with neck adjustments if there was an objective clinical reason for treating their necks as part of their overall spine care, and
 - (b) they would use screening tests to lower the risks.
122. When the College issued these communications it knew and the fact is that there were no tests or screening procedures that had any positive predictive value in effectively screening patients to ascertain the risk of stroke before chiropractic adjustment of their cervical spines.
123. During the Mathiason inquest in Saskatoon in 1998, chiropractic researchers had testified that, as chiropractic textbooks and other literature stated,

- (a) there was no evidence or basis for suggesting chiropractors could effectively screen patients before neck manipulation,
 - (b) to the contrary, the scientific and chiropractic literature had demonstrated as early as 1995, and had consistently held since that time, that there were no tests or screening procedures that had any positive predictive value in effectively screening patients to ascertain the risk of stroke before chiropractic manipulation and adjustment of their cervical spines; and
 - (c) the tests that had been proposed to be such had been demonstrated to be invalid, unnecessary and only created a false sense of security regarding the degree of risk for chiropractic manipulation and adjustment of the cervical spine.
124. In their own prominently published writings prior to and during the Class Period, a number of chiropractors, including the president of the Canadian Chiropractic Protective Association, acknowledged that the tests had no predictive value to ascertaining the risk of stroke and were recommended solely on the basis that they could benefit chiropractors in the eventuality of a lawsuit.
125. In the years that followed the Mathiason inquiry, the College continued to act in bad faith and did not implement any, or any adequate system to track objective data respecting the relationship between stroke or other adverse events and chiropractic adjustment of the cervical spine. Nor did it implement, sponsor, or incorporate into its regulatory activities adequate scientific study to investigate the incidence of strokes associated with adjustment of the cervical spine or the benefits and harmful side effects that are associated with single and multiple cervical manipulations.
126. The College made false assurances in bad faith to the Minister from time to time during the Class period that the College was ensuring that patient information literature indicating the risk of vascular accidents and other risks associated with chiropractic treatment, particularly manipulation and adjustment of the upper cervical spine, was available in the chiropractic clinics and provided to patients.

127. Neither the government nor the College took reasonable steps to ensure that patient information literature adequately reflecting the risk of vascular accidents and other risks associated with chiropractic treatment, particularly manipulation and adjustment of the upper cervical spine, was clearly visible and available in the reception area of every chiropractic clinic.
128. The College acted in bad faith and advised its members that chiropractic was safe, that chiropractic adjustment of the cervical spine was safe, it participated in the development, approval for use by its members and communication to them and to the public of pamphlets, posters and advertisements extolling the benefits of chiropractic generally, including chiropractic neck adjustments, and it trivialized and misrepresented its risks, knowing about the case of Lana Dale Lewis.
129. In early 2000 the College and certain of its members claimed in statements to the media that Lana Dale Lewis did not die of a chiropractic neck adjustment and misrepresented statements from the coroner's office. In February 2000, for example, Dr. J. Ronald Carter, a member of the Calgary Chiropractic Society stated in the Calgary Herald, "The case of Lana Dale Lewis is simply not true. The coroner's decision was that an inquest into this death would not be necessary."
130. Throughout the Class Period and to this date the defendants do not know how often a chiropractic neck adjustment damages a patient's extra cranial arteries, or how many people suffer neurological complications following a neck adjustment or how many patients who have their neck adjusted by a chiropractor suffer strokes, paralysis and / or death. They have no idea what the incidence of harm is from chiropractic neck adjustment because the defendants have not done the work needed to investigate and answer this question.
131. Instead, the College acted in bad faith and concocted evidence, sponsored methodologically inadequate research studies designed to validate rather than investigate the issue, and it distorted scientific findings relating to the relative benefits and risks associated with chiropractic manipulation of the upper cervical spine in order to support traditional chiropractic beliefs and the private economic interests of the Class Defendants.

132. In the written materials intended to advise patients in relation to the risks associated with chiropractic adjustment of the spinal column, including the various forms of document titled “Informed Consent to Chiropractic Treatment” they required chiropractic patients sign during the Class Period, the College and the Class Defendants acting in bad faith, represented the possibility of suffering an injury as a result of chiropractic neck adjustment as “rare”, “extremely remote”, “one in a million” and “substantially lower than that associated with many medical or other treatments, medications, and procedures given for the same symptoms”.
133. In truth and in fact these representations were, to the College’s and the Class Defendants’ knowledge, false, untrue, inaccurate and misleading, misrepresented the state of knowledge relating to the risks associated with those procedures when the representations were made, and ignored, or misrepresented and distorted, data which contradicted the claim. Some particulars follow:
- (a) A study published in 1985 put the incidence rate of neurological complications as high as 1 in 40,000 cervical adjustments.
 - (b) In January 1986 the Manitoba College of Physicians and Surgeons advised doctors to warn patients about the risks of neck manipulation after it was found that in the previous three years six cases of brain-stem injury resulting in permanent paralysis had occurred within the province, which had a population of about one million people not all of whom received chiropractic adjustments, or chiropractic adjustments of their upper necks.
 - (c) In 1996, Danish researchers published the results of a study tracking the rate of cerebrovascular accidents (CVA) associated with chiropractic adjustment of the upper neck over a ten year period from 1978 to 1988. Their finding was that the incidence of CVA was 1 in every 120,000 cervical treatment sessions. The same study found the manipulation of the upper neck about four times more commonly associated with injury than that of the lower neck.

- (d) In 1999 a study published in the British Medical Journal put the incidence rate of neurological complications as high as 1 in 20,000 cervical adjustments.
- (e) In a research article published in 1999 reporting on the results of a stroke study, *Diagnostic Strategies in Young Patients with Ischemic Stroke*, the Canadian Stroke Consortium, a national network of stroke physicians, concluded that the commonest cause of stroke in young people was dissection and that chiropractic adjustment was one of several causes of those dissections. This incidence rate was surprisingly high and when the study data was made public chiropractors claimed it was a conspiracy.
- (f) In 2000 The Canadian Stroke Consortium published a commentary in the Canadian Medical Association Journal reporting on the results of its ongoing national study of stroke following cervical arterial dissection, *Sudden neck movement and cervical artery dissection*. The goal of the study was to determine the relationship of extreme head movements and other forms of head and neck trauma to dissection of the neck arteries and stroke. The study had found that therapeutic neck manipulation was associated with 28 percent of the cases of dissection and stroke in the study.
- (g) After the commentary was published, a Canadian case-control study published in the journal Stroke in 2001 reported a disturbing association between chiropractic neck manipulation and vertebrobasilar (VBA) stroke in the province of Ontario, Canada, between 1993 and 1998. The study found that among 582 VBA cases age- and sex-matched to four controls with no history of stroke, VBA patients under age 45 were five times more likely than controls to (a) have visited a chiropractor within a week of the VBA and (b) to have had three or more visits with neck manipulations. The study supported a conclusion that one in every one hundred thousand patients under forty-five who are given a neck adjustment by a chiropractor will suffer a stroke, a number significantly higher than most chiropractic estimates, and the authors urged that further research be done.

