

Da Vinci Group Goals: An In-depth Review



Colleagues,

Over the better part of the past two months there has been a series of ongoing developments with respect to the ICA, the CCE and the re-recognition process involving a United States Department of Education (USDE) advisory panel known as the National Advisory Committee on Institutional Quality and Integrity (NACIQI). The NACIQI panel, in concert with staff from the USDE, reviews the compliance of all USDE approved accrediting agencies with the criteria for recognition developed by the USDE. All USDE approved accrediting agencies, from the regional accrediting bodies representing thousands of institutions to specialized accrediting agencies such as the CCE representing less than two dozen institutions or programs, go through this process.

More recently, on November 21 and November 25, 2013 the member organizations of the Da Vinci Group were invited to participate in a meeting to discuss the Da Vinci Group's response to the NACIQI panel. Out of these meetings emerged several important developments; first a decision as to direction of the Da Vinci Group relative to oral testimony at the December NACIQI hearing and second a clarification of the differences between the position of the Da Vinci Group and the ICA with respect to the renewal of CCE by the Secretary of Education.

Da Vinci Group Perspective	ICA Perspective
Express continued concern over CCE governance processes and structures	Express continued concern over CCE governance processes and structures
Advocate for one-year renewal of CCE or a one year deferral with continuing recognition	Advocate for renewal of CCE without reference to the time period

In the next few paragraphs I would like to sort these issues out a bit and if I am lucky perhaps shed some light on the current situation.

We will need to peel this onion back one layer at a time to get to the heart of these matters!

Layer One-The CCE, NACIQI and the USDE

December 2011

The CCE appeared before the NACIQI panel seeking renewal as an institutional and programmatic accrediting agency addressing programs that award the D.C. degree in December 2011. The CCE was one of many agencies appearing before the panel over two days of hearings. The CCE hearing involved a

report from the staff of the USDE detailing their assessment of CCE's compliance with the criteria for recognition as well as testimony from the CCE and questioning of the USDE staff and the CCE by members of the NACIQI panel. In addition testimony was offered by 25 "third-party" spokespersons representing organizations such as the ICA, ACA, ACC and others. Two groups spoke in support of the CCE and 23 expressed concern about the CCE. Unfortunately only 3 groups referenced areas of the criteria for recognition that were under consideration.

Following the hearing the NACIQI forwarded their recommendation to the Secretary of Education suggesting that CCE be required to respond to more than forty areas of deficiency developed by the staff. The panel added a concern related to section 602.13(b) of the recognition criteria. This additional element would require CCE to demonstrate that it adequately reflected the body of interest of the chiropractic community.

March 2012

The Undersecretary of Education, Mr. Ochoa, advised the CCE that it would be expected to report back to the USDE on all of the areas identified during with hearing with the exception of the issue raised by the NACIQI panel regarding reflecting the interests of the profession. The concerns expressed by the profession during the December hearing, reflected in the recommendation related to section 602.13(b), were essentially dismissed as representing a minority perspective in the profession. Per the procedures of the USDE the CCE was given a one-year extension on its authorization as an approved agency to address the 40-plus concerns outlined by the USDE.

November 2013

The USDE released its report to the public as well as to the NACIQI panel detailing their analysis of CCE's response and attempts to come into compliance relative to the concerns expressed in March 2012. The CCE was found to have complied with all of the outstanding criteria for recognition and the staff offered a recommendation that the agency's recognition be renewed for a period of three years.

December 2013

The NACIQI will hold a hearing on the status of the renewal of CCE as an accrediting agency for institutions and programs awarding the D.C. degree in mid-December 2013. At this hearing the only realistic options the panel will have is to renew the agency for a given number of years or continue on to the process of limitation, suspension or termination of recognition.

Layer Two-ICA, CCE, the Summit and the Da Vinci Group

In 2007 the ICA was a founding member of The Summit, a working group of more than forty organizations and businesses associated with the profession that began to work together in the early days of the development of the Patient Protection and Affordable Care Act (PPACA).

March 2012

The ICA responded with shock and dismay at the decision of Undersecretary Ochoa to dismiss the input of the NACIQI with respect to the community of interest (602.13(b)) as being the reflection of a minority view in the profession. Others responded in similar fashion.

May 2012 The Da Vinci Group

Following the actions detailed in Undersecretary Ochoa's March 2012 letter to CCE relieving them of the need to comply with section 602.13(b) a call was made for a meeting of all concerned individuals and groups to meet in Atlanta on May 19, 2012 to explore the development of a coalition to pursue a coordinated response to the activities of the CCE found to be of concern. The Da Vinci Group is what emerged following the meeting of May 19. ICA provided the initial funding and impetus for the development of this coalition. Since its inception the Da Vinci Group has never sought termination of the recognition of the CCE by the USDE. Rather it has sought reform of the by-laws and Standards related to governance, use of the term subluxation and the exclusion of drugs and surgery from the education and practice of chiropractic. These continue to be the prime areas of concern on the part of the ICA as well.

