



LIFE UNIVERSITY LAWSUIT AGAINST CCE

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LIFE UNIVERSITY, INC.)
Plaintiff,)

v.)

THE COUNCIL ON)
CHIROPRACTIC)
EDUCATION, INC.; THE COUNCIL)
ON CHIROPRACTIC)
EDUCATION COMMISSION)
ON ACCREDITATION, through)
its)
Chair JOSEPH BRIMHALL; and)
PAUL D. WALKER, individually)
and)
in his official capacity as)
Executive Vice President of the)
Council on Chiropractic)
Education)

Defendants.

**CIVIL ACTION
FILE NO. _____**

**COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE
RELIEF AND DAMAGES**

COMES NOW Plaintiff Life University, Inc. ("Life" or "the University"), and for its Complaint against Defendants The Council on Chiropractic Education, Inc. ("CCE"), The Council on Chiropractic Education Commission on Accreditation ("COA") through its Chairman Brimhall and Paul D. Walker ("Walker"), shows this Court as follows:

NATURE OF THE CASE

1.

This case is brought to correct the actions of an accrediting agency, CCE, and its Executive Vice President, Walker, who have run amok. CCE has acted ultra vires by (a) amending its Bylaws in such a manner that they conflict with its

Articles of Incorporation ("Articles"); (b) applying procedures that conflict with those prescribed in the Bylaws; and (c) adopting Standards for Doctor of Chiropractic Programs and Institutions ("Standards") that strongly favor one major branch of chiropractic philosophy at the expense of the other major branch of chiropractic philosophy, despite contrary representations both to its members and to the U.S. Department of Education ("USDE"). CCE and Walker have violated Life's common law due process rights by conducting a flawed and biased process for reaffirmation of accreditation calculated to cause the wrongful denial of Life's reaffirmation. In so doing, CCE has violated its contract with Life, and CCE and Walker have tortiously caused a mass migration of students from the largest school of chiropractic in the world. Finally, CCE now has compounded the problem by refusing to reconsider Life for accreditation in a timely manner, despite prior assurances it would do so.

PARTIES

2.

Life, which was founded in 1974, is a private, nonprofit, nonsectarian, coeducational institution of higher education serving a diverse population. The University offers first professional, graduate, and undergraduate degree programs in the broad fields of science, health care and business, and provides a variety of technical and continuing education programs. Life's College of Chiropractic provides an educational and clinical environment that prepares Doctors of Chiropractic to be primary health care clinicians and is committed to providing leadership in the chiropractic profession through education, patient care, clinical experience, and research. Although its primary mission is educational, the University also encourages and supports scholarly studies and has a strong commitment to public service. Life is accredited by the Southern Association of Colleges and Schools ("SACS") and is certified by USDE to participate in federal student aid programs authorized by Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 as ("Title IV") et seq. From 1985 until October 20, 2002, Life's College of Chiropractic was also accredited by CCE, and grew into the largest school of chiropractic in the world.

3.

CCE is a nonprofit corporation incorporated under the laws of the State of Wisconsin, with its principal place of business located in Scottsdale, Arizona.

4.

COA is the arm of CCE that interprets and enforces CCE's Standards of Accreditation. CCE, through the COA, accredits both institutions and doctor of chiropractic programs. It is the only accreditor of chiropractic education programs recognized by the U.S. Department of Education. Joseph Brimhall is domiciled in Utah and is named in his official capacity as Chair of the COA.

5.

Walker is domiciled in New Mexico and is sued individually and in his official capacity.

JURISDICTION AND VENUE

6.

This court has jurisdiction over the subject matter of this action under one or more of the following statutory provisions:

(a) 28 U.S.C. § 1331, in that this action arises under the Constitution and laws of the United States, including, but not limited to, the Higher Education Act Amendments of 1992, as amended, 20 U.S.C. § 1001 et seq. and the Due Process Clause of the Fifth Amendment to the United States Constitution;

(b) 20 U.S.C. § 1099b(f), which provides exclusive jurisdiction in the United States District Courts for claims brought by institutions of higher education against accrediting agencies recognized by the Secretary of Education and involving the termination of accreditation of such institution;

(c) 28 U.S.C. § 1332, in that there is complete diversity of citizenship between Life and the Defendants and the amount in controversy between Life and the Defendants exceeds the sum or value of \$75,000, exclusive of interest and costs; and

(d) 28 U.S.C. § 2201(a), which provides jurisdiction over actions for declaratory relief.

(e)

7.

This Court has jurisdiction over the person of the Defendants.

8.

Venue for this action lies in this judicial district and division under 28 U.S.C. § 1391(b)(2) and LR 3.1(B)(3), NDGa., based on the fact that a substantial part of the acts giving rise to the claims asserted herein occurred in the Northern District of Georgia.

FACTS Background

9.

