

# Princeton Insurance

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July 3, 2008

RE: *Bedford v Riello* Scope of Practice **UPDATE**

In April 2007, we advised you that the New Jersey Appellate Division had held in *Bedford v. Riello* that “the scope of chiropractic practice in New Jersey is limited to adjustments of the spinal column and does not include the adjustment of other joints” and that although a chiropractor is permitted to perform “recognized ‘chiropractic analytical procedures,’ which may allow a chiropractor to maneuver a patient’s limbs to assist in adjusting the patient’s spine,” a chiropractor is not authorized to “independently adjust extremities” or “a joint, such as a knee joint, which is not an articulation of the spine.”

We further noted that we believed that the Appellate Division had erred in so limiting the legally permissible scope of accepted chiropractic practice and that we had authorized the attorneys handling the matter to request the Supreme Court of New Jersey to review and reverse that decision. Subsequently, the Supreme Court agreed to hear the case, and on June 18, 2008, issued its decision in the matter.

We are pleased to report that the Supreme Court concluded that “the Appellate Division erred in concluding that chiropractors are absolutely prohibited from performing extra-spinal adjustments” and modified that ruling, holding that “N.J.A.C. 13:44E-1.1(a) permits manipulation of articulations beyond those of the spine when there is a causal nexus between a condition of the manipulated structure and the condition of the spine. Whether adjustment of a particular portion of the body is permissible as a ‘related structure’ under N.J.A.C. 13:44E-1.1(a) must be determined and demonstrated by the practitioner on a case-by-case basis, focusing on whether a condition of the adjusted structure bears a causal relationship to a condition of the spine.”

The Court further held that whether such a nexus exists “will be a matter of expert proof” and that expert testimony to the effect that “there is ‘a kinetic linkage’ between all extremities and the spine” will not be sufficient; rather, “the expert must focus on the specific facts of the case and state what it was about the extra-spinal condition that was or was not related either by cause or effect to a spinal condition. Moreover, evidence of documentation of that relationship in the patient’s record will be relevant.”

Finally, the Court also noted that in such cases, “[t]he jury should be instructed that, if it concludes that no condition of the adjusted structure was properly related to a spinal condition, the adjustment would fall outside the scope of chiropractic practice in New Jersey, as defined in the statutes and regulations, and that such violation may be considered evidence that the ...[chiropractor was]... negligent.” Having set forth the standards to be applied, the Court then remanded the *Bedford* case to the trial court to determine whether the defendant’s adjustment of the plaintiff’s knee properly falls within the scope of chiropractic practice as provided by N.J.A.C. 13:44E-1.1(a).

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While we are encouraged by the Supreme Court's modification of the Appellate Division's decision, the Court's interpretation of the scope of chiropractic practice is obviously not open-ended. On the contrary, the Court has made plain that ***in any legal action challenging the propriety of chiropractic care, the treatment of an extra-spinal structure will be considered acceptable if and only if the defendant can prove, through specific, fact-based expert testimony, that the condition of the adjusted structure was, in fact, causally related to the condition of the spine. The Court has also underscored the vital role that contemporaneous documentation of that relationship will play in making that determination.***

We previously advised you that we would not rely on the Appellate Division's decision in *Bedford* to deny coverage for claims allegedly caused by manipulations or adjustments of joints that had been performed prior to that decision which were, at the time they were performed, considered to be legal and within generally accepted standards of chiropractic practice. We also noted, however, that the Appellate Division's ruling in that case represented the law with which we all must comply and urged you not to perform any adjustment or manipulation prohibited by that decision.

The Supreme Court's decision modifying the Appellate Division's ruling is now the governing law concerning the scope of chiropractic practice in New Jersey, and the constraints it imposes on all of us will necessarily govern our coverage decisions concerning claims arising out of such treatment. Your policy with Princeton Insurance defines Professional Services as those services performed that are within the generally recognized and accepted scope of your specialty. The policy also excludes from coverage acts which violate any law, statute or regulation, i.e., any treatment that the Supreme Court's decision does not allow. However, we also believe that it would be unfair to utilize the Court's decision as a basis for denying coverage for any claim for injury caused by treatment that was provided prior to this decision being issued and which was, at the time it was performed, considered to be legal and within generally accepted standards of chiropractic practice. Therefore, we will not utilize this decision to deny coverage for any such claim.

We remain committed to providing you with the same high level of service you have come to expect from us.



John O'Farrell  
Vice President of Claims