- (h) A controlled study carried out by researchers at the University of California in San Francisco and published in the journal Neurology in 2003 supported the Canadian study. Fifty one of 151 patients under age sixty identified with ischemic stroke, or TIA, were confirmed to have suffered arterial dissection and statistical analyses revealed that they were six times more likely to have had chiropractic neck manipulation within 30 days.
- (i) In 2001, British researchers reported, in *Neurological complications of cervical spine manipulation*, published in the Journal of the Royal Society of Medicine, on a survey in which all members of the Association of British Neurologists were asked to report cases referred to them of neurological complications occurring within 24 hours of neck manipulation over a 12-month period. The 35 reported cases included 7 strokes involving the vertebrobasilar artery and 2 strokes involving a carotid artery. None of the 35 cases were reported to medical journals. These results were reported as very significant because they demonstrated an underreporting rate of 100%, which rendered chiropractic estimates of complication incidence rates nonsensical.
- (j) In *Complications of Cervical Spine Manipulation Therapy: 5-year Retrospective Study in a Group Practice*, published in January 2002 in Neurosurgical Focus, the authors reported a series of twenty two patients in whom major complications developed after cervical spinal manipulation therapy with the objective of estimating the regional incidence of these complications and to compare it with the very low incidences reported in the literature. The authors concluded the estimated regional incidence was disturbingly much higher.
- (k) In 2002, researchers representing the Canadian Stroke Consortium reported on 98 cases in which external trauma ranging from "trivial" to "severe" was identified as the trigger of strokes caused by blood clots formed in arteries supplying the brain. Chiropractic-style neck manipulation was the apparent cause of 38 of the cases, 30 involving vertebral artery dissection and 8 involving carotid artery dissection.

Their data indicated that there may be gross underreporting of chiropractic manipulation as a cause of stroke.

134. To science-based health professionals, the only important disadvantage of reports published since 1995 of complications associated with chiropractic spinal manipulation including manipulation and adjustment of the upper cervical spine was that they only indicated the tip of a much bigger iceberg of problems, particularly as no reliable system existed to record adverse events.
135. The message for science-based primary health care practitioners, however, was summed up in an article published in the Canadian Medical Association Journal in January of 2002: The safety of spinal manipulation was uncertain and it was debatable whether the benefits of spinal manipulation outweighed its risks. There was little evidence to demonstrate that spinal manipulation had any specific therapeutic effects, and there was convincing evidence to show that it was associated with frequent, mild adverse effects as well as with serious complications of unknown, but unacceptably high incidence. Specific risk factors for vascular accidents related to spinal manipulation had not been identified, which meant that any patient might be at risk, particularly those below 45 years of age. Definitive, prospective studies that overcame the limitations of previous investigations were now a matter of urgency. Until they were available, patients were advised to adopt a cautious approach and avoid the type of spinal manipulation for which the risk seemed greatest: forceful manipulation of the upper spine with a rotational element.
136. The January 2002 CMAJ article was also critical of current chiropractic practice which seemed to take little account of the evidence relating to the risks of spinal manipulation, the absence of systematically collected prospective information about adverse effects and complications of spinal manipulation and chiropractors' continued advice to patients that chiropractic was devoid of risks.
137. The representations relating to the risks associated with chiropractic adjustment of the spinal column aforesaid also ignored communications of chiropractic-induced injuries specifically reported to the College by treating neurologists and other health care providers.

138. By a letter dated September 21, 2001, a neurologist, Doctor Bradley J. Stewart, sent the following letter to the Registrar of the College:

I am a private neurologist in Edmonton with an appointment at the University of Alberta Department of Medicine. I have witnessed numerous complications of chiropractic cervical manipulation since coming to Edmonton in 1999 and have finally decided to take an active stand against this type of needless injury. It is very clear that very few cases of chiropractic-induced injuries are reported and so the risk would seem to be grossly minimized within the medical literature. The recent large amount of advertising regarding the safety and efficiency of chiropractic on television, in newspapers and on billboards is deeply disturbing. I am especially angered by a recent pamphlet sent out by the Alberta Chiropractic College stating that physicians support the use of chiropractic manipulation. This has been brought to the attention of appropriate authorities, as this is simply not true.

In the future, I will be encouraging my colleagues in neurology to report such complications as they occur, hopefully providing you with a better appreciation of the negative impact that chiropractic has upon the citizens of Alberta.

I hope this information proves useful.

139. Dr. Stewart followed this September 21, 2001 letter by forwarding numerous complaints in writing to the College on behalf of the patients involved, as did other neurologists. Their letters of complaint outlined the facts regarding each complaint, as well as the diagnostic and other medical reports supporting them, including the angiograms establishing the cause of the complication was diagnosed arterial damage.
140. In a little more than a year from the time Dr. Stewart began documenting the cases he had identified some twenty patients who had suffered injuries from chiropractic procedures, more than half consisting of stroke, the rest consisting of compressed spinal cords, compressed nerves in the neck, and compressed nerves in the back.
141. The College, acting in bad faith, declined to respond to the complaints, ostensibly because it was not the patients who were communicating the complaints.
142. Based on the mounting scientific evidence indicating that manipulation and adjustment of the upper neck caused far more damage than chiropractors and the College represented, in February 2002 sixty two Canadian neurologists and chiefs of neurology departments of major teaching hospitals in Canada published a statement of their strong concern. The statement warned Canadians that the public had to be made aware that the neurological

damage that can result subsequent to upper neck manipulation can be debilitating and fatal.

143. The following recommendations they made were directed to the attention of the Canadian public, the practitioners of manipulation, their health care professional regulatory bodies, the provincial Ministries of Health and the medical community:
- (a) as had been recommended following the 1998 inquest into the manipulation-induced death of Laurie Jean Mathiason, the risk of stroke and other inherent risks associated with chiropractic treatment should be made visible and available in the reception area of every chiropractic facility and other practitioners of manipulation therapy;
 - (b) qualified epidemiologists, medical scientists and legal experts should develop a patient information form that is truly reflective of the risks, it should be presented to every patient, and it should include up to date scientific information on the risks per individual patient rather than dated, non-scientific claims that significantly underestimate the risk to the individual patient;
 - (c) the Minister of Health should acknowledge and act on the strong concerns and recommendations of the scientific community relating to the claims and recommendations of chiropractic authorities that have no scientific basis and expose the public to unwarranted treatments associated with paralysis and other complications including death. Specific recommendations called for the Minister to immediately ban chiropractic manipulation on the spines of infants and children and to conduct a full inquiry into the dubious claims that were being made.
144. When a supposed therapy that has no important demonstratable medical benefit is then unequivocally established and documented to be associated with risks of serious, permanent disablement and death, the risk, no matter how small the supposed therapy, is unacceptable. A risk benefit analysis left no doubt that throughout the Class Period one

could not rationally proceed with routine chiropractic adjustment of the upper cervical spine.