Within the chiropractic community, there have long been two primary philosophies on the scope of chiropractic. Adherents to the conservative philosophy believe the scope of chiropractic care should be limited to the traditional diagnosis and adjustment of displacements of spinal segments or other musculoskeletal structures. According to this viewpoint, any form of allopathic or homeopathic pharmaceutical prescription or other ancillary treatment is the practice of medicine and, therefore, outside the scope of chiropractic. This philosophy is promoted by the International Chiropractors Association ("ICA") and the National Association for Chiropractic Medicine ("NACM"). Life's curriculum has traditionally been based on this conservative philosophy.

10.

Proponents of the competing liberal philosophy based on a medical model, believe the doctor of chiropractic should go beyond the diagnosis and treatment of displacements of spinal segments or other skeletal structures and utilize ancillary treatment methods consistent with the role of a primary care physician (i.e., acting as a primary care physician but without any medical school training or residency). In this capacity, the doctor of chiropractic makes the preliminary diagnosis for all patient complaints and either treats the patient directly, or refers the patient to the proper branch of medicine for treatment. This latter philosophy is promoted by the American Chiropractic Association ("ACA").

11.

ACA began operation as the National Chiropractic Association ("NCA"). NCA created its Committee on Educational Standards ("CES") in 1935, which first provisionally approved schools in 1941. In 1964, NCA became the ACA; subsequently the CES was continued and supported by the new ACA organization.

12.

In 1971, ACA divested CES, which was then separately incorporated in the State of Wisconsin as CCE. In 1974, the U.S. Commissioner of Education, predecessor to the U. S. Secretary of Education, listed CCE as a nationally recognized accrediting agency. This recognition allowed schools of chiropractic accredited by CCE to disburse federal student aid pursuant to Title IV of the Higher Education Act of 1965, as amended. The recognition of CCE by USDE remains in effect to the present.

13.

CCE is the only accreditor of chiropractic education programs in the United States. At least thirty-five states have statutes requiring a chiropractor to have graduated from a CCE-accredited school in order to be eligible for a license to practice in that state. To Life's knowledge, no school in the United States offers a chiropractic program that is not accredited by CCE. As such, CCE accreditation is critical to the survival of schools of chiropractic.

14.

From 1971 to 1998, CCE was organized to include (a) a Commission on Accreditation ("COA"), which interpreted and applied CCE Standards in making school accreditation decisions, and (b) a Board of Directors ("BOD") which adopted, interpreted, and applied CCE Bylaws, adopted Standards, selected members of the COA, adopted the budget, and oversaw CCE staff operations. The BOD consisted of one representative from each of the 16 accredited schools, the members of the COA and two other public members.

15.

A massive reorganization of CCE took place in January 1999. In contravention of the CCE Articles of Incorporation ("Articles"), the BOD drastically altered the BOD's composition, removing the representation of each school, and creating a

body made up of seven institutional representatives, not necessarily from seven different schools.

16.

The BOD also created a new body, called the "Corporation," which was composed of one representative from each institution. The "Corporation" was given the authority to decide matters pertaining to incorporation, to revise the Bylaws, and to elect BOD members.

17.

The newly-created Corporation selected a new ultra vires BOD. While the previous BOD had been divided nearly equally between conservatives and liberals, the new, ultra vires BOD was dominated by liberals.

18.

Even with these changes in place, the new, ultra vires BOD chose to usurp the authority of the Corporation by deciding matters pertaining to incorporation and revising the Bylaws. See paragraphs 67-76 below.

Foundation for the Current Action

19.

The 2002 CCE Standards, like those dating back at least to 1998, provide that "CCE does not seek to define or support any philosophy regarding the practice of chiropractic, nor are the CCE standards intended to support or accommodate any philosophical position. These are the responsibility of the profession and each educational program and institution, giving consideration to requirements of the jurisdiction within which the professional may practice, professional associations, and in the final analysis, the practitioner's own philosophy of chiropractic." In spite of CCE's pledge not to seek to define or support any philosophy regarding the practice of chiropractic, CCE recently has adopted the stated goal of supporting "accredited programs and institutions as they educate and train a competent doctor of chiropractic who will provide quality patient care and serve as a primary care physician." Goal 3-a, January 2002 Standards.

20.

CCE also has proposed new standards to be debated during its January 2003 BOD meeting that would require schools to include coursework in physiotherapy as a degree requirement and to add language referencing a doctor of chiropractic as a physician, in order to further CCE's agenda of completely transforming the chiropractic practice into a practice of liberals only. Announcement: Possible Revisions of the CCE Standards for Chiropractic Programs and Institutions, December 12, 2002. This is the same standard embraced by ACA, CCE's former parent, which conflicts with the chiropractic philosophy espoused by ICA and Life.

21.

The effort to revoke Life's accreditation by any means possible was, in part, calculated to ensure the incapacitation of the largest economic competitor and educator of conservative chiropractors, and, in part, based on the animus of Walker toward Life.

22.

