

**PROPOSED REGULATION OF THE CHIROPRACTIC
PHYSICIANS' BOARD OF NEVADA**

LCB File No. R034-05

July 29, 2005

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-3, NRS 634.030 and 634.123; §§4 and 7, NRS 634.030; §5, NRS 364.030 and 634.130; §6, NRS 634.018 and 634.030.

A REGULATION relating to chiropractic medicine; requiring certain applicants for certification as a chiropractor's assistant and chiropractor's assistant for massage to apply within a certain period; removing the requirement that an applicant for certification as a chiropractor's assistant and chiropractor's assistant for massage submit certain statements; requiring certification by the National Certification Board for Therapeutic Massage and Bodywork for certain applicants for certification as a chiropractor's assistant for massage; revising provisions regarding manipulation of patients under anesthesia; making various changes concerning continuing education requirements; prohibiting sexual relationships between chiropractors and current patients; removing the requirement that a supervising licensee inform a chiropractor's assistant, chiropractor's assistant for massage and chiropractor's assistant trainee of certain provisions; and providing other matters properly relating thereto.

Section 1. NAC 634.350 is hereby amended to read as follows:

634.350 1. An applicant for a certificate as a chiropractor's assistant or *an applicant for a certificate as a* chiropractor's assistant for massage must file an application with the Board on a form furnished by the Board and pay the required fee ~~[not less than 30 days before the date of the examination.]~~ *within 15 days after the date on which the applicant has begun performing duties as a chiropractor's assistant or chiropractor's assistant for massage. An applicant who has not begun performing duties as a chiropractor's assistant or chiropractor's assistant for massage may file an application at any time after he has completed his formal training required pursuant to NRS 634.123.*

2. The application must set forth:

(a) The date of the application.

(b) The applicant's date and place of birth and two personal references based upon 5 years' acquaintance.

(c) The applicant's name, age, social security number, sex and current residence.

(d) If the applicant is applying for:

(1) A certificate as a chiropractor's assistant:

(I) The name and mailing address of the applicant's current employer, if any; *and*

(II) If applicable, the date on which he was hired to perform the duties of a chiropractor's assistant. ~~]; and~~

~~———(III) If the applicant was hired to perform the duties of a chiropractor's assistant, the statement required pursuant to NAC 634.460.]~~

(2) A certificate as a chiropractor's assistant for massage ~~];~~

~~———(I) The], the~~ name and mailing address of the applicant's current employer, if any. ~~]; and~~

~~———(II) If the applicant was hired to perform the duties of a chiropractor's assistant for massage, the statement required pursuant to NAC 634.460.]~~

(e) Whether or not the applicant has ever applied for certification as a chiropractor's assistant or chiropractor's assistant for massage, as appropriate, in another state. If he has so applied, he must state when and where he applied and the result of that application.

(f) If the applicant has been certified in another state, whether any proceeding to discharge, dismiss or discipline him or other similar proceeding has ever been instituted against him and the disposition of each such proceeding.

3. An application expires after 1 year.

4. For good cause shown, the Board may, at its discretion, waive one or more of the requirements of this section.

Sec. 2. NAC 634.355 is hereby amended to read as follows:

634.355 1. An applicant for a certificate as a chiropractor's assistant or chiropractor's assistant for massage must, in addition to fulfilling the requirements of NAC 634.350, furnish evidence satisfactory to the Board that he:

(a) Is 18 years of age or older; and

(b) Has received a score of at least 75 percent on an examination administered by the Board on the provisions of NRS and NAC that are related to the practice of chiropractic.

2. In addition to the requirements set forth in subsection 1 and NAC 634.350, an applicant for a certificate as a chiropractor's assistant must furnish evidence satisfactory to the Board that he:

(a) Satisfies one of the following:

(1) Is certified as a chiropractor's assistant by a program for chiropractor's assistants that is approved by the Board; or

(2) Has had 6 months of full-time training and employment as a chiropractor's assistant trainee from a licensee.

(b) Has received a score of at least 75 percent on the examination for certification required pursuant to NAC 634.305.

3. In addition to the requirements set forth in subsection 1 and NAC 634.350, an applicant for a certificate as a chiropractor's assistant for massage must furnish evidence satisfactory to the Board that he has passed:

(a) The examination administered by the National Certification Board for Therapeutic Massage and Bodywork ~~;~~ *and holds a current certificate from that organization;* or

(b) An examination that the Board deems sufficient.

4. Evidence of an applicant's completion of approved training pursuant to subparagraph (2) of paragraph (a) of subsection 2 must consist of a certification by the licensed provider of health care, and the certification must be notarized.

5. The Board may, at its discretion:

(a) Waive one or more of the requirements of this section for good cause shown.

