

BOARD OF CHIROPRACTIC EXAMINERS MINUTES

DATE: December 18, 2015

TIME: 9:00 AM CST

LOCATION: Iris Conference Room
665 Mainstream Drive, 1st Floor
Nashville, TN 37243

MEMBERS PRESENT: Chris Alexander, D.C., President
Richard Cole, D.C., Board Member
Cole Hosenfeld, D.C., Board Member
Joseph Amato, D.C., Board Member
Sheila Fitzgerald, Consumer Member, Secretary

STAFF PRESENT: Michael Sobowale, Unit Director
Zandra Pickett, Board Administrator
Mark Cole, Assistant General Counsel

GUESTS: Ashley Fine, Paralegal
John Williams, Tennessee Chiropractic Association
Tiffany Stevens, Tennessee Chiropractic Association

Call to Order

With a quorum present, Dr. Alexander called the meeting to order at 9:34 a.m.

Rulemaking Hearing

A roll call was taken prior to the start of the rulemaking hearing, with the following Board Members in attendance: Dr. Christopher Alexander, Dr. Richard Cole, Dr. Cole Hosenfeld, Dr. Joseph Amato, and Mrs. Sheila Fitzgerald, consumer member. Absent were Dr. Andrea Selby and Mrs. Nancy Strawn, consumer member.

Mark Cole, Assistant General Counsel, conducted the rulemaking hearing and presented proposed rule amendments to Chapter 0260-02, Rule Number 0260-02-.01, 0260-02-.02, 0260-02-.12, 0260-02-.13, 0260-02-.21, and 0260-02-.24.

Mr. John Williams, attorney for Tennessee Chiropractic Association (TCA), while noting the association was generally in favor of the proposed rule changes, also discussed suggested changes in the board's consideration of comments submitted for the rulemaking hearing.

Rule Number 0260-02-.01- Chapter Title – Definitions. Rule amended by deleting paragraphs (6), (7), (18), (22), and (24) in their entirety and renumbering the remaining paragraphs, and the rule is further amended by adding new paragraphs (6), (17), (20), (22), and (24) and renumbering the remaining paragraphs so that as amended, the new paragraphs shall read:

(6) Adjustment - A manual or mechanical intervention that may be administered with a high or low velocity, short or long lever, high or low amplitude, directed to specific structures of the frame to improve joint function, neurological integrity, joint mobility or alignment.

(17) Manipulation - A passive therapeutic intervention that may be administered with a high or low velocity, short or long lever, high or low amplitude, directed to specific structures of the frame to improve joint function, neurological integrity, mobility or alignment.

(20) Physical Therapeutics - Physical agents, rehabilitative and/or therapeutic procedures utilized in the restoration and maintenance of health.

(22) Subluxation – An abnormal condition where one or the other of two adjacent articular surfaces has lost its articular or neurological function, position, or alignment and is classified less than a dislocation.

(24) Therapeutic Care - An approved, adjustive, manipulative, nutritional, therapeutic or rehabilitative treatment administered by or ordered by a chiropractic physician for the restoration and maintenance of health.

Thereafter, Dr. Cole made a motion, seconded by Mrs. Fitzgerald, to adopt changes suggested by TCA in paragraph (22), to remove the word “when” and replace with the phrase, “An abnormal condition where”.

With all members voting yes to adopt this change, the motion passed.

Rule Number 0260-02-.02- Chapter Title – Scope of Practice. Rule amended by deleting paragraph (2) and subparagraphs (3)(b), (3)(c), and (3)(d) in their entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

(2) The scope of practice of a chiropractic physician shall be as set forth in T. C.A. § 63-4-101 and shall include:

(a) As a portal of entry provider, a chiropractic physician has authority to make a differential diagnosis that may include the use of patient history, examination techniques, lab analysis and analytical instruments for the purpose of determining vital signs and screening of health status, orthopedic and neurological testing, range of motion and muscles testing and diagnostic evaluation and/or imaging of the human body that may be revealed in a state of pathology, as a basis for making clinical judgments as to the patient's condition, degree or nature of treatment needed and management and rehabilitation of the human body which is in the opinion of the provider, appropriate for the restoration and maintenance of health.

(b) A chiropractic physician has the authority to perform an adjustment, manipulation or treatment which may include physical therapeutic interventions to the human frame and/or soft tissues for the restoration and/or supportive care and/or maintenance of health.