Walker's animus toward Life erupted in 1997 through 2000, when Life representatives, including its former President, Dr. Sid Williams, testified before the National Advisory Committee on Institutional Quality and Integrity ("Advisory Committee") in opposition to CCE's new policy requiring schools to adopt a higher GPA admissions standard. Life representatives testified that this policy was not supported by any relevant education-related data, was made solely because CCE had determined that this was the same GPA requirement purportedly imposed by many medical schools, and would have a disparate impact on minority students. Life's testimony frustrated and angered Walker and then-COA Chair Dr. Charles Sawyer. As a result of Life's testimony, the Advisory Committee delayed implementation of CCE's GPA policy and required CCE to study and justify its proposed GPA requirement.

23.

During one heated exchange on the topic between Dr. Williams and Walker following Life's testimony, Walker was both threatening and prescient, writing, "attention to your personal comments about me will await a more propitious moment, and possibly a more effective avenue." January 11, 2001 Memorandum from Walker to Dr. Williams. (emphasis added). Indeed, Walker's "more effective avenue" appears to have been pursued successfully with the denial of reaffirmation of Life's CCE accreditation.

24.

Walker recently confirmed his animus against Life when he informed Life's current President, prior to his interview with Life, that Life never should have lost accreditation, but that such action was due to "that demagogue," Dr. Williams.

Actions of the COA Regarding Life University

25.

At its June, 1999 meeting, the COA issued a confidential sanction of notice to Life, alleging concerns with certain aspects of Life's program. The confidential sanction of notice was continued at the January, 2000 COA meeting, and a focused site-visit was ordered.

26.

Following the focused site-visit, the COA removed the confidential sanction of notice in June, 2000, recognizing and supporting Life's positive efforts to respond to COA concerns, and finding no other remaining concerns. June 19, 2000 letter from Joseph Brimhall to Dr. Williams and Dr. Kirk. Exhibit "1", attached under seal.

27.

Life applied to have its CCE accreditation reaffirmed and submitted its self-study to COA in October, 2000. A site-visit team ("2001 Team") visited Life April 2 through 5, 2001, and issued a report, to which Life responded on May 22, 2001.

28.

Six weeks before the 2001 Team site visit, a disgruntled former Life faculty member, Dr. Steven Petty, had filed a complaint against Life with CCE on February 19, 2001 ("the Petty complaint"). Life timely responded to the Petty complaint on April 25, 2001.

29.

Life's reaffirmation was considered at COA's June 2001 meeting. After reviewing the reaffirmation materials and holding a public session in which Life officials and the site-visit team were asked follow-up questions regarding reaffirmation, the COA met in executive session.

30.

During the executive session, the COA decided to defer a decision on reaffirmation of accreditation and imposed the sanction of probation upon Life. CCE immediately posted the decision on its website.

31.

Unknown to Life, the COA had also considered the Petty complaint during the June, 2001 COA meeting, and decided to appoint an ad hoc committee to investigate that complaint. Life only learned of the ad hoc committee's appointment three months later after Life inquired about the status of the Petty complaint in September, 2001. On information and belief, Life was placed on probation as a result of the COA's consideration of the Petty complaint, although Life was provided no opportunity to respond to any questions or concerns the COA had as a result of that complaint.

32.

The COA revisited the reaffirmation issue at its December, 2001 meeting, again deferring the decision on reaffirmation and continuing the sanction of probation. In advising Life of these decisions, the COA Chair indicated the COA's appreciation of Life's efforts to resolve accreditation issues, and informed Life of another site-visit planned to understand and verify the extent of Life's implementation of corrective actions in response to the COA's concerns. January 24, 2002 Letter from Brimhall to Dr. Williams, Exhibit "2", attached under seal.

33.

The CCE BOD also met in December, 2001, substantially revising its Policy Manual and Standards. Among the changes was a complete revision of the

appellate process that greatly limited the appeal rights of schools whose accreditation was revoked. This revision was presented to the BOD for consideration as a new policy, rather than as a revision to an existing policy. Significantly, the appeal procedures were revised while Life was on probation, and while no school other than Life was potentially in a position to appeal any COA decision denying reaccreditation.

34.

A focused site-visit team ("2002 Team") visited Life April 1 through 4, 2002. Leading the 2002 Team was Dr. William DuMonthier, Dean of Student Academic Affairs at Palmer College of Chiropractic West. Palmer College of Chiropractic is a close geographic and economic competitor of Life, having recently opened a branch campus in Port Orange, Florida. DuMonthier's presence and role on the 2002 Team was in direct violation of CCE Policy BOD-18, which states, "Members of the Council on Chiropractic Education (CCE) Board of Directors, Commission on Accreditation (COA) and Corporation; site visit team members; CCE Executive Office staff; other CCE representatives; and consultants retained by CCE; shall not engage in activities that would result in a conflict of interest, or the appearance of a conflict of interest, with their CCE-related duties." CCE Policy BOD-18, Exhibit "3". After reaffirmation of Life's accreditation was denied, Palmer College of Chiropractic solicited transfer students from Life.

35.

Also on the 2002 Team was Sandra Mooney, Chief Financial Officer at Texas Chiropractic College, an economic competitor to Life. Mooney's presence and role on the 2002 Team was in direct violation of CCE Policy BOD-18. Once the decision to deny Life's reaccreditation was announced, Texas Chiropractic College aggressively solicited transfer students from Life.

