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MEMORANDUM

TO: Committee on Legal Services

FROM: Chuck Brackney, Office of Legislative Legal Services

DATE: December 27, 2012

RE: Rules of the Colorado State Board of Chiropractic Examiners, Division of Professions and Occupations, Department of Regulatory Agencies, concerning the scope of practice of chiropractors, 3 CCR 701 (LLS Docket No. 130070; SOS Tracking No. 2012-01055).¹

Summary of Problem Identified and Recommendations

Section 12-33-103 (1.7), C.R.S., defines the term "chiropractic" for purposes of chiropractic practice in Colorado. The definition does not authorize chiropractors to administer injections to patients, but the Colorado State Board of Chiropractic Examiners' Rule 7 C. authorizes chiropractors to administer injections and establishes a new level of certification for chiropractors who administer injections. **Because the rule is being reviewed "out-of-cycle", we therefore recommend that Rule 7 C. of the rules of the Colorado State Board of Chiropractic Examiners concerning the administration of injections be repealed.**

Analysis

¹ Under section 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under section 24-4-103 (8) (c) (I), C.R.S., these rules are not scheduled to expire until May 15, 2014.

I. The Colorado State Board of Chiropractic Examiners does not have the authority to permit the administration of injections by chiropractors nor to establish a new level of certification for chiropractors who administer injections.

The practice of chiropractic in Colorado is governed in law by article 33 of title 12, C.R.S. The rule-making authority of the Colorado State Board of Chiropractic Examiners ("Board") is found in section 12-33-107 (1) (a), C.R.S., which reads as follows:

12-33-107. Board powers. (1) The board is authorized to and shall:

(a) Adopt, promulgate, and from time to time revise such **rules and regulations not inconsistent with the law** as may be necessary to enable it to carry out the provisions of this article; except that the board shall not adopt the code of ethics of any professional group or association by rule or regulation; **(emphasis added)**

The General Assembly has granted the Board general rule-making powers. Any rules adopted by the Board must be consistent with the law regarding chiropractors.

The scope of practice of chiropractic is found in the definition of the term "chiropractic" in section 12-33-102 (1.7), C.R.S., which reads as follows:

12-33-102. Definitions. As used in this article, unless the context otherwise requires:

(1.7) "Chiropractic" means that branch of the healing arts that is based on the premise that disease is attributable to the abnormal functioning of the human nervous system. It includes the diagnosing and analyzing of human ailments and seeks the elimination of the abnormal functioning of the human nervous system by the **adjustment or manipulation, by hand or instrument, of the articulations and adjacent tissue of the human body, particularly the spinal column**, and the use as indicated of procedures that facilitate the adjustment or manipulation and make it more effective and the **use of sanitary, hygienic, nutritional, and physical remedial measures** for the promotion, maintenance, and restoration of health, the prevention of disease, and the treatment of human ailments. "Chiropractic" includes the use of **venipuncture for diagnostic purposes**. "Chiropractic" does not include colonic irrigation therapy. "Chiropractic" includes **treatment by acupuncture** when performed by an appropriately trained chiropractor as determined by the Colorado state board of chiropractic examiners. Nothing in this section shall apply to persons using acupuncture not licensed by the board. **(emphasis added)**

Chiropractic practice includes the adjustment and manipulation of the human

body, by hand or instrument, to alleviate abnormal functioning of the human nervous system. The statute also refers to the use of sanitary, hygienic, nutritional, and physical remedial measures. The statute specifically allows venipuncture, the drawing of a patient's blood, but only for diagnostic purposes. The use of acupuncture by a trained chiropractor is also allowed.

The statute goes on to define "chiropractic adjustment". Section 12-33-102 (2), C.R.S., reads as follows:

12-33-102. Definitions. As used in this article, unless the context otherwise requires:

(2) "Chiropractic adjustment" means the **application, by hand**, by a trained chiropractor who has fulfilled the educational and licensing requirements of this article, **of adjustive force to** correct subluxations, fixations, structural distortions, abnormal tensions, and disrelated structures, or to remove interference with the transmission of nerve force. The application of the dynamic adjustive thrust is designed and intended to produce and usually elicits audible and perceptible release of tensions and movement of tissues or anatomical parts for the purpose of removing or correcting interference to nerve transmission and expression. **(emphasis added)**

This section authorizes a chiropractor to use adjustment force by hand to correct a number of issues stemming from problems with the nervous system.

The rules of the Board establish the scope of practice in Rule 7. Rule 7 C. reads as follows:

Rule 7 Scope of Practice

- C. Nutritional Remedial Measures as referenced in Section 12-33-101 (1), C.R.S., means that a doctor of chiropractic may administer, prescribe, recommend, compound, sell, and distribute homeopathic and botanical medicines, vitamins, minerals, phytonutrients, antioxidants, enzymes, glandular extracts, non-prescription drugs, durable and non-durable medical goods and devices.