(c) The chiropractic physician's responsibility for patient care, case management, and the protection of the patient includes the authority to make a proper referral to a particular health specialist for consultation or collaborative care, and also for treatments, therapeutic procedures, recommendations, recording and reporting to third-party payers, preparing narratives, giving of depositions and in-court testimony as an expert witness and determination of impairment ratings.

(d) The scope of practice of a chiropractic physician includes such supportive care as nutritional evaluation, recommendation and supplementation, patient management in their mental and physical environment, and due regard for patients concerning diet, hygiene, sanitation and rehabilitation.

(e) The scope of practice of a chiropractic physician includes the ordering, from a licensed or certified laboratory, analysis of blood, urine, or other bodily fluids, secretions or excretions, for the diagnosis and management of the patient.

3.(f) The Board of Chiropractic Examiners does not recognize any one document, guideline, textbook, clinical trial or study as the exclusive endorsement for setting standards of practice.

(b) Spinal manipulation must be performed by hand or with the use of instruments such as Activator, Grostic, Pettibon, mechanical and/or electromechanical devices.

(c) Manipulation moves the spinal segments beyond their normal range of motion for the restoration of neurological integrity, and/or correction of articular dysfunction, but without exceeding the limits of anatomical integrity.

(d) A differential diagnosis is necessary to properly establish the indications and contraindications before the administration of the spinal manipulation/adjustment procedure.

Dr. Cole made a motion, seconded by Dr. Hosenfeld, to adopt the changes suggested by TCA in paragraph (2), to insert the word “a” before the beginning of the sentence and also add the phrase, “and shall include” at the end of the sentence, so that the new sentence shall read:

“(2) The scope of practice of a chiropractic physician shall be as set forth in T.C.A. §63-4-101 and shall include:”

With all members voting yes to adopt these changes, the motion passed.

Rule Number 0260-02-.02- Chapter Title – Scope of Practice. Rule is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

(4) Acupuncture - A licensed chiropractic physician who practices acupuncture as a chiropractic specialty must complete two hundred and fifty (250) hours of an acupuncture course accredited by an agency or entity acceptable to the Board and pass the National Board of Chiropractic Examiners (NBCE) Acupuncture Exam. Prior to engaging in the practice of acupuncture, a chiropractic physician must:

(a) request that an official transcript be sent directly to the Board's Administrative Office from an accredited acupuncture program demonstrating successful completion of at least 250 hours training and education and.

(b) request that official proof be sent directly to the Board's Administrative Office from the NBCE demonstrating successful completion of the acupuncture exam. Upon receipt, the Board office shall provide a letter to proceed with the practice of acupuncture.

Upon receipt, the Board office shall provide a letter to proceed with the practice of acupuncture.

Dr. Cole made a motion, seconded by Mrs. Fitzgerald, to adopt the changes suggested by TCA in paragraph (4), to add the word, “and” at the end of (4)(a) and separate the sentence, “Upon receipt, the Board office shall provide a letter to proceed with the practice of acupuncture” from (4) (b).

With all members voting yes, the motion passed.

Rule Number 0260-02-.12 - Chapter Title – Continuing Education. Rule is amended by deleting subparagraphs (1) (a) and (1) (c) in their entirety and substituting instead the following language and is further amended by deleting paragraph (3) in its entirety and renumbering the remaining paragraphs, so that as amended, the new subparagraphs (1)(a) and (1)(c) shall read:

(a) Acupuncture - Licensees who practice acupuncture shall have six (6) classroom hours each year of the required twenty-four (24) hours in the area of acupuncture. Such licensees must have first met the requirements of Rule 0260-02-.02(4). No credit for continuing education shall be awarded beyond the six (6) hours each year.

(c) No prior approval is required for continuing education courses conducted or approved by the American Chiropractic Association, the International Chiropractors Association, the Tennessee Chiropractic Association, or CPR training provided by the American Heart Association or the American Red Cross.

Rule Number 0260-02-.12- Chapter Title – Continuing Education. Rule is amended by deleting newly-numbered subparagraph (3) (a) in its entirety and substituting instead the following language, and is further amended by deleting newly-numbered subparagraph (3)(c) and re-lettering the remaining subparagraphs, so that as amended the new subparagraph (3)(a) shall read:

(a) The licensee must, within (thirty) 30 days of a request from the board, provide evidence of continuing education activities. Such evidence must be copies of one (1) or more of the proofs described in subparagraph (a).

Rule Number 0260-02-.12- Chapter Title – Continuing Education. Rule is amended by deleting newly numbered paragraph (4) and subparagraphs (4)(b) and (7)(f) and substituting the following language, so that as amended, the new paragraph (4) and subparagraphs (4)(b) and (7)(f) shall read:

(4) Distance Learning

(a) A maximum of six (6) credit hours may be granted for distance learning courses during each calendar year. If the licensee practices acupuncture, three (3) of these six (6) hours may pertain to such acupuncture practice.