36.

Also on the 2002 Team as an observer was Dr. Laura Weeks, Vice President of Academic Affairs at Sherman College, a close geographic and economic competitor of Life. Although ostensibly serving as an observer, Dr. Weeks participated in the site-visit in the manner of a regular team member. Her presence and role was in direct violation of CCE Policy BOD-18.

37.

Also on the 2002 Team was Dr. Sawyer, who had been COA Chair when Life testified against CCE before the Advisory Committee. Dr. Sawyer's presence and role was therefore in direct violation of CCE Policy BOD-18.

38.

Four days after the departure of the 2002 Team, the site-visit team investigating the Petty complaint ("Petty Team") visited Life April 8 through 11, 2002. The Petty Team was comprised of Dr. Lance Blackshaw (New York Chiropractic College), Dr. Ann Carpenter, (NYCC graduate), Dr. David Wickes (National University of Health Studies), and Dr. Glenn Bub (Logan College of Chiropractic, an economic competitor of Life).

39.

No report of the Petty Team's visit was ever released or provided to Life. However, Life was assured that the Petty complaint would not be considered at Life's June, 2002 accreditation status review meeting with CCE but would be handled separately. June 2, 2002 e-mail from Joseph Brimhall to Dr. Kirk.

40.

The COA met on June 6, 2002, and adopted a new Accreditation Manual. The 2000 COA Accreditation Manual prohibited site-visit team members from participating in COA decisionmaking on schools they had visited. The new 2002 Accreditation Manual removed that prohibition, an amendment the COA utilized the very next day when considering Life's accreditation. 2000 COA Manual.

41.

The COA met with Life on June 7, 2002. COA members present at the meeting were Chair Joseph Brimhall; Dr. Weeks, a 2002 Team observer from Sherman; Dr. Lester Lamm, a member of both the 2001 Team and the 2002 Team from Western States; Dr. Ann Carpenter, a member of both the 2001 Team and the Petty Team; Dr. DuMonthier, Chair of both the 2001 Team and the 2002 Team from Palmer; Dr. Ronald Evans, a private practitioner; Dr. Stephan Haslund, an observer on the 2001 Team and Dean of Student Services at Texas Chiropractic College, an economic competitor of Life; Dr. Anthony Onorato, Associate Dean of Academic Affairs of the University of Bridgeport College of Chiropractic; Dr. Howard Simmons, and Dr. Michael Stutts, from East Virginia Medical Center. Also present were Defendant Walker and Dr. Charles Sawyer, who was not a COA member but had been on the 2002 Team, had been Chairman of the COA and testified on behalf of CCE in the same Advisory Committee hearings in which Life representatives had testified against CCE's GPA proposal, and had admitted during his testimony that CCE had not reviewed any education-related data in reaching its decision to raise the GPA standard.

42.

During the status review meeting, the COA asked questions of Life representatives. The COA then excused Life's representatives and convened an executive session to deliberate. Members of the 2001 Team (DuMonthier, Lamm, Carpenter and Haslund), the 2002 Team (DuMonthier, Sawyer, Lamm and Weeks), and the Petty Team (Carpenter) were allowed to participate in the decisionmaking, a clear violation of the 2000 COA Manual. Furthermore, representatives of economic and geographic competitors of Life (Haslund, Weeks and DuMonthier) were allowed to participate in the decisionmaking, a clear violation of CCE Policy BOD-18.

43.

Sometime during the same weekend meeting, the COA also debated the resolution of the Petty complaint, even though Life still had not seen the report of the Petty Team and had not had any opportunity to respond to such a report.

44.

Life was informed on June 10, 2002, that the COA had denied reaffirmation of Life's accreditation. The COA's denial letter did not contain any findings of fact. June 10, 2002 letter from Joseph Brimhall.

45.

Section 602.17(f)(1) of USDE regulations for recognized accreditation agencies requires that, subsequent to the review of the site-visit team's report and any other appropriate information from other sources, the accrediting agency must provide the institution with a detailed written report that assesses the institution's compliance with the agency's standards, including areas needing improvement. While COA did provide Life with a list of standards allegedly out of compliance, there was no report providing the factual predicate for such determinations.

46.

Even though the COA's decision would not become effective until the conclusion of any appeal activities, COA and CCE determined that the decision would be made public immediately. No reasons were given for the decision to make the denial immediately public. A public announcement was made that day and posted on the CCE website.

47.

Several competing chiropractic schools, including Logan, Texas Chiropractic, Palmer and Parker immediately posted information on their websites, offered financial incentives and sent representatives and even buses to Marietta to solicit transfers and entice students to transfer from the proposed unaccredited program at Life.

48.

Section 602.25 of USDE's regulations governing accrediting agencies provides, "The agency must demonstrate that the procedures it uses throughout the accrediting process satisfy due process."

49.