November 2013

From The Summit, a subset of leadership known as the Summit Roundtable emerged. The Roundtable includes the Summit representatives of the ACA, ICA, ACC and COCSA together with the presidents of the ACA, ACC, CCE, COCSA, FCLB, ICA and the NBCE. In Atlanta, in October 2013, the Roundtable met with the President and Chair of the CCE. At that time the ICA insisted that the issue of CCE's governance structure be taken up by the Roundtable. An offer was made by the CCE leadership to engage in a dialogue regarding the concerns of ICA and several other Summit Roundtable participants, regarding the governance structure of the CCE. It was agreed that this matter would be brought to the full Summit at its next meeting in November in Seattle.

At the November Summit meeting a request was made of the ICA to participate with the members of the Summit Roundtable in a meaningful consideration of the governance of the CCE with the leadership of the CCE. President McLean agreed to participate but also advised ICA will continue to express ongoing concerns over the issue of governance.

Layer Three-ICA, The Summit and Summit Roundtable, The Da Vinci Group and the CCE

The most important developments involving these groups have come about over the course of the past two months beginning with the meeting of the Summit Roundtable and the CCE that led to the willingness on the part of the CCE to consider discussions of its governance structure.

Absent this development there would be little or no need for the information such as offered in these writings. But in the presence of such an offer ICA was left with a choice of either accepting the offer for constructive engagement or denying the same. Accepting it meant active engagement in future dialogue and rejection of the offer meant going before the NACIQI panel having refused an opportunity for deeper engagement, on a subject ICA raised, and then complaining to the NACIQI panel that the views

of ICA are not being considered by the CCE. In accepting the offer for dialogue on the governance structure of CCE ICA agreed to modify its position from continued deferral to renewal of the agency.

The movement of these discussions, in mid-November from the Summit Roundtable to the floor of the Summit meeting, was an important moment of transition as it put the offer of the CCE in front of all of the members of The Summit. No longer was this a contained discussion in a limited setting, this was a very public and very widely acknowledged offer to conduct discussions in a good faith manner with the ICA AND with all of the other Summit partners sharing concerns about the governance of the CCE. Realizing that there are parties with concerns about the CCE beyond the ICA, ICA President Michael McLean has personally spoken with the leadership of the CCE about expanding the degree of involvement in the pending governance dialogue to include the Da Vinci Group.

Layer Four- The CCE and the Report of the Staff of the USDE

Subsequent to the Summit meeting in Seattle, to the decision of the ICA with respect to its testimony at the December 2013 NACIQI and to the criticism of the ICA, the report of the USDE Staff on the input provided by the CCE was released.

The USDE staff found that the CCE had answered each and every one of their 40-plus concerns in an adequate fashion, they indicated that they have NO outstanding concerns and recommended a renewal of the agency for a period of three years.

Some of our colleagues have expressed their view that ICA has failed to follow through on the matters of the use of subluxation terminology and the exclusion of drugs and surgery from chiropractic. Nothing could be further from the truth. The problems lies in the fact that the ONLY thing the USDE will respond to are the criteria for recognition of an agency. Period. For them it is like asking your accountant to change a local building code! She may be totally supportive of the change you desire, may think the change you desire is great public policy and may think the change you want to see is sheer genius, but it simply has no relevance to her role as your accountant.

The USDE said as much in its recent report:

The comments in opposition to the agency were primarily received from practitioners. They were based largely upon a long-standing philosophical disagreement within the chiropractic community and continue a pattern of oppositional comments that have been received by the Department each time this agency has been reviewed for recognition over the years. This debate centers largely on whether it is appropriate for chiropractors to dispense drugs or perform surgery. Generally, the oppositional commenters feel that CCE is moving the profession toward more medically-based training (and therefore practice) and strongly oppose that approach. The opposing comments generally centered around 1) the elimination of the term "subluxation" from the agency's standards; 2) the removal from the standards of the specification "without drugs or surgery" when describing chiropractic treatment; and 3) opposition to the Doctor of Chiropractic Medicine or equivalent degree.

The Federal Register Notice states that comments are to address only the Criteria for Recognition that are under consideration.”

This makes the emphasis on governance all the more important. With little or no expectation of support in this renewal process by USDE for our conceptual concerns about the profession the need to participate more fully in the governance of the agency looms larger and more important.