(7) (f) Failure to obtain the required continuing education during the calendar year, shall result in the following actions:

(1) The licensee must pay a civil penalty in the amount of six hundred dollars (\$600.00) with payment rendered within 30 days of notification from the Board.

(2) The licensee must make up the hours in which he/she is deficient, in addition to the continuing education hours necessary to be obtained annually. The deficient hours must be made up in the subsequent year. Failure to fulfill these requirements may result in additional disciplinary action.

Mr. Williams suggested that the phrase, “unless waived or lowered by the Board due to circumstances” should be added to the end of sub-paragraph (1) so that the Board will have some discretion to waive or lower civil penalties in appropriate cases. The Board rejected this proposal and stated that the Board already has the authority to consider cases on a case-by case basis.

Mr. Amato also suggested that Council on Chiropractic Education (CCE) should be added to list of those entities for which prior board approval is not needed for continuing education courses. The Board decided to table this matter to a later meeting.

Rule Number 0260-02-.13- Chapter Title – Professional Ethics. Rule is amended by deleting paragraph (4) and substituting instead the following language, and is further amended by adding subparagraph (8) (g) so that as amended, the new paragraph (4) and paragraph (9) shall read:

(4) Advertising or promoting, waiving, abrogating, or rebating the deductible and/or co-payment amounts of any insurance policy by forgiving any or all of any patient's obligations for payment, unless the insurer is notified in writing of the fact of such waiver. Advertising or promoting the same must include the notice to the insurer and the record must include proof of the actual notice. If the patient is unable, due to circumstances, to pay for their services and no advertising or promotion is given to the patient, the provider may excuse any portion of fees to insure that the patient may receive the necessary procedure.

(9) Unlicensed assistants - Licensees shall not allow staff personnel to perform procedures in the clinic for which they are not licensed for services, in which a license is required. This includes those services that require a chiropractic therapy assistant or a chiropractic x-ray technologist. Violators will be subject to a civil penalty of up to one thousand dollars (\$1000.00) per month

for each employee found to be practicing without a license. Failure to fulfill these requirements may result in additional disciplinary action.

Chapter Rule Number 0260-02-.21- Chapter Title – Chiropractor Preceptor Program. Rule is amended by deleting the rule, but not its title, in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

(1) Applications for Preceptor Program

An application will be considered by the board or its designee, based upon:

(a) If the preceptor named in the application is in good standing with the board.

(b) If the application for the chiropractic preceptor program includes an intern who is serving his/her internship with a chiropractic college accredited by the Council on Chiropractic Education (CCE), registered with the Commission on Accreditation of the U.S. Department of Education.

(2) Conditions for Practicing Under an Internship Certificate

(a) An intern must have approval from the chiropractor supervisor of the findings/diagnosis and case management plan of all patients assigned for examination and care before commencing treatment. With the approval, an extern will be allowed to perform all diagnostic tests and therapeutic interventions as provided in T.C.A. § 63-4-101.

(b) The preceptor program will be discontinued upon graduation of the intern. However, if the graduate has completed the application for licensure in this state, and upon filing an application for temporary license, if approved, may continue practicing on the temporary license.

(c) In the event of a vacation or a prolonged illness the chiropractic supervisor must make arrangements for continued supervision by a licensed chiropractic physician and submit a letter from the new chiropractic supervisor, addressed to the previous supervisor, stating that he/she will take the responsibility as previously outlined for the supervision and forward a copy of said letter to the Board's administrative office.

(d) Collection of fees for services and filing claims to third-party-payers must be in the name of the chiropractic supervisor (attending physician).

(3) Supervision – An intern must be supervised by a chiropractic physician licensed in Tennessee. The chiropractic supervisor must be available for approval of examination findings/diagnosis and management plan, including subsequent changes that may alter the treating program. The chiropractic supervisor must conduct and evaluate case studies with the intern on each visit of the interactive reassessment throughout the treating program of each patient. The supervisor shall be on the facility premises while the intern is conducting patient care.

Dr. Hosenfeld made a motion, seconded by Mrs. Fitzgerald, to adopt language suggested by TCA in paragraph (3), to replace the word, “extern” with “intern” and strike the sentence, “For

purposes of this rule, supervision is defined as the direct oversight of the extern by a Tennessee licensed chiropractic physician” from the beginning of the paragraph and replace with the sentence, “An intern must be supervised by a chiropractic physician licensed in Tennessee.”