145. The College responded not as an evidence-based regulator that understood the need to re-evaluate the risks and benefits of this practice in the service and interest of the public. The College's conduct as pleaded herein was incomprehensible, irrational, completely divorced from its obligations at law and in bad faith.
146. Incredibly, and, acting in bad faith, the College attacked the new and surprisingly high numbers of vascular accidents associated with chiropractic services that were published medical literature and reported in the media by demanding a level of evidence it has never demanded itself. It maintained that the causal link between the strokes and chiropractic adjustment remained unproven. The College challenged the scientific opinions put forward as aforesaid as groundless speculation based on incomplete and flawed evidence and the scientific criticisms as an unsupported attack on chiropractors.
147. The College went further in its bad faith by chilling and seeking to prevent scientific debate. Through the Canadian Chiropractic Association, its response to the statement of the Canadian neurologists and chiefs of neurology departments of major teaching hospitals in Canada was to individually threaten each and every one of the physicians whose name was associated with the statement with professional disciplinary action, with challenges to their standing and accreditation with hospitals and with legal action on the basis that their warning the Canadian public and governments about the dangers of neck manipulation was defamatory to chiropractic.
148. The College approached the Coroner's inquest into the death of Lana Dale Lewis not as an objective fact-finding investigation that might shed light relevant to the protection and service of the public interest on a commonly used treatment technique, but as an attack on the profession. Under the umbrella of the Canadian Chiropractic Association it retained legal representation at the inquest and contributed to a defence fund. Under the umbrella of the Chiropractic Communications Working Group, it participating in a carefully managed public relations campaign to defend the profession.

149. Anticipating the negative media attention chiropractic would get during the inquest into the death of Lana Dale Lewis, the College launched a marketing campaign to reassure Albertans that all was well, accused critics of chiropractic neck adjustment of waging a campaign against chiropractic and issued information sheets purporting to correct the news media's excesses and exaggeration of the risks of neck manipulation.
150. On June 12, 2002, the family of Dr. Ronald Samuel Grainger publicly reported in Calgary that their father had died of a stroke following adjustment of his upper cervical spine that his Calgary chiropractor had administered against Dr. Grainger's specific instructions on November 16, 2001. After Dr. Grainger's death the Grainger family had elected to keep the death private until his son, Dr. Mark Grainger began to hear reports of many more cases of stroke after chiropractic neck adjustment. When the family learned a few months later about a twenty-one year old woman who had suffered a stroke after a chiropractic neck adjustment they decided it was important to speak out and alert people the possible risks.
151. Dr. Mark Grainger called on the Minister to order an immediate ban on all chiropractic adjustment of the upper cervical spine based on the substantial evidence and opinion that chiropractic adjustment of the upper neck constituted a significant and not-uncommon risk to the public. He told the Minister that chiropractors were not fully informing their patients of the scant evidence of benefit of cervical manipulation and its concomitant risk, and that the College had failed to enforce the Mathiason inquest jury recommendation that information about the risks of upper neck manipulation be made available in chiropractic offices.
152. In response to Dr. Grainger's statement and appeal to the Minister, the College told reporters, and represented to the Minister, that the risk of stroke after chiropractic neck manipulation was a very rare, one in a million chance and that international peer reviewed scientific evidence had substantiated the benefits of chiropractic for low back pain, neck pain and headaches.
153. The College has persistently acted in bad faith during the Class Period and has never taken any or any reasonable steps to ensure that patient information documentation was

developed with the assistance of qualified epidemiologists, medical scientists and legal experts that was truly reflective of the risks associated with chiropractic adjustment of the upper cervical spine per individual patient, nor has the College required that its members present this information to every patient so as to ensure their patients' informed consent to this procedure.

154. During the Class period neither of the Minister or the College has taken any or any reasonable steps to ensure that the procedures members of the College provide are tracked, that the specific adjustments given or the reasons for them are recorded, that adverse reactions suffered by patients are collected, or even that serious problems or strokes are reported in any collective database.
155. The College developed or participated in developing, and approved for use by its members a document titled "Informed Consent to Chiropractic Treatment" that should, but does not, disclose that (a) with the possible exception of back pain, chiropractic spinal manipulation has not been shown to be effective for any medical condition, (b) the risk associated with chiropractic adjustment of the neck is unknown; (c) alternative treatments are available; (d) in many cases, neck symptoms will go away without treatment; (e) certain types of neck manipulation carry a higher risk than others; and (f) claims that chiropractic spinal manipulation and adjustment can remedy systemic diseases, boost immunity, improve general health, or prolong life have neither scientific justification nor a plausible rationale.

ALBERTA'S REVIEW OF CHIROPRACTIC

156. In May 2002 the Minister of Health and Wellness appointed an expert advisory panel and Research Group (the "Expert Panel") to review and make recommendations in relation to an appraisal process for reviewing health services. The Minister specifically requested that the Expert Panel review chiropractic services and provide its recommendations.
157. The Expert Panel, assisted by its own research group as well as the Health Technology Assessment Unit of the Alberta Heritage Foundation for Medical Research considered the

available research evidence. The Expert Panel also considered various submissions, including presentations and submissions made by the College.

158. In its December 2002 report to the Minister, the Expert Panel observed that notwithstanding extensive government support for research addressing the effectiveness and cost effectiveness of treatments and services, there was a "striking" lack of research evidence on chiropractic.
159. The Expert Panel reported the following findings:
 - (a) chiropractic services were not well integrated with other health services,
 - (b) there was "considerable" overlap between chiropractic services, about which little was known in practice or in theory, and other methods of treatment available from physical therapists and physicians,
 - (c) there was insufficient basis to conclude chiropractic services were cost-effective,
 - (d) the government's fee code methodology did not capture information to track or assess the type of chiropractic service being provided or the condition for which it was being provided and should be improved,
 - (e) there were apparent risks associated with cervical manipulation, but insufficient evidence to judge whether neck manipulation, or chiropractic adjustment for any other condition other than back pain, was effective, and
 - (f) the most that could be said, "based on limited evidence", was that chiropractic "appeared to be" as effective for back pain in adults, not children, as other methods of treatment.
160. The Expert Panel recommend that the Alberta government limit public funding to treatment in adults for pain related to the muscles and joints of the spine and pelvis.
161. On July 18, 2003 the Minister announced that the government of Alberta would not be following the recommendations of its Expert Panel.