Layer Five- The ICA and the December NACIQI Hearings

It is the intention of the ICA to attend and offer comment to the NACIQI panel as follows:

1. The ICA appreciates the opportunity to offer input to this process
2. The ICA continues to have serious concerns about the organization and activity of the CCE especially with respect to governance and broad representation of the profession at the agency
3. The ICA acknowledges the willingness of the CCE to engage in meaningful discussions with respect to reforming the governance of the agency
4. The ICA looks forward to reporting back to the NACIQI at the next available opportunity on the progress of these discussions or to again reiterate our concerns regarding governance of the agency.
5. THE ICA supports renewal of the agency.

Layer Six-The ICA and the Da Vinci Group

On November 21, 2013 an open meeting of the Da Vinci Group was held. The meeting was artfully chaired by Dan Lemberger, D.C., Chair of the Da Vinci Group Steering Committee. At that time the report of the USDE staff with respect to renewal of the CCE was discussed. In addition, analyses of the present circumstances completed by Christopher Kent, D.C. and myself were highlighted. From these writings and the subsequent discussions, the following points emerged:

Re: Continued recognition of CCE

Dr. Kent: “First and foremost, I am not aware of any organization that has asked that CCE’s recognition be withdrawn at this time.”

Dr. Clum: “...no one from the DaVinci Group has called for the revocation of the approval of the USDE but rather some have requested a deferral on the award of continued recognition.”

Re: The ability of the approval of the CCE to be extended on a deferred basis:

Dr. Kent: “For example, the Foundation for Vertebral Subluxation has asked for a deferral. This means that a decision on CCE’s renewal petition would be deferred for one year, during which time CCE would retain recognition.”

Dr. Clum: “If you read the letter of March 2012 from Undersecretary Ochoa you will appreciate that CCE's continued recognition must be decided by NACIQI in December 2013 [as the next step

in the renewal process that must be completed by the Secretary no later than March 2014.] The only options at this point are continued recognition or removal of recognition. Continuing the agency's standing on its extension of renewal basis is unavailable as an option."

Please note: Dr. Kent also noted that the Secretary of Education does have the authority to extend this window beyond 12 months in extraordinary situations. As the USDE staff finds the CCE to be 100% in compliance there are no extraordinary circumstances present.

Re: The impact of non-renewal of the CCE by the Secretary of Education and student loans:

Dr. Kent: "All US chiropractic colleges, except Life-West, are regionally accredited as well as holding CCE accreditation for their DC programs. Regionally accredited institutions are eligible for Title IV (student loan) funds.

The suggestion that loss of CCE accreditation would mean the end of student loans for any school other than Life-West is not true. Life-West is currently the only college which holds institutional accreditation with CCE. Furthermore, Brian Kelly, president of Life-West, stated that they would pursue regional accreditation. Even in the highly unlikely event that CCE lost status with the Department of Education, there would be a transition period during which they could seek another accreditor."

Dr. Clum: "Student loans. Life West enjoys its Title IV participation by virtue of its accreditation by the CCE. But all other programs also receive student loan program participation approval as a result of their relationship with the CCE. This was related in the Staff Report regarding CCE's continuing recognition:

"The Council on Chiropractic Education is recognized as a specialized accreditor. It currently accredits 15 doctor of chiropractic programs at 18 sites in 13 states. Of these programs, CCE accredits one program that is offered through a single-purpose chiropractic institution. The agency's one single-purpose chiropractic institution uses the agency's accreditation to establish eligibility to participate in the Title IV HEA programs. Accreditation by the agency also allows its 15 programs to participate in non-Title IV programs offered through the Department of Health and Human Services (HHS)." (Emphasis added)

Therefore the failure of CCE to be recognized on a continuing basis would impact all of chiropractic education. It would have its greatest impact on Life West however."

Re: The impact of non-renewal of the CCE by the Secretary of Education and the ability to issue licenses by state boards:

Dr. Kent: "If CCE were to lose Department of Education recognition, state boards would not disband. State boards existed long before CCE! Furthermore, in reviewing the list of state requirements forwarded to me by IFCO, it appears that if CCE were to lose Department of Education recognition, it would have very little direct impact on licensure eligibility.

Iowa, NH, Pennsylvania, and perhaps Utah would be affected. I say “perhaps” for Utah because the language is ambiguous and poorly drafted.

Most states requiring CCE accreditation for licensure do not have language requiring Department of Education recognition of CCE. CCE could continue to operate, as it did before it was recognized by the then DHEW. In fact, an agency must have two years of “accreditation activity” before it can apply for Department of Education recognition.

Here is an FCLB link to the various boards if you want to check out what the laws actually say.