Without ever being afforded any opportunity to review or to respond to the Petty team's report, Life was notified of the results of the Petty complaint deliberations on June 26, 2002. June 26, 2002 letter from Joseph Brimhall to Dr. Williams. While the denial of reaffirmation rendered the Petty complaint moot, the matter was left open for further action at a later date.

50.

On June 13, 2002, COA notified Life that Life had waived confidentiality of the appeal process and CCE would feel free to release information. Despite requests from Life, neither COA nor CCE stated what facts led to this decision.

51.

On June 13, 2002, Life wrote to Dr. Brimhall, noting inconsistencies between the rules applicable to appeals in CCE Policy COA-8 and in the 2000 COA Manual, and requesting additional pertinent information regarding the appeal process. June 13, 2002 memorandum from Dr. Williams to Dr. Brimhall, and June 13, 2002 letter from R. Milton Crouch to Dr. Brimhall.

52.

On July 8, 2002, Life filed its Notice of Intent to Appeal with CCE. In that Notice, Life again asked for additional information regarding the appeal process, including the grounds for appeal. July 8, 2002 Notice of Intent to Appeal.

53.

The COA refused to provide additional information, responding that the appeal procedure was apparent. See July 10, 2002 letter from Paul Walker to Charles E. Ribley and Deborah Pogrelis. Despite several requests by Life, neither CCE nor COA ever disclosed the grounds for appeal available to Life.

54.

On August 6, 2002, Life filed its appeal of the COA's accreditation decision with CCE, along with a formal complaint to CCE regarding the appeal process. Walker subsequently wrote to Life challenging Life's right to file its complaint and insisting that Life could not be sincere in its confusion about the appeal process because Life had filed its appeal and claiming that the school had never asked how to appeal. August 8, 2002 letter from Paul Walker to Dr. Pogrelis. August 20, 2002 letter from Paul Walker to Dr. Pogrelis.

55.

The CCE Executive Committee rejected Life's complaint on August 22, 2002 and copied its decision to the Appeals Panel with instructions to disregard any material in Life's appeal documents that had been considered and rejected as inappropriate by the Executive Committee. Walker informed Life that because Life had included in its appeal references to changes made since June 10, 2002, he would feel free to communicate directly with the appeal panel. August 22, 2002 letter from Walker to Dr. Pogrelis, Exhibit "4" attached under seal; August 23, 2002 letter from Walker to Dr. Pogrelis, Exhibit "5" attached under seal.

56.

In addition to refusing to provide the requested information on appeals, Walker also notified Life that, even though the COA had been provided and was entitled to review Life's appeal documents in preparing its response, Life was

not entitled to receive or review the COA response to Life submission in preparation for the appeal hearing. August 27, 2002 letter from Walker to Dr. Pogrelis. After repeated requests, CCE relented and finally released the document to Life on September 23, 2002, more than a month after it was prepared and less than a month before the appeal panel met.

57.

While Life's appeal was pending, Life made numerous attempts to open discussions with the COA so that any concerns the COA had about Life could be resolved to the satisfaction and Life's accreditation could be continued and its students would be protected. The COA, CCE and Walker all rebuffed each of these attempts, and refused to engage in any discussions with Life.

58.

CCE appointed an appeal panel comprised of Dr. Theodore Manning, an educator who had previously served on CCE's COA; Jan Harbour, D.C. a practitioner in West Virginia; and William Ramsey, Vice President of Academic Affairs at Logan College of Chiropractic. The appeal panel met on October 20, 2002 in St. Louis, Missouri. Life subsequently learned that the hearing was held in St. Louis, the home of Dr. Ramsey, because Dr. Ramsey was too ill to travel. Shortly before the hearing, Walker sent Life newly drafted rules for the conduct of the hearing, requiring Life to keep the time and location of the hearing secret.

59.

During the October 20, 2002 hearing on Life's appeal, the COA submitted four affidavits from Drs. Brimhall, Weeks, Carpenter and Lamm to the appeal panel, which the COA claimed addressed the issue of whether the COA had considered the Petty complaint when it made the decision on Life's application for reaffirmation of accreditation. These affidavits had not been submitted as part of the COA's response to Life's appeal, and had never been seen by Life. Life informed the appeal panel that Life had never seen the affidavits, and asked to see them during the appeal hearing. The appeal panel denied that request and informed Life that Walker would mail Life copies of the affidavits following the hearing. It was not until October 21, 2002, the day after the appeal hearing and after CCE had posted the decision of the appeal panel on its website, that Walker sent copies of the four affidavits to Life.

60.

The appeal panel denied Life's appeal on October 20, 2002.

61.

In its appeal Life had requested that, in the event of a negative decision, the decision not become effective until the conclusion of the current academic quarter, so as not to punish those students who were completing their coursework.

62.

Immediately after the appeal panel reached its decision, Walker pronounced that, "as of this moment Life has no relationship with CCE," stepped out of the hearing room, sat down at a piano steps outside the door of the hearing room and played a celebratory tune.

63.

Within days of the appeal panel's October 20, 2002 decision, the Board Chair of Logan, the institution where Dr. Ramsey serves as Vice President of Academic Affairs, contacted the Board Chair of Life and made an offer to purchase Life.