162. On January 16, 2004 the jury serving on the coroner's inquest into the death of Lana Dale Lewis concluded that her death was the result of the chiropractic adjustment of her neck.
163. The coroner's inquest jury once again made recommendations geared toward avoiding future adverse events by remedying, *inter alia*,
- (a) any misunderstanding amongst practitioners that useful pre-screening procedures existed,
 - (b) the non-existence of
 - (i) methodologically adequate research evaluating high neck manipulation and its associated risks, as well as
 - (ii) professional standards of practice for documenting a meaningful description of the type and location of the manipulative procedure,
 - (iii) adequate fee code methodology established by the Ministries of Health to track the type of chiropractic service being provided and the condition for which it is being provided, as well as
 - (iv) a database established by the Ministries of Health to track cervical manipulations as well as adverse events,
 - (v) adequate procedures fostering patients' informed consent to treatment, including information sheets outlining the risks of the procedure, all symptoms warranting emergency medical attention, and the risks of taking x-rays.
164. During televised programs and in interviews surrounding the Lewis inquiry, the College continued to act in bad faith by maintaining that, while a very small number of people did suffer strokes following neck manipulation, the occurrence was rare, the association between the adjustment and the stroke was unproven, the procedure was extremely safe and chiropractors were doing everything they could to make it safer, including screening tests to screen patients who might be at greater risk.

165. In a letter to the editor of the Calgary Herald published in that newspaper on May 26, 2004 the College issued a statement in bad faith that in both the coroner's inquests into the death of Lana Dale Lewis and Sharon Mathiason the juries found no direct causation to chiropractic.
166. After the coroner's inquest jury into the death of Lana Dale Lewis issued its recommendations, the College falsely represented in bad faith to the Minister that the College had adopted many of the recommendations addressed to health care professionals arising from the Lewis Inquest and the Mathiason Inquest and that based on various research findings upper cervical manipulation was generally safe and had an estimated risk ratio of only one or two adverse reactions out of one million adjustments.
167. In a Commentary article published in the same prominent chiropractic Journal in 2004 titled *Chiropractic Dinosaur* the past President of the College and government relations representative, Allan Halowski, asserted his belief that "following the principles of science that subluxations do exist, that they are real and have been scientifically validated to exist". Marching in the steps of the "warriors" that preceded him he openly declared to Alberta chiropractors that he would save and sell subluxation-based Chiropractic, "within the law, without the law, or against the law".
168. Undaunted by the Expert Panel's findings, the College stated in its 2004 / 2005 Annual Report to the Minister:

"Chiropractic is a healing discipline firmly grounded in science and endorsed by research. Over the past 25 years, there have been at least six formal government studies into chiropractic worldwide – all of which concluded that contemporary chiropractic care is safe as well as cost and clinically effective."
169. In 2005 a World Health Organization-sponsored, systematic review of cost analyses in complementary medicine included seven investigations related to spinal manipulation or chiropractic care. It concluded that there was no evidence to suggest that chiropractic care was a more cost-effective treatment option than physiotherapy or outpatient treatment or back school.

170. In 2006, the *Journal of Neurology* published a highly significant German Vertebral Artery Dissection Study Group report about 36 patients who had experienced vertebral artery dissection associated with neck manipulation. Twenty-six patients developed their symptoms within 48 hours after a manipulation, including five patients who got symptoms at the time of manipulation and four who developed them within the next hour. In 27 patients, special imaging procedures confirmed that blood supply had decreased in the areas supplied by the vertebral arteries as suggested by the neurological examinations. In all but one of the 36 patients, the symptoms had not previously occurred and were clearly distinguishable from the complaints that led them to seek manipulative care.
171. A 2006 systematic review of the effectiveness of spinal manipulation in any indication, published between 2000 and May 2005 concluded that collectively these data did not demonstrate that spinal manipulation was an effective intervention for any condition, and given the possibility of adverse effects, did not suggest that spinal manipulation was a recommendable treatment.
172. Another review published in 2007 drew similar conclusions. A systematic review of literature to identify reports of adverse effects of spinal manipulation published between January 2001 and June 2006 identified 32 case reports, four case series, two prospective series, three case-control studies and three surveys. In the case reports or case series, more than 200 patients were suspected to have been seriously harmed. The most common serious adverse effects were due to vertebral artery dissections. The two prospective reports suggested that relatively mild adverse effects occur in 30% to 61% of all patients. The case-control studies suggested a causal relationship between spinal manipulation and the adverse effect. The survey data indicated that even serious adverse effects are rarely reported in the medical literature. The report concluded that spinal manipulation, particularly when performed on the upper spine, is frequently associated with mild to moderate adverse effects, could also result in serious complications such as vertebral artery dissection followed by stroke and its use could not be recommended.
173. All of the various attempts by concerned physicians, parents and others during the Class Period to alert the Minister and government officials under the Minister's administration

to the serious health issues respecting Inappropriate and Non-beneficial Adjustment in meetings, formal and informal presentations on the subject and written representations to them addressing the subject were met with silence and inaction.

174. To the extent that they may have conducted investigations into complaints that the College's regulation of chiropractic in Alberta preferred the promotional and economic interests of Alberta chiropractors over the interest and safety of the public, the health discipline boards, directorates, Committees and advisory committees established by the Minister and other employees of the government under the Minister's administration as aforesaid
- (a) placed undue reliance on the representations it received during its consultations with the College, the Association and other colleges and / or associations of persons engaged in the practice of chiropractic or that had as one of its objects the advancement or promotion of the practice of chiropractic, and
 - (b) failed to independently and properly evaluate the degree of impact of services normally provided by a person engaged in the practice of chiropractic may have on the health of persons to whom those services are provided and failed to evaluate the College's ability to regulate same.
175. The College appreciated and knew during the Class Period that its conduct as pleaded herein was irrational, so completely divorced from its obligations at law as to amount to bad faith, an abuse of power and an abuse of public trust that would result in actual injury to the plaintiffs and the other Class Members. Alternatively, the College exhibited serious and extreme carelessness and recklessness in the exercise of and the failure to exercise the functions delegated to it by the legislature that substantially impaired its fundamental objective of supervising the practice of chiropractic.
176. The College and the decision-makers empowered to perform the statutory powers and duties of the College in which the public has an interest abused their public office in that

- (a) they knew that the Inappropriate and Non-beneficial Adjustment were beyond the scope of practice of chiropractic, or it was recklessly indifferent or wilfully blind to the lack of statutory authority for such practices;
 - (b) they knew that harm would result to the plaintiffs and the Class Members, or, alternatively, they were recklessly indifferent or wilfully blind to the harm that could be foreseen to result from the College's failure to regulate the Class Defendants' provision of Inappropriate and Non-beneficial Adjustment, in that:
 - (i) the Class Defendants would promote, offer and provide Inappropriate and Non-beneficial Adjustment for purposes of economic gain to the Class Members;
 - (ii) the plaintiffs and the Class Members would suffer economic loss and damage;
 - (iii) the plaintiffs and the Class Members would be exposed to the risk of personal injury, loss and damage and some of them would suffer personal injury, loss and damage.
177. The promotion by the College and the Class Defendants of the Inappropriate and Non-beneficial Adjustment, and the offer and supply of Inappropriate and Non-beneficial Adjustment by the Class Defendants to the plaintiffs and the other Class Members were unfair consumer transactions because the College and the Class Defendants knew or ought to have known that the patients consuming these services were unable to receive any reasonable benefit from the services and the transactions for the purchase and provision of such services contravened the provisions of the *Fair Trading Act*, R.S.A. 2000, c. F-2.