(b) Upon receipt from an applicant of documentation demonstrating that the applicant has received additional formal training, education or experience, grant the applicant credit toward fulfilling the requirements of subparagraph (2) of paragraph (a) of subsection 2.

Sec. 3. NAC 634.360 is hereby amended to read as follows:

634.360 1. A person may not be employed and trained for more than 30 days as a chiropractor's assistant trainee for the purposes of satisfying subparagraph (2) of paragraph (a) of subsection 2 of NAC 634.355 unless the person ~~;~~

~~—(a) Within] *within* the first 30 days during which he performs any duties as a chiropractor's assistant trainee, applies to the Board by submitting a form provided by the Board . ~~;~~ and~~

~~—(b) Includes with the application, the statement required pursuant to NAC 634.460.]~~

2. Except as otherwise provided in subsection 3, an applicant for a certificate as a chiropractor's assistant who completes training pursuant to subparagraph (2) of paragraph (a) of subsection 2 of NAC 634.355 shall, upon the completion of his training:

(a) Apply to the Board to sit for the next scheduled examination; and

(b) Submit the fees required by the Board pursuant to NAC 634.200.

3. For good cause shown, the Board may, at its discretion, extend the training period of a chiropractor's assistant trainee and authorize the trainee to take a later scheduled examination.

Sec. 4. NAC 634.3665 is hereby amended to read as follows:

634.3665 1. A licensee shall not perform manipulation on a patient under anesthesia unless the licensee performs the manipulation at a medical facility *or office* described in subsection 2 and:

(a) Has obtained certification to perform such manipulation from:

(1) A college of chiropractic that is accredited by the Council on Chiropractic Education;

or

(2) Another program approved by the Board; or

(b) Is enrolled in a program to obtain the certification described in paragraph (a) at the time the manipulation is performed and the licensee performs the manipulation under the direct supervision of a qualified instructor approved by the Board.

2. The manipulation described in subsection 1 may be performed :

(a) *On a patient who is under general anesthesia or deep sedation*, only in a hospital or surgical center for ambulatory patients that is licensed by the Health Division of the Department of *Health and* Human ~~[Resources]~~ *Services* and accredited by:

~~[(a)]~~ (1) The Joint Commission on Accreditation of Healthcare Organizations; or

~~[(b)]~~ (2) The National Committee for Quality Assurance ~~[I]~~; *or*

(b) *On a patient who is under conscious sedation:*

(1) *In a medical facility described in paragraph (a); or*

(2) *In the office of a physician licensed pursuant to chapter 630 of NRS or osteopathic physician licensed pursuant to chapter 633 of NRS who is currently certified by a specialty*

board of the American Board of Medical Specialties in the specialty of anesthesiology, emergency medicine or the management of pain, if the office is approved by the Board for the administration, monitoring and control of conscious sedation by a licensee.

3. As used in this section:

(a) *“Conscious sedation” means a minimally depressed level of consciousness, produced by a pharmacologic or nonpharmacologic method, or a combination thereof, in which the patient retains the ability independently and continuously to maintain an airway and to respond appropriately to physical stimulation and verbal commands.*

(b) *“Deep sedation” means a controlled state of depressed consciousness, produced by a pharmacologic or nonpharmacologic method or a combination thereof, and accompanied by a partial loss of protective reflexes and the inability to respond purposefully to verbal commands.*

(c) *“General anesthesia” means a controlled state of unconsciousness, produced by a pharmacologic or nonpharmacologic method, or a combination thereof, and accompanied by partial or complete loss of protective reflexes and the inability independently to maintain an airway and respond purposefully to physical stimulation or verbal commands.*

(d) “Hospital” has the meaning ascribed to it in NRS 449.012.

~~(b)~~ (e) “Surgical center for ambulatory patients” has the meaning ascribed to it in NRS 449.019.

Sec. 5. NAC 634.385 is hereby amended to read as follows:

634.385 1. Except as otherwise provided in subsection 6, the Board may approve or endorse an educational class or a seminar if it is designed to advance the professional skills and

knowledge of the chiropractic physicians licensed in this State for the purpose of ensuring an optimum quality of chiropractic health care.