64.

Although Life had assumed that Manning and Harbour were impartial participants on the appeal panel, Life discovered, after the appeal hearing, that Dr. Manning had been involved in the debate respecting the GPA dispute by helping CCE conduct a study defending its proposed policy against Life's challenge.

65.

On October 21, 2002, the day after the decision by the appeal panel, Life submitted to the COA its application for re-accreditation and eligibility documents. Based on assurances from Dr. Brimhall that such a request would be honored, Life requested that the two year timeline for eligibility for initial accreditation be shortened.

66.

After numerous representations from Dr. Brimhall that there would not be a problem waiving the two year eligibility required for initial accreditation and several delays in responses from Dr. Brimhall and the COA, Dr. Brimhall and the COA informed Life on November 20, 2002 that Life would not be eligible to apply for accreditation for two years.

67.

On November 25, 2002, at Dr. Brimhall's suggestion, Life requested that CCE's BOD revise the two-year eligibility period at its January, 2003 meeting. On December 4, 2002, CCE's website announced several revision proposals which would be discussed and decided at the BOD's January, 2003 meeting. Life's proposal was not included among the revision proposals to be decided, but was mentioned as an item for "possible" consideration. After Life requested clarification of whether Life's request would be on the agenda, on December 11, 2002, CCE informed Life that Life's request for revision had been forwarded to the BOD for "possible" consideration, but no comments on Life's request would be heard at the BOD meeting. Thus, it is apparent that CCE has no intention of revising the two year eligibility, and every intention of preventing Life from applying for accreditation until at least 2004.

68.

Life cannot survive if it is not permitted to apply for reaccreditation until 2004 and become accredited until 2005.

Facts Relevant to Violations of Articles of Incorporation and Bylaws

69.

CCE was incorporated in the State of Wisconsin in 1971. Article 10 of CCE's original Articles of Incorporation ("Articles") provides that CCE "is to have no members who are not directors." Consistent with this Article, the Bylaws of January, 1998 provide: "The Board of Directors of [CCE] shall be composed of a Commission on Accreditation, a representative from each [CCE] accredited program or institution, and two public members at large." (emphasis added).

70.

CCE members are those chiropractic institutions and doctor of chiropractic programs that are accredited by CCE. Each CCE-accredited institution and Program is entitled to designate a representative to sit on the BOD, and the BOD must seat each such designee.

71.

In January 1999, the BOD amended the CCE Bylaws (the "1999 Bylaws") to create a new body called the "Council," later called the "Corporation". Each chiropractic institution and Program accredited by CCE was required to designate "an official at the administrative level" to sit as its representative on the Corporation, and the Corporation seated each designee.

72.

Paragraph 4.01(3) of the 1999 Bylaws authorizes the Corporation alone to (a) "decide matters pertaining to incorporation and/or revision of the Bylaws" by a two-thirds vote; and (b) elect BOD members by a majority vote. By enacting the 1999 Bylaws, the BOD gave up its authority to decide matters pertaining to incorporation, to revise the Bylaws and to elect Board members.

73.

The 1999 Bylaws also changed the composition of the BOD so that it would comprise thirteen directors. Seven directors were to represent CCE-accredited institutions or programs. Four directors were to be practicing chiropractors, and two were to be members of the public. As a result of the 1999 Bylaws and in violation of Article 10 of the Articles, fewer than all CCE members were represented on the Board.

74.

On January 13, 2002, the BOD proposed that the Corporation revise the 1999 Bylaws so as to dissolve itself and transfer back to the BOD the powers described above in paragraph 60 (the "BOD Proposal").

75.

Walker, acting for the chair of the Corporation, ruled at the March 12, 2002 meeting that, because of a policy change adopted in September 2001, the representatives of institutions which had any board member in common would be considered one institution and would only have one vote on the Corporation. This ruling reduced the number of votes of the Corporation from 16 to 14, and reduced the number of representatives of conservative schools from eight to six.

76.

Of the fourteen members of the Corporation allowed to vote at the March 12, 2002 meeting, only eight voted in favor of the BOD Proposal, not the two-thirds majority (10 votes) required under Paragraph 4.01(3) of the 1999 Bylaws. Consequently, the BOD Proposal failed to be adopted at the March 12, 2002 meeting of the Corporation.

77.

On or about April 23, 2002, the Chairs of the Corporation, the Board, and the COA sent certain members of the Corporation a letter asserting that the BOD Proposal had not required an amendment to the Bylaws and, therefore, had not required a two-thirds majority to pass. Recipients were asked to affirm this assertion. Only eight recipients, still less than two-thirds of the Corporation, replied in the affirmative.

78.

On or about May 13, 2002, the BOD purported to assume the Corporation's powers and attempted to dissolve CCE as a Wisconsin corporation and reincorporate as an Arizona corporation. This action, as well as all other actions taken by the illegally constituted BOD, including policy and rule changes, appointments to the COA, are null and void, as are all actions of the illegally appointed COA, including COA policy changes, the COA's denial of Life's application for reaffirmation of accreditation and the appeal panel's denial of Life's appeal.