THE RESULTING DAMAGES OF THE PLAINTIFFS AND THE OTHER CLASS MEMBERS

178. The College's duty to govern its regulated members in a manner that protected and served the public interest intended to guard against the personal as well as economic

losses the plaintiffs and the other Class Members have suffered as a result of the fraudulent conduct of the Class Defendants which, but for the College's bad faith, abuse of power and abuse of public trust, would have been avoided.

179. The plaintiffs and the other Class Members who entered into transactions for the purchase and supply of Inappropriate and Non-beneficial Adjustment have suffered damage or loss due to

- (a) the College's and the Class Defendants' representations to them that those services had benefits they did not have, particularly that
 - (i) the representations were not based on adequate and proper independent testing that was done before the representations were made which substantiated the claim, and
 - (ii) the representations did not accurately or fairly reflect the results of testing that had been made which contradicted the claim;
- (b) the Class Defendants' influence on them to enter into the transaction;
- (c) the Class Defendants' taking advantage of them as a result of their inability to understand the character, nature, or effect of the transaction;
- (d) the Class Defendants' knowledge that, contrary to their representations to patients relating to the benefits of the services, the patients consuming the services were unable to receive any reasonable benefit from the services;
- (e) the price the Class Defendants charged for the services

all of which are unfair practices and the Plaintiffs and other Class Members seek relief from that damage or loss against the Class Defendants, and the College as agent of the Class Defendants that engaged in or acquiesced in those unfair practice that caused them damage or loss.

180. As a result of the defendants' conduct as aforesaid, the plaintiffs and the other Class Members paid monies to the Class Defendants which the Class Defendants wrongfully charged and were not entitled to receive for Inappropriate and Non-beneficial Adjustment and have suffered an economic loss and damage to their economic interests, all of which was foreseeable.
181. The plaintiffs and the other Class Members have suffered the deprivation of the monies they paid and other value they transferred to the Class Defendants and that the Class Defendants received from the plaintiffs and other Class Members on account of Inappropriate and Non-beneficial Adjustment they provided to the plaintiffs and the other Class Members who received Inappropriate and Non-beneficial Adjustment.
182. The Class Defendants have unjustly enriched themselves by providing Inappropriate and Non-beneficial Adjustment to the plaintiffs and the other Class Members who received Inappropriate and Non-beneficial Adjustment, receiving the monies and retaining them.
183. In equity and good conscience the Class Defendants should not be permitted to retain the moneys paid by the plaintiffs and the other Class Members and / or other transfers of valuable benefit they gained.
184. There is no juridical reason justifying the Class Defendants' retention of any part of the monies paid and other valuable benefits received.
185. The plaintiffs and the other Class Members claim restitutionary recovery from the defendants of all moneys they paid and other value they transferred to the Class Defendants and that the Class Defendants received from them on account of Inappropriate and Non-beneficial Adjustment they provided to the plaintiffs and the other Class Members who received Inappropriate and Non-beneficial Adjustment.
186. Further, or in the alternative, the plaintiffs and the other Class Members claim disgorgement by the Class Defendants of all moneys and other transfers of value acquired by the Class Defendants through the provision of Inappropriate and Non-beneficial Adjustment.

187. The plaintiffs and the other Class Members claim an accounting of the benefits and / or a constructive trust.
188. Further, or in the alternative, the plaintiffs and the other Class Members claim damages.
189. The College is jointly and severally liable with the Class Defendants for the losses arising from the transactions they entered into with the plaintiffs and the other Class Members for the purchase and supply of Inappropriate and Non-beneficial Adjustment.
190. The Minister is vicariously liable for the wrongful conduct of the College.
191. As a result of the defendants' acts and omissions as aforesaid, Sandra Nette and the Class Members who received Inappropriate and Non-beneficial Adjustment and suffered personal injury as a result have suffered loss and damages, including personal injury and injury to their economic interests, all of which were foreseeable. They suffered and will continue to suffer serious and permanent injuries to their bodies and persons, including physical trauma and/or mental anguish, emotional distress and other psychological damage. They have incurred hospital, medical, nursing, medication and other out-of-pocket expenses and will incur future care costs. They have lost income in the past and will continue to lose income in the future. They have lost and will continue to lose enjoyment of life, they have suffered fear for their health and suffered a loss of life expectancy.
192. The conduct of the College and the Class Defendants in exposing the plaintiffs and the other Class Members to Inappropriate and Non-beneficial Adjustment
 - (a) exploited their vulnerability and the trust the plaintiffs and the other Class Members were required to place in the Class Defendants in the health care provider / patient relationship they had with them;
 - (b) constituted systematic predation upon their vulnerability for their own person gain;

(c) intentionally disregarded legislative enactments which were designed to protect the plaintiffs and the other Class Members from exploitation and injury;

(d) was wanton, callous, in contumelious disregard of the plaintiffs and the other Class Members personal safety and rights and indifferent to the consequences

so as to warrant the condemnation of this Court and renders them liable to pay aggravated, exemplary or punitive damages.

193. The bad faith, abuse of power and abuse of public trust of the College in promoting Inappropriate and Non-beneficial Adjustment constituted a marked, persistent and conscious departure from the standards of conduct required of it. It disregarded measures it knew were necessary to protect the plaintiffs and the other Class Members from economic predation that threatened their bodily integrity and to protect them from injury in contumelious disregard of their personal safety and rights. The College's indifference to the consequences warrants the condemnation of this Court through the imposition of punitive damages.

PARTICULARS OF THE PLAINTIFFS' CLAIMS AND EXPOSURE TO DAMAGE AND LOSS

194. So far as is known to the plaintiffs the defendant Gregory John Stiles ("Stiles") resides at or near the City of Edmonton in the Province of Alberta.

195. The defendant The Spa At Life Stiles is a registered partnership that carries on its business and trade at 10314 – 124 Street in the City of Edmonton in the Province of Alberta under the trade name of Life Stiles (hereinafter "Life Stiles"). On September 13, 2007 the partners of Life Stiles were:

(a) Lydia Jean Saunders of 11106 University Avenue, Edmonton, Alberta, T6G 1Y6;

(b) Shera Brandley of 112 Brander Drive, Edmonton, Alberta, T6H 4V4 and

(c) 860058 Alberta Ltd., of 10314 124 Street, Edmonton, Alberta, T5N 1R2.