2. The Board may approve or endorse the attendance of licensees at an educational seminar or seminars if:

(a) The syllabus and curriculum of the instructors of the seminar or seminars and the required fee are submitted to the Board;

(b) The seminar or seminars provide instruction in conformity with subsection 3 of NRS 634.130;

(c) The seminar or seminars concern the clinical aspects of a practice or another topic that the Board determines to be in the best interest of the public;

(d) The sponsor of the seminar or seminars ensures that each licensee who requests credit for continuing education to satisfy the requirement set forth in subsection 3 of NRS 634.130 attends at least 50 minutes of each hour of instruction;

(e) The seminar or seminars are sponsored by:

(1) A chiropractic college which has been accredited by:

(I) The Council on Chiropractic Education; or

(II) Another educational entity that has been approved by the Board;

(2) A state chiropractic board or association; or

(3) The American Chiropractic Association, the International Chiropractors Association or the successor of either; and

(f) ~~FA~~ *An original* certificate of attendance at the seminar or seminars is provided directly to the Board by the sponsor *or licensee on or before January 1 of each year* before the issuance of a renewal certificate.

3. The sponsor of the seminar or seminars shall ensure that each licensee attending that seminar is in attendance in a timely manner at the start of each lecture. If the sponsor fails to maintain the proper monitoring procedure, such failure may constitute grounds for the Board to withdraw its approval of a current or future seminar or seminars hosted or arranged by that sponsor.

4. The sponsor of a seminar shall allow any representative of the Board to attend all or part of the seminar in order to monitor the content of the course or lecture and the procedures for taking attendance. A representative who is taking the seminar to satisfy the requirements of subsection 3 of NRS 634.130 shall pay the full registration fee.

5. The sponsor of a seminar which has received the approval of the Board shall report to the Board all changes in the seminar as soon as possible.

6. The Board will not award credit for continuing education to a licensee for an educational class or seminar that is of a nonclinical nature, including, without limitation, an educational class or seminar regarding:

- (a) The building or management of a chiropractic practice; or
- (b) The billing of insurance.

7. The Board will not award credit for continuing education to an instructor of an educational class or seminar unless the instructor obtained from the Board approval for such credit before teaching the educational class or seminar.

~~[8. If, in a particular year, a licensee fails to obtain the 2 hours of continuing education in a topic specified by the Board that is required pursuant to subsection 3 of NRS 634.130, the Board will deem the licensee to have failed to fulfill his continuing education requirements for that year.]~~

Sec. 6. NAC 634.430 is hereby amended to read as follows:

634.430 1. As used in subsection 10 of NRS 634.018, the Board will interpret the phrase “conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public” to include, without limitation:

- (a) Engaging in or soliciting sexual misconduct as defined in subsection ~~4.~~ 2.
- (b) Performing any chiropractic service on a patient who is under the age of 18 years without first obtaining the consent of the parent or legal guardian of that patient if the consent is required pursuant to NRS 129.030.
- (c) Performing manipulation on a patient under anesthesia without complying with the requirements set forth in NAC 634.3665.
- (d) Entering into a financial agreement or making a financial arrangement with a potential or existing patient as an inducement to enter into or continue care. This paragraph does not prohibit a licensee from providing complimentary chiropractic services to an existing patient.
- (e) Participating in any verbal or written arrangement that involves capping or fee splitting.
- (f) Engaging in practices regarding the billing of patients or the making of claims under a contract of insurance that are abusive or fraudulent, or both, including, without limitation:
 - (1) Billing patients or making claims under a contract of insurance for chiropractic services that have not been performed.
 - (2) Billing patients or making claims under a contract of insurance in a manner which misrepresents the nature of the chiropractic services that have been performed.
 - (3) Submitting to patients or carriers of insurance bills or claims that fail to disclose pertinent information or contain false information, including, without limitation:

(I) Failing to disclose to a patient that a bill has already been paid, in full or in part, by a carrier of insurance.

(II) Failing to disclose to a carrier of insurance that a claim has already been paid, in full or in part, by a different carrier of insurance.

(III) Stating falsely that the injury of a patient is the result of an accident or work-related incident.

(g) Engaging in a practice of waiving, abrogating or rebating the deductible or copayment required to be paid by a policy of insurance or a third party if the practice is used as a device for advertising or marketing, or both.

(h) Failing to make any report or record available to the Board upon lawful request, failing to cooperate with any investigation by the Board or knowingly giving false information to the Board.

(i) Failing to make any report or record available to another licensee, practitioner, patient or institution upon a lawful request to do so in compliance with the provisions of chapter 629 of NRS.

(j) Being delinquent in the payment of a judgment for the payment of child support pursuant to chapter 425 of NRS or being subject to a court order for the support of one or more children and not complying with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

(k) Being in default on the payment of a student loan.

(l) Violating the rules or regulations of a federal program that relates to the practice of chiropractic.

(m) Engaging in fraud, misrepresentation or deception in any business affairs that relate to the practice of chiropractic.

(n) Allowing a person to:

(1) Perform chiropractic services; or

(2) Engage in any aspect of the provision of chiropractic care to patients,

↳ if that person is not authorized to perform such services or provide such care pursuant to this chapter and chapter 634 of NRS. The prohibition set forth in this paragraph does not apply to a person who is licensed or certified as a provider of health care pursuant to one or more of the chapters of title 54 of NRS.