Actions of Defendant Paul D. Walker

79.

Defendant Walker assumed the position of Executive Vice President of CCE in 1995. In that role, he supervises the CCE staff and the CCE Executive Office, and he is frequently designated as the public voice of the organization. Defendant Walker also sits on the CCE Executive Committee and the COA Executive Committee.

80.

Defendant Walker has a demonstrated antipathy toward Life. If not earlier, this antipathy was demonstrated following Life's testimony before the Advisory Committee challenging CCE's recognition by USDE and opposing CCE's proposed GPA requirement. Life representatives urged the Advisory Committee to prevent CCE from adopting its new proposed admissions standards requirements on the basis that those requirements were not

supported by educational data and would have a disparate impact on minorities. As a result of this sometimes heated testimony, CCE was required to engage in a substantial study demonstrating the educational basis for such a change in policy and the impact such a policy would have on minority admissions.

81.

Defendant Walker's animosity and biased attitude against Life became most apparent during the time between the COA's denial of reaffirmation of Life's accreditation and Life's appeal to the CCE Appeal Panel. Correspondence from Walker, including Exhibit "6" attached under seal. When approached by Life officials to try to determine if there might be an informal manner to discuss and possibly resolve the parties' differences, Walker accused Life of becoming adversarial by exercising its right to appeal. September 16, 2002 letter from Paul Walker to Dr. Michael Schmidt.

82.

Walker also attempted to cut off all communications between Life and CCE or the COA. July 12, 2002 letter from Walker to Dr. Pogrelis. When Life complained, Walker disingenuously quibbled about the meaning of what he had written. August 20, 2002 letter from Walker to Dr. Pogrelis.

Damage to Life

83.

The effects of CCE's denial of reaffirmation of Life's accreditation have been financially and professionally devastating for Life, its students, faculty and staff, and for the Marietta, Georgia community.

84.

Life's enrollment has plummeted from 2100 chiropractic students to fewer than 300 chiropractic students as a result of the loss of CCE accreditation.

85.

This drastic loss of students has resulted in the loss of millions of dollars in tuition revenues. These losses will multiply unless and until Life's CCE accreditation is restored. If accreditation is not restored very quickly, Life's survival will become impossible.

86.

Because of the dramatic loss of students, Life has had to terminate the employment of nearly 100 faculty members and more than 100 staff members. Such terminations will continue if the loss of students is not stopped by restoration of accreditation.

87.

As a result of Life's loss of CCE accreditation, the chiropractic licensing boards of numerous states, including Georgia, are taking action to remove Life from their lists of approved schools. This action will make it impossible for Life graduates to become licensed in those states.

88.

As a result of the loss of CCE accreditation, hundreds of Life students have filed suit against Life, seek damages in excess of \$100 million dollars.

89.

CCE's denial of Life's accreditation has grievously damaged and continues to damage the reputation of Life, as well as the reputations and livelihood of its graduates, students, faculty and staff.

COUNT I

Violation of Common Law Right of Due Process

90.

Life incorporates the allegations set forth in paragraphs 1 through 87 above as if set forth fully herein.

91.

CCE, as an accrediting body whose actions directly and indirectly affect the ability of a post-secondary school to operate in the State of Georgia and the eligibility of students to qualify for Title IV financial aid, performs as a "quasi-public" private association and, therefore, is required to follow fundamental principles of due process and fairness.

92.

CCE, as an accrediting body recognized by the U.S. Department of Education, must follow fundamental principles of due process and fairness.

93.

CCE's refusal to provide a complete and accurate record of the factual predicate for COA decisions denied Life any meaningful opportunity to challenge either the credibility or sufficiency of such evidence at any time subsequent to the COA decision to deny reaffirmation of accreditation, thereby denying Life due process and fundamental fairness in the accreditation process.

94.

CCE's decision to appoint as members of site-visit teams individuals who are employed by schools in direct competition with Life deprives Life of its right to a decision by an impartial tribunal, which as a basic requirement of due process and common law principles of fairness under any standard.

95.

CCE's decision to withhold detailed appeal procedures until the appeal process was nearly concluded deprived Life of a fair appeal of the COA decision, thereby denying Life due process and fairness in the accreditation process.

96.

CCE's withholding of the Petty complaint site-visit team report and failure to allow Life to respond to report was fundamentally unfair and deprived Life of due process.

97.

The distribution of the Petty Team reports prior to COA's consideration of Life's application for reaffirmation of accreditation was fundamentally unfair and deprived Life of due process.

98.

The consideration of both the application for reaffirmation of accreditation and the Petty complaint in the same meeting deprived Life of due process because the two topics were not sufficiently separated in consideration.

99.

CCE's changing of its rules in mid-process was fundamentally unfair and deprived Life of due process.

100.

CCE's adoption of procedures for reaccreditation purposely intended to assure failure of an institution seeking such accreditation deprived Life of due process.

101.