196. Further, or in the alternative, Stiles owned, operated and carried on the business and trade at 10314 – 124 Street in the City of Edmonton in the Province of Alberta of Life Stiles.
197. Further, or in the alternative, Stiles practiced in association with the business and trade at 10314 – 124 Street in the City of Edmonton in the Province of Alberta of Life Stiles.
198. Stiles referred patients to Life Stiles and received patient referrals from Life Stiles.
199. At all times that are material to this lawsuit Life Stiles was Stiles' employer and Stiles carried on a practice of chiropractic.
200. In law Life Stiles is responsible for the actions of Stiles as described in this Statement of Claim.
201. So far as is known to the plaintiffs Stiles
 - (a) was a registered practitioner under the *Chiropractic Profession Act*;
 - (b) was a regulated member of the College of Chiropractors of Alberta and Alberta College and Association of Chiropractors,
 - (c) was licensed to carry on a chiropractic practice in the Province of Alberta,
 - (d) had been elected as a member of the Council of the College of Chiropractors of Alberta in 1995, had served as its second vice-president, its Chairman for the Quality Assurance, Marketing and Promotion, and the Relocation Committees, and was the Chair of the College's Marketing and Promotions Program committee, and
 - (e) held himself out to the public as a primary care health care professional specializing in chiropractic.
202. Stiles, and Life Stiles, offered, promoted and sold chiropractic services, aesthetic services, massage therapy products, spa therapies, revolutionary next generation skin tightening treatment technologies, skin creams, cleansers and exfoliants, anti-cellulite creams, make-up, cosmetic products, brushes, brush cleaners, Magic Mitts, body balls,

nutra-therapeutics, herbal bath products, vitamins and supplements, gift packages and cards, and much much more.

203. At all material times Stiles and Life Stiles represented to the public, and represented to Sandra, that
- (a) the chiropractic adjustments they offer, promote and sell, release areas of the spine that are out of balance and put tension on the nervous system causing nerve interference between the brain and the body, which may cause muscles, blood vessels and organs to malfunction, which can produce pain, restrictive motion, degenerative changes or ill health, and that
 - (b) with the chiropractic adjustments they offer, promote and sell, the “nervous system will work with greater ease” so that the patients who purchase the adjustments “can perform and function better”.
204. In truth and in fact the said representations were, and each of them was, false and untrue and inaccurate and misleading.
205. The said representations were made to the public and to Sandra via Life Stiles’ internet site, as follows:

“Mission Statement

We at Life Stiles Chiropractic are committed to serving the true health care needs of as many people as possible.

...

- Are you concerned with the health of your whole body, and are looking for a different approach to health care?
- Are you concerned with your newborn's or child's long term well being and growth?

What is Chiropractic?

Chiropractic is based on two premises:

- the body is a self healing organism

- the nervous system is the Master system of the body. The main goal of your Chiropractor is to reduce the interference to your body's inborn ability to heal itself.

- the spine not only supports most of the body, it works as a "switchboard" for the nervous system. Nerves, connected to all organs, muscles and every part of the body, exit the spine between each vertebrae. Signals from these nerves control the body's organs, all senses, and life itself.

What do Chiropractors do?

Chiropractors find and release areas of the spine that are out of balance and putting tension on the nervous system. These areas are called subluxations. With an adjustment the nervous system will work with greater ease so you can perform and function better.

What is a Subluxations?

A subluxations is a spinal misalignment that causes nerve interference between the brain and the body. When nerve function is interfered with-muscles, blood vessels and organs may malfunction. This can produce pain, restrictive motion, degenerative changes or ill health.

What is a Chiropractic Adjustment?

A gentle specific and controlled pressure that restores the spines balance and relieves tension in the nervous system. Adjustments will release the subluxations in your spine.

Once I Start Seeing a Chiropractor, How Long Do I Have To Go?

It depends how you want to use it. Chiropractic can be used as a treatment of a specific ailment or you can choose to use it as a way of maintaining and improving your overall health and wellness. The first choice limits your time and benefits. The second gives you the opportunity to experience greater health and well being over time.”

206. The said representations were made to the public via other advertising and marketing materials designed principally for distribution to an external market of new patients, other health professionals and employer groups, as well as through practice promotion materials and content designed principally for distribution to its internal market of patients and/or customers and are designed and intended to induce the plaintiffs and others to purchase Inappropriate and Non-beneficial Adjustment from Stiles.
207. The said representations were made orally to Sandra as well as through practice promotion materials and content designed principally for distribution to its internal market of patients and/or customers such as Sandra in the course of Sandra's relationship

with Stiles and Life Stiles as their patient, knowing that Sandra would rely on the said representations and would be induced thereby to seek chiropractic services from them.

208. The said representations included materials provided by the College.
209. In the premises Stiles and Life Stiles were under a duty to take care in the making of the said representations, including a statutory duty as a regulated member not to engage in advertising that is untruthful, inaccurate or otherwise capable of misleading or misinforming the public.
210. The defendants were guilty of negligence in making the said representations referred to at paragraphs 203 and 205 hereinabove.
211. Acting on the faith of the said representations and induced thereby, Sandra sought chiropractic services from Stiles and Life Stiles and Stiles and Life Stiles charged and received a fee for these services.
212. At all times that are material to this lawsuit Stiles and Life Stiles knew there were specific and material risks associated with the chiropractic examinations and spinal manipulation procedures and techniques used by Stiles. In particular, they knew that stroke, serious neurological impairment and death was associated with adjustment of the upper cervical spine.
213. On September 13, 2007, Sandra went to Life Stiles for the purpose of receiving chiropractic examination and care from Stiles.
214. Stiles performed rapid acceleration-deceleration manipulations on Sandra's upper cervical spine (the "Manipulation(s)").
215. The Manipulation is a useless practice that offered no, or no demonstrable therapeutic or practical benefit to Sandra.
216. Stiles knew the Manipulation was a useless practice that offered no, or demonstrable therapeutic or practical benefit to Sandra.

217. The Manipulation is a dangerous procedure that exposes persons undergoing the Manipulation to the risk of stroke and death.
218. Stiles knew the Manipulation was a dangerous procedure that exposed Sandra to the risk of stroke and death.
219. The Manipulations Stiles applied to Sandra's neck dissected both her right and left vertebral arteries, disrupting the blood flow to her brain.
220. Immediately after Stiles performed the Manipulations Sandra advised Stiles she felt sore, dizzy and unwell. Stiles recommended to Sandra that she would benefit from purchasing massage therapy from Life Stiles.
221. Stiles and Life Stiles knew that, unusually for Sandra, Sandra was unable to leave the premises of Life Stiles immediately after her procedures and was required to seat herself for a time to compose herself before she left Life Stiles.
222. Stiles and Life Stiles permitted Sandra to leave the premises of Life Stiles when they knew or ought to have known that her condition was compromised, she required urgent medical attention, she was alone and she was unable to operate her motor vehicle in safety.
223. Sandra left Life Stiles by car alone to return home. As she drove she experienced increasing neurological impairments that prevented her from operating her vehicle. She succeeded in pulling her car over onto the side of a roadway and calling her husband David for help.
224. Fortunately David was nearby when Sandra called him and he drove immediately to the roadside where Sandra was located. He found his wife incapacitated and suffering from symptoms of neurological collapse. David rushed her by car to the hospital emergency department.
225. Sandra's body collapsed into David's arms as David tried to remove her from their vehicle in the hospital's emergency drive-through bay. With the help of others David wheeled Sandra into the emergency department.