(o) Engaging with a patient in a romantic or dating relationship unless ~~§~~:

~~— (1) The] *the* patient is the spouse of the licensee . ~~§~~; or~~

~~— (2) The patient is involved in a dating relationship with the licensee and the patient signs an informed consent as required pursuant to subsection 3.]~~

(p) Examining or treating the anus, breast or genitalia of a patient without first:

(1) Obtaining from the patient an informed consent that refers to the specific procedures that will be performed on those parts of the body of the patient; and

(2) Making a note of such consent in the record of the patient.

(q) Violating a provision of a chapter of title 54 of NRS other than chapter 634 of NRS pursuant to which the licensee holds a license or certificate as a provider of health care.

2. ~~[If, at a hearing conducted pursuant to NRS 634.190, the Board receives reliable, probative evidence, the preponderance of which indicates that the licensee has engaged in conduct of a sexual nature with a patient other than the spouse of the licensee, there is a rebuttable presumption that the licensee committed sexual misconduct. The licensee may rebut~~

~~this presumption by adducing evidence to include, without limitation, that the licensee obtained the informed consent required pursuant to subsection 3 or that the chiropractor-patient relationship had been terminated at the time the alleged conduct took place.~~

~~—3.— A licensee must obtain the informed consent of a patient with whom the licensee is having a dating relationship each time before the licensee performs chiropractic services on the patient. The consent must be in substantially the following form:~~

~~— I am having a dating relationship with (name of chiropractor), and I consent to receiving chiropractic services on (date) from this chiropractor.~~

~~.....
.....
..... (date) (signature of patient)~~

~~—4.]~~ As used in this section:

(a) “Capping” means the use by a licensee of the services of a person who is remunerated for referring to the licensee a new patient who has been involved in a motor vehicle accident or who has been injured as a result of the actions of another person.

(b) “Fee splitting” means the acceptance of remuneration by a licensee for referring a patient to another provider of health care or a health care facility or the provision of remuneration by a licensee for a referral to the business of the licensee.

(c) “Sexual misconduct” means:

(1) Sexual relations between a licensee and a patient of that licensee, regardless of whether the patient initiated or consented to those sexual relations.

(2) Conduct by a licensee, in regard to a patient, that is sexual in nature, sexually suggestive or sexually demeaning to the patient.

(3) The commission by a licensee of one or more of the offenses defined in NRS 200.368, 200.730, 201.210 and 201.220.

(4) The use by a licensee of deception, misrepresentation or force for the purpose of engaging in sexual conduct with a patient in:

(I) A clinical setting; or

(II) A setting that is used ordinarily for the provision of chiropractic services.

↪ The term does not include sexual conduct or sexual relations that take place between a licensee and his spouse ~~[]~~ or between a licensee and a person who was a patient after the chiropractor-patient relationship has been terminated for a reasonable time . ~~[, or between a licensee and a patient if the patient signs an informed consent as required pursuant to subsection 3.]~~

Sec. 7. NAC 634.460 is hereby amended to read as follows:

634.460 ~~[1.]~~ A chiropractor's assistant, chiropractor's assistant for massage or chiropractor's assistant trainee may not:

~~[(a)]~~ 1. Diagnose a patient or establish a prognosis.

~~[(b)]~~ 2. Prescribe a program of treatment for any patient.

~~[(e)]~~ 3. Perform any service ~~[which]~~ that is not specifically authorized by the provisions of chapter 634 of NRS.

~~[(d)]~~ 4. Perform any service that is not specifically authorized by the terms of his certificate.

~~[(e)]~~ 5. Perform a chiropractic adjustment.

~~[(f)]~~ 6. Perform any service, except at the direction and under the direct supervision of a licensee.

~~[(g)]~~ 7. Bill independently of the supervising licensee for any services rendered.

~~[2.—The supervising licensee shall inform each chiropractor’s assistant, chiropractor’s assistant for massage and chiropractor’s assistant trainee who is subject to the supervision of the licensee of the provisions of this section, and the chiropractor’s assistant, chiropractor’s assistant for massage or chiropractor’s assistant trainee must sign a statement indicating that he has been so informed and that he understands the provisions and agrees to comply with them. The statement must be in substantially the following form:~~

~~—I,, (name and title of person supervised by chiropractor) have been informed by my supervising chiropractor (name of supervising chiropractor) of the content of the provisions of NAC 634.460. I understand those provisions and I agree that I will not perform a chiropractic adjustment or any other act prohibited by NAC 634.460 during this supervisory period.~~

~~.....
.....
..... (date) (signature of person supervised by
chiropractor)}~~