With all members voting yes, the motion passed.

Rule Number 0260-02-.24- Chapter Title – Chiropractor Professional Corporations (CPC) and Chiropractic Professional Limited Liability Companies. Rule is amended by deleting the rule title in its entirety and substituting instead the following language, so that as amended, the new rule title shall read:

Rule 0260-02-.24 Chiropractic Professional Corporations (CPC) and Chiropractic Professional Limited Liability Companies (CPLLC).

Rule Number 0260-02-.24- Chapter Title – Chiropractor Professional Corporations (CPC) and Chiropractic Professional Limited Liability Companies. Rule is amended by deleting subparagraphs (1) (b) and (2) (b) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1)(b) and (2)(b) shall read:

(1) (b) Ownership of Stock - With the exception of the health care professional combinations specifically enumerated in T.C.A. § 48-101-610, only the following may form and own shares of stock in a foreign or domestic CPC doing business in Tennessee:

1. Chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4; and/or

2. A foreign or domestic general partnership, CPC or CPLLC in which all partners, shareholders, members or holders of financial rights are either:

(i) Chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 to practice chiropractic services in Tennessee, or composed of entities which are directly or indirectly owned by such licensed chiropractic physicians; and/or

(ii) Professionals authorized by T.C.A. §§ 48-101-610 or 48-248-401 or 48-249-1109 to either own shares of stock in a CPC or be a member or holder of financial rights in a CPLLC; and/or

(iii) A combination of professionals authorized by subparts (i) and (ii) as long as those professionals are licensed to practice their professions in Tennessee.

(2) (b) Membership - With the exception of the health care professional combinations specifically enumerated in T.C.A. §§ 48-248-401 and 48-249-1109, only the following may be members or holders of financial rights of a foreign or domestic CPLLC doing business in Tennessee:

1. Chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4; and/or

2. A foreign or domestic general partnership, CPC or CPLLC in which all partners, shareholders, members or holders of financial rights are either:

(i) Chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 to practice chiropractic services in Tennessee, or composed of entities which are directly or indirectly owned by such licensed chiropractic physicians; and/or

(ii) Professionals authorized by T.C.A. §§ 48-101-610 or 48-248-401 or 48-249-1109 to either own shares of stock in a CPC or be a member or holder of financial rights in a CPLLC; and/or

(iii) A combination of professionals authorized by subparts (i) and (ii), as long as those professionals are licensed to practice their professions in Tennessee.

Dr. Hosenfeld made a motion, seconded by Mrs. Fitzgerald, to adopt the changes suggested by TCA to add the phrase, “to practice their professions in Tennessee” at the end of paragraph (1) (b) 2. (iii). With all members voting yes, the motion passed.

The Tennessee Physical Therapy Association, through its president, Mr. Scott Newton, submitted comments in a letter discussed by Mr. Newton opposing the use of the term, “physical Therapeutics” in Rule 0260-02-.01 – Definitions, in the proposed amended rule. In response, Mr. Williams of the Tennessee Chiropractic Association stated that it is TCA’s position that “physical therapeutics” is a part of the practice of every chiropractic physician and that the term should be defined and used in the rules.

Thereafter, Dr. Cole made a motion, seconded by Dr. Alexander, for the Board to vote to accept the rule amendments in their entirety, including changes voted upon to be adopted from the TCA comments and changes approved at the rulemaking hearing. A roll call vote was taken of members in attendance and all members voted yes. The motion passed.

Thereafter, Mr. Cole presented the Board with the Statement of Economic Impact to Small Business. Dr. Cole suggested that the word “examination” be removed from the first paragraph in the Statement and be replaced with “physicians”. A roll call vote was taken of members in attendance to accept the Statement of Economic Impact with the change suggested and all members voted yes. The motion passed.

Then, Mr. Cole presented the Board with the Regulatory Flexibility Analysis. With no comments or questions, a roll vote was taken of members in attendance to accept the Regulatory Flexibility Analysis as presented and all members voted yes. The motion passed.

Chiropractic Physician Externship

The board reviewed and discussed a new Chiropractic Physician Externship policy for a temporary license in the state of Tennessee. Dr. Cole made a motion to submit the new Chiropractic Physician Externship policy to the board as amended for consideration, Dr. Hosenfeld second. The motion passed.

Adjournment

The rulemaking hearing and other business, the meeting adjourned at 12:12 pm.

These minutes were ratified by the Board at the January 28, 2016 meeting.