226. Shortly after Sandra's admission to the hospital Sandra started to choke. As David screamed for doctors' assistance Sandra's body began to convulse.
227. Sandra suffered full neurological collapse and permanent neurological damage rendering Sandra permanently tetraplegic.
228. By reason of the relationship between Sandra and Stiles and Life Stiles there was an express or alternatively an implied contract one term of which was that those defendants would use reasonable skill and care in advising Sandra and providing chiropractic services to her, which contract the defendants, by their conduct, breached.
229. Further or in the alternative, in advising Sandra and providing chiropractic services to her Stiles and Life Stiles owed her a duty, including a fiduciary duty, to use the skill and care expected of competent primary care health care professionals, or, in the alternative, of competent practitioners of chiropractic, which duty they breached.
230. Stiles and Life Stiles owed a duty to Sandra to fairly disclose the material risks and benefits of the chiropractic services offered to her, the comparative risks and benefits of other forms of treatment, or of non-treatment, and to obtain her consent to the treatment provided to her, which duty was breached.
231. In the circumstances, given Stiles' and Life Stiles' failure to fairly disclose the material risks and benefits of Highest Neck Manipulation and their failure to discuss the comparative risks and benefits of alternate forms of treatment, or non-treatment, the Manipulations Stiles performed on Sandra were applied without Sandra's consent and constituted an assault and battery in law.
232. Sandra's condition is the direct and proximate result of the negligence, assault and battery, and breach of contract of Stiles, some particulars of which include the following:
 - (a) he failed to obtain or record adequately, or at all, Sandra's history and signs and symptoms;
 - (b) he failed to conduct the appropriate and necessary examinations, tests and other relevant investigations to determine Sandra's medical condition;

- (c) he failed to develop an appropriate plan of care for Sandra;
- (d) he failed to disclose to Sandra the material risks of the procedures he performed on Sandra and misrepresented the risks and the benefits associated with the chiropractic adjustments he offered, promoted and sold to her;
- (e) he failed to identify alternate treatments for Sandra or to discuss their comparative risks and benefits with Sandra;
- (f) he failed to obtain an informed consent from Sandra to the procedures he performed on Sandra;
- (g) he favoured his and Life Stiles' own economic considerations over Sandra's safety and exploited Sandra financially;
- (h) he failed to perform to the standard of care required of a competent primary care health care professional and of a competent practitioner of chiropractic in the circumstances;
- (i) he failed to direct Sandra to seek treatment appropriate to her condition;
- (j) he manipulated her upper neck in a manner he knew exposed her to the risk of devastating bodily injury and death and that was of little or no therapeutic benefit to her;
- (k) he executed the intended manipulation incorrectly and incompetently; and
- (l) such further and other particulars as are within the exclusive and particular knowledge of Stiles and Life Stiles and will not be known to the plaintiff until the examinations for discovery or the trial of this action.

233. Further, or in the alternative, Sandra's condition was the direct and proximate result of the negligence, assault and battery, and breach of contract of Life Stiles, some particulars of which include the following:

- (a) Life Stiles failed to have an adequate system in place to ensure that the chiropractic services it provided were provided and conducted effectively, safely and with proper care;
 - (b) Life Stiles failed to train or to hire properly trained, competent and qualified chiropractors, managers, staff and agents who provided chiropractic services to its patients, including to Sandra;
 - (c) Life Stiles failed to supervise the chiropractors, managers, staff and agents who provided chiropractic services to its patients, including to Sandra;
 - (d) Life Stiles favoured its own economic considerations over each of its patients' safety, including Sandra's safety and exploited them financially;
 - (e) Life Stiles misrepresented the therapeutic benefits of the chiropractic adjustments it offered, promoted and sold to Sandra;
 - (f) Life Stiles misrepresented the risks associated with the chiropractic adjustments it offered, promoted and sold to Sandra;
 - (g) Life Stiles failed to ensure that the knowledge and skill of the chiropractors and other staff responsible for the care of each of its patients and, in particular, persons in the condition of Sandra, was proper and adequate; and
 - (h) such further and other particulars as are within the exclusive knowledge of Stiles and Life Stiles and will not be made known to the plaintiffs until the examinations for discovery or the trial of this action.
234. Further, and in the alternative, Sandra's condition was caused by the combined negligence of Stiles and Life Stiles, particulars of which are set out above.
235. By reason of the negligence, assault and battery and breach of contract of Stiles and Life Stiles, or any of them, Stiles' performance of a chiropractic adjustment to Sandra's upper neck dissected both her right and left vertebral arteries, disrupted the blood flow to her

brain, caused her full neurological collapse and permanent neurological damage rendering Sandra permanently tetraplegic.

236. Sandra has Locked-In syndrome. She is cognitively not impaired and she is aware that other than very limited function in her right arm, she cannot move or communicate due to complete paralysis of nearly all voluntary muscles in her body. It is a condition that has been described as “the closest thing to being buried alive”. There is no treatment nor is there a cure. She has retained sensation throughout her body by which she perceives pain. She cannot swallow, speak or breathe without regular mechanical ventilations and suctioning of her secretions. She cannot attend to her own personal care. She has survived a number of emergency crises in her condition solely as a result of the expert, dedicated 24/7 efforts of the finest medical, nursing and technical hospital personnel available who have treated her since Stiles’ procedure at Life Stiles.
237. As a result of the negligence, assault and battery and breach of contract of the defendants Sandra has suffered loss and damages from her personal injury and injury to her economic interests, all of which were foreseeable. Particulars include:
- (a) Sandra has suffered serious and permanent injuries to her body and person, including physical trauma and/or mental anguish, emotional distress and other psychological damage;
 - (b) Sandra has suffered and will continue to suffer extreme pain and suffering and a total loss of the amenities of life;
 - (c) Sandra has suffered fear for her health and has suffered a loss of life expectancy;
 - (d) Sandra has incurred hospital, medical, nursing, medication and other out-of-pocket expenses and will incur future care costs;
 - (e) Sandra’s capacity for work has been utterly and permanently destroyed and she has lost valuable working capacity.