<http://www.fclb.org/boards>

Here is a link to an Excel spreadsheet summarizing access to licensure requirements. It was prepared for IFCO. Caveat: There may have been some minor changes since this was prepared:

<http://www.sendspace.com/pro/6yzdux>

Another claim is that existing licensees would not be able to renew their licenses “if CCE went away.” First, there is a significant difference between CCE losing recognition by the Department of Education, and CCE shutting down or “going away.” As previously mentioned, CCE could, and undoubtedly would, continue to operate.

Many DCs (myself included) graduated from chiropractic college before CCE existed, or before it received federal recognition as an accrediting agency. There are also DCs in practice who graduated from schools that are no longer in operation. There is no problem with license renewal provided CE and other requirements are met.

Dr. Clum: “Dr. Kent provided an Excel file offering an analysis of various state laws/regulations with respect to the impact of the CCE not receiving continuing recognition. [Dr. Kent did offer a caution about the currency of the file and its contained information]

For example the file cites a regulation from the California Code of Regulations that is superseded by the language of Section 4 of the Chiropractic Initiative Act and a change that was made by the California electorate in November 1976.

In the absence of CCE as a USDE approved agency many states will need to re-operationalize their institutional approval process that have been moth-balled or eliminated since the advent of the CCE. This holds the potential for delays in licensure of new graduates and a return to graduates of one school or another being able to practice in one state or another in a very harmful and patchwork manner.

License renewals by DCs--I agree with Dr. Kent this is not a matter that is impacted in any way by the CCE situation.”

Re: Drugs in Chiropractic

Dr. Kent: “Everyone seems to be missing the clever maneuver to sneak in non-prescription drugs. If the Cartel promoted the inclusion of OTC drugs in the scope of chiropractic practice, there would be controversy. However, by mentioning only prescription drugs, they quietly endorsed, de facto, the inclusion of OTCs. When the OTC issue is brought up in back rooms, dissenters are reportedly told that unless OTCs are included in our scope of practice, DCs will not be permitted to recommend or dispense supplements. This is simply untrue. A scope of practice can be crafted that includes nutritional supplements without including OTC drugs. This was done here in NJ.<http://www.state.nj.us/lps/ca/chiro/A2029.pdf>

For an example of over the counter drugs, see:

<http://www.countyofsb.org/hr/pdf/benefits/04FlexOTCDrugListing.pdf> I was unable to find a complete listing of all OTC drugs available legally in the US, but this list from Santa Barbara County, is representative.

In some cases, the only difference between an OTC and prescription drug is dosage and labeling. Some drugs formerly requiring a prescription are now available OTC. Chiropractic is not drugless if over the counter drugs are included in the practice of chiropractic. A statement excluding only prescription drugs does not make chiropractic drugless.”

This commentary from Dr. Kent, while important, is related to an action of The Summit rather than anything to do with the NACIQI and the criteria for recognition of an accrediting agency. No part of this discussion is pending before NACIQI. The statement from the website of The Summit reads as follows:

“The drug issue is a non-issue because no chiropractic organization in the Summit promotes the inclusion of prescription drug rights and all chiropractic organizations in the Summit support the drug-free approach to health care” [Emphasis added]

Dr. Clum: “Use of drugs, over-the-counter or by prescription by DCs. The criteria of the Department of Education do not address this subject and as a result it is not a matter of concern to them. See the following comment from the Staff Report:

"The Federal Register Notice states that comments are to address only the Criteria for Recognition that are under consideration." and:

"Staff notes that the agency also provided additional information addressing issues raised by third party commenters regarding the alleged removal of “subluxation” from the standards and the “medicalization” of chiropractic education. While these issues are not relevant to the Criteria for Recognition, the information provided by the agency is helpful in shedding additional light on the long-standing dispute within the profession." [Emphasis added]

There was agreement between Drs. Kent and Clum on the following:

1. The opinion of the staff will be given great deference in these matters

2. There are few arguments—based on the criteria for recognition by the Secretary—upon which to base a challenge to the CCE’s renewal
3. It is possible that a shorter period of renewal, less than the three years recommended by the staff, could be encouraged

So the debate rages on. I urge you, as Dr. Kent has, that we need to get down to the facts of these matters to understand them and then to deal with them. The bottom line is simple—**many of us want relief from our frustrations with the CCE from a government agency that does not have the power or desire to provide that relief.**

We now find ourselves with an offer to dialogue about governance and a history that says be very cautious. If we choose not to take the opportunity for dialogue we will have further marginalized our views. If we enter the dialogue we have a potential for change. Plain and simple: ICA has chosen to stay in the discussions.

Gerard W. Clum, D.C.