Walker's biased administration of the reaffirmation of accreditation process, both in his own actions and in the advice and direction he gave to others at CCE, deprived Life of due process.

102.

CCE's actions in appointing an appeal panel including William Ramsey, who had an economic conflict of interest, and Theodore Manning, who had reason to be biased against Life, deprived Life of due process.

103.

Life has been irreparably harmed by Defendants' violations of due process and fundamental fairness. Consequently, Life is entitled to declaratory and injunctive, and is further entitled to recover damages from Defendants, jointly and severally.

COUNT II

Tortious Interference with Contract

104.

Life incorporates the allegations set forth in paragraphs 1 through 101 above as if set forth fully herein.

105.

Life had a contractual and/or business relationship with its students.

106.

By improperly denying reaffirmation of Life's accreditation, Defendants CCE and Walker acted improperly and without privilege, purposely and with malice, with the intent to injure Life, and induced Life's students and prospective students not to enter into and/or continue a business relationship with Life.

107.

Life has been damaged by Defendants' tortious interference with its contractual and/or business relationships with students and prospective students, for which Defendants are liable, jointly and severally.

COUNT III

Breach of Contract

108.

Life incorporates the allegations set forth in paragraphs 1 through 105 above as if set forth fully herein.

109.

CCE's Articles, Bylaws, and implementing documents form the basis of a contract between CCE and its member institutions, including Life.

110.

CCE has breached that contract in numerous ways, including any and all of the following: adopting Standards that favor one philosophical branch of chiropractic philosophy over the other major branch of chiropractic philosophy; adopting procedures for reaccreditation purposely intended to assure failure of an institution seeking such accreditation; amending the Bylaws in 1999 to change the composition of the BOD in contravention of the Articles; all relevant actions subsequently taken by the improperly reconstituted BOD; allowing individuals and institutional representatives with economic or other conflicts of interest to serve on site-visit teams and participate in COA deliberations denying Life's reaffirmation of accreditation without following CCE's and COA's own rules; changing the appeal rules when it became apparent that Life would have cause to appeal; changing the COA rules on conflicts of interest the day before the COA's status review meeting with Life; and denying Life due process.

111.

Life has been and continues to be irreparably damaged by CCE's breach of contract, for which Defendants are liable, jointly and severally.

COUNT IV

Violation of Articles of Incorporation and Bylaws

112.

Life incorporates the allegations set forth in paragraphs 1 through 109 above as if set forth fully herein.

113.

All actions taken by CCE and approved by its reduced BOD subsequent to January 1999 were in violation of the Articles of Incorporation.

114.

CCE's actions to deny reaccreditation to Life were in violation of both the Articles of Incorporation and the Bylaws, as last properly amended.

115.

Life has been irreparably harmed as a result of CCE's violation of its Articles and Bylaws.

116.

Life is entitled to declaratory judgment declaring the actions of CCE and COA to deny reaffirmation of Life's accreditation null and void, and is further entitled to injunctive relief enjoining Defendants from denying Life's accredited status and requiring Defendants to restore Life's accreditation, restore the Standards, CCE Policy Manual, COA Accreditation Manual, Articles and Bylaws to their original content, and ordering Defendants to provide Life with a fair process for reaffirmation of its accreditation and/or a timely opportunity to become reaccredited.

WHEREFORE, Plaintiff asks the Court for judgment:

(1) declaring that all relevant actions taken by CCE entities subsequent to the 1999 amendments to the Bylaws are ultra vires and, therefore null and void;

(2) declaring that all relevant actions taken by CCE entities subsequent to the March 2002 amendments to the Bylaws are ultra vires and, therefore null and void;

(3) declaring that CCE's adoption of Standards of Accreditation that favor one philosophical branch of chiropractic philosophy over the other major branch of chiropractic philosophy is ultra vires because such Standards contravene both CCE's published mission and goals and its representation to the U.S.

Department of Education and declaring that all such Standards are, therefore, null and void;

(4) declaring that Defendants failed to provide Life with due process and fundamental fairness in the reaffirmation of accreditation process, and that the decision to deny reaffirmation of accreditation to Life is therefore null and void;

(5) issuing a preliminary and permanent injunction supplemental to the above declarations restoring the status quo ante, requiring the Defendants to (a) restore the accreditation of Life, (b) restore the Standards, CCE Policy Manual, COA Accreditation Manual, CCE Bylaws and CCE Articles to their content prior to the unauthorized changes, and (c) begin the reaffirmation of accreditation process anew and in a manner providing Life with its common law due process and fundamental fairness rights;

(6) awarding compensatory damages in favor of Life and against Defendants, jointly and severally, in an amount to be proved at trial;

(7) awarding punitive damages in favor of Life and against Defendants, jointly and severally, based on Defendants' willful and wanton conduct;

(8) awarding Life its attorney fees and expenses of litigation, based on Defendants' bad faith and stubborn litigiousness;

(9) awarding Life its costs; and

(10) awarding such other and further relief as shall be just and equitable.

JURY DEMAND

Plaintiff requests that the trial of the damages portion of this case be heard by jury.

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