238. As a result of the negligence, assault and battery and breach of contract of the defendants David has suffered loss and damages from his personal injury and injury to his economic interests, all of which were foreseeable. Particulars include:
- (a) David has suffered serious and permanent injuries to his person, including nervous shock and mental anguish, post traumatic stress disorder and other psychological damage;
 - (b) David has suffered and will continue to suffer extreme pain and suffering and a loss of the amenities of life;
 - (c) David has incurred hospital, medical, nursing, medication and other out-of-pocket expenses and will incur future care costs;
 - (d) David's capacity for work has been impaired and he has lost valuable working capacity.
 - (e) David has suffered a loss of financial support;
 - (f) David has been deprived of the society and comfort of Sandra.
239. The plaintiffs plead *res ipsa loquitur*.
240. The plaintiffs plead the provisions of the *Domestic Relations Act*, R.S.A. 2000, c. D-14 and the *Judgment Interest Act*, S.A. 2000, c. J-1, and all amendments and regulations related thereto.
241. The plaintiffs propose that the trial of this action be held at the Law Courts, in the City of Edmonton, in the Province of Alberta, and, at this time, it does not appear likely that this action will take more than 25 days to try.

WHEREFORE the Plaintiff, Sandra Gay Nette, claims, on her own behalf, and on behalf of the Class Members:

- (a) an order certifying this action as a class proceeding and appointing Sandra Nette as the representative plaintiff for the Class and any appropriate subclass(es) thereof;
- (b) pursuant to the *Fair Trading Act*, R.S.A. 2000, c. F-2:
 - (i) A declaration that the promotion of the use of Inappropriate and Non-beneficial Adjustment by the Class Defendants, and the offer and supply of Inappropriate and Non-beneficial Adjustments by a chiropractor to a patient are unfair practices;
 - (ii) an award of damages for damage or loss suffered as a result of these unfair practices;
 - (iii) an award of punitive or exemplary damages;
 - (iv) an order for restitution of property or funds obtained as a result of the unfair practices,
 - (v) an order in the nature of an injunction restraining the Class Defendants from engaging in the unfair practices;
 - (vi) such other directions and such other relief as the Court considers proper.
- (c) general damages, aggravated damages and punitive damages in the amount of \$100,000,000, or such other sum as this Honourable Court finds appropriate;
- (d) special damages and pecuniary damages in the amount of \$400,000,000, or such other sum as the Court finds appropriate;
- (e) Judgment interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1;
- (f) Costs of this action on a substantial indemnity scale, plus applicable taxes; and

- (g) Such further and other relief as to this Honourable Court deems just.

WHEREFORE the Plaintiff, Sandra Gay Nette, claims against the defendants and each of them:

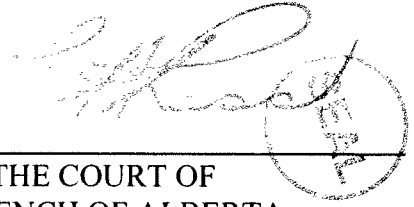
- (a) General non-pecuniary damages for pain, suffering and loss of enjoyment of the amenities of life in the amount of \$500,000.00;
- (b) Special damages and pecuniary damages in the amount of \$25,000,000.00;
- (c) Punitive damages in the amount of \$1,000,000.00;
- (d) Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1;
- (e) Costs of this action on a substantial indemnity scale; and
- (f) Such further and other damages as this Honourable Court deems appropriate.

WHEREFORE the Plaintiff, David Nette, claims against the defendants and each of them:

- (a) General non-pecuniary damages for pain, suffering and loss of enjoyment of the amenities of life in the amount of \$150,000.00;
- (b) Special damages and pecuniary damages in the amount of \$2,000,000.00;
- (c) Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1;
- (d) Costs of this action on a substantial indemnity scale; and
- (e) Such further and other damages as this Honourable Court deems appropriate.

DATED at the City of Edmonton, in the Province of Alberta, this 12th day of June, 2008; and delivered by Fraser Milner Casgrain LLP, Barristers and Solicitors, 2900, 10180 – 101 Street, Edmonton, Alberta, T5J 3V5, Attention: P. Daryl Wilson, Q.C. and Philip Tinkler, Esq., counsel for the Plaintiffs whose address for service is in care of their solicitors as aforesaid.

ISSUED out of the Office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Edmonton, this 12th day of June, 2008.

A handwritten signature in cursive script is written over a circular stamp. The stamp contains some illegible text and a central emblem.

CLERK OF THE COURT OF
QUEEN'S BENCH OF ALBERTA

**NOTICE TO:
GREGORY JOHN STILES
THE SPA AT LIFE STILES**

**ALBERTA COLLEGE AND ASSOCIATION
OF CHIROPRACTORS**

**HER MAJESTY THE QUEEN IN RIGHT OF
ALBERTA (MINISTER OF HEALTH AND
WELLNESS)**

You have been sued. You are the Defendant. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Edmonton, Alberta.

You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiff may get a Court Judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

The plaintiffs' address for service is in care of their solicitors, Fraser Milner Casgrain LLP, 2900 Manulife Place, 10180 – 101 Street, Edmonton, Alberta T5J 3V5.

The defendants, Gregory John Stiles and The Spa At Life Stiles may be served at:

The Spa At Life Stiles
10314-124 Street, Edmonton, AB T5N 1R2
Tel: (780) 453-3538
Fax: (780) 452-6612
Web: www.lifestyles.ca

1884703-1

Action No. 0803 08204

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON**

BETWEEN:

**SANDRA GAY NETTE and
DAVID NETTE**

Plaintiffs

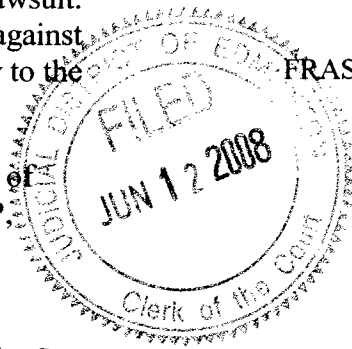
- and -

**GREGORY JOHN STILES,
THE SPA AT LIFE STILES,
ALBERTA COLLEGE AND ASSOCIATION OF
CHIROPRACTORS and
HER MAJESTY THE QUEEN IN RIGHT OF
ALBERTA (Minister of Health and Wellness)**

Defendants

Brought under the *Class Proceedings Act*, S.A. 2003
c.C-15.5

STATEMENT OF CLAIM



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CIVIL MEDIATION PROGRAM
Court of Queen's Bench of Alberta
This civil, non-family action is eligible to proceed to mediation through the Civil Mediation Program. If all parties agree to mediate, they may choose a Roster Mediator and schedule mediation. Alternatively, any party may file and serve a Request to Mediate if the requirements in Civil Practice Note No. 11 are met.
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www.albertacourts.ab.ca/qb/civilmediation