Administer includes Oral, Topical, Inhalation, and Injection

All chiropractors that choose to administer homeopathic and botanical medicines, vitamins, and minerals, phytonutrients, antioxidants, enzymes and glandular extracts **by means of injectible procedures** shall be certified by the Board. Applications for certification in Injectables shall be made in a manner approved by the Board. Certification in Injectables by the State Board of Chiropractic Examiners may be obtained by complying with the following:

1. Successfully complete a minimum of a combined total of

24 hours of theoretical study and supervised clinical instruction obtained from a college of chiropractic approved by the Council on Chiropractic Education (CCE) or the equivalent hours of study and clinical obtained from an instructor recognized by the postgraduate faculty of a chiropractic institution or approved by CCE to teach this course and

2. Passing a nationally recognized Injectable certification examination recognized by a CCE accredited chiropractic college. **(emphasis added)**

Rule 7 C. allows chiropractors to inject certain medicines, vitamins, and extracts into patients. However, nowhere in the definition of "chiropractic" is there any mention of the authority of chiropractors to administer subcutaneous injections to patients.

Administering injections to patients does not fall under any of the allowed practices found in the definition of "chiropractic" in section 12-33-102 (1.7), C.R.S. It is not "the adjustment or manipulation, by hand or instrument, of the articulations and adjacent tissue of the human body, particularly the spinal column" or a procedure that facilitates such an adjustment. Nor can injections be considered "the use of sanitary, hygienic, nutritional, and physical remedial measures for the promotion, maintenance, and restoration of health, the prevention of disease, and the treatment of human ailments".

The term "injection" is defined as "the act of forcing liquid into a part, as into the subcutaneous tissues, the vascular tree, or an organ".² Injections, by definition, constitute an invasive procedure that breaks the skin of the patient and injects a substance into the patient's body. The definition of "chiropractic" in section 12-33-102 (1.7), C.R.S., contains two specific instances in which the breaking of a patient's skin is allowed. The first is venipuncture, the drawing of blood for purposes of diagnosis, and the second is the use of acupuncture. Neither of these instances includes the administration of injections to patients. The General Assembly has specifically authorized only these two invasive procedures. By contrast, it has not done so for the administration of injections.

Finally, the definition of the term "chiropractic adjustment" in section 12-33-107 (2), C.R.S., does not include anything that could allow the administration of injections.

II. The General Assembly has considered, and rejected, past attempts

² Medical-Dictionary.com

to give chiropractors the authority to administer injections.

The General Assembly has in the past considered the policy of authorizing chiropractors to administer injections. H.B. 10-1416 proposed to allow chiropractors to treat "neuromuculoskeletal ailments, limited to topical, subcutaneous, and intramuscular routes of administration". Similarly, H.B. 97-1017 sought to give chiropractors the authority to inject noncontrolled drugs. Neither of these legislative proposals was successful.

The "State Administrative Procedure Act" requires the Attorney General to issue an opinion on all rules slated for adoption by an executive branch agency. The opinion of the Attorney General is that the changes to rule 7 discussed in this memorandum "exceed the legislative scope of authority granted to the Board of Chiropractic Examiners". See **Addendum A**.

The current definition of "chiropractic" does not allow for the administration of injections by chiropractors. The Board does not have the power, by rule, to expand the scope of practice of chiropractors to allow them to administer injections without the authority of a specific statutory directive.

Rule 7 C. also creates a certification process that allows chiropractors to be certified to administer injections. The rule establishes educational and testing requirements for this certification. But the creation of an additional level of certification is also beyond the authority of the Board. Rather, it is the prerogative of General Assembly to create these additional levels of certification, as well as to determine who should set the educational and testing requirements. The legislature has not authorized certification for chiropractors to administer injections.

Because neither section 12-33-102 (1.7) nor 12-33-102 (2), C.R.S., provide authority for the Board to permit chiropractors to administer injections to patients and to establish a new level of certification for this purpose, the authorization for injections by chiropractors in the Colorado State Board of Chiropractic Examiner's Rule 7 C. exceeds the authority of the Board and should be repealed.

Addendum A



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Tracking Number: **2012-01055**

OPINION OF THE ATTORNEY GENERAL RENDERED IN
CONNECTION WITH THE RULES ADOPTED BY THE
Division of Professions and Occupations - Board of Chiropractic Examiners
ON 11/15/2012

3 CCR 707-1
COLORADO STATE BOARD OF CHIROPRACTIC EXAMINERS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/30/2012 as required by section 24-4-103, C.R.S. This office has reviewed them and our opinion is that rules 6 and 29 are constitutional and otherwise legal, but that the changes to Rule 7 exceed the legislative scope of authority granted to the Board of Chiropractic Examiners.

December 05, 2012 10:51:14 MST

JOHN W. SUTHERS
Attorney General
by **DANIEL D. DOMENICO**
Solicitor General