

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

LCB File No. R115-23

December 7, 2023

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

AUTHORITY: §§ 1 and 3, NRS 634.030; § 2, NRS 634.030 and 634.035; § 4, NRS 634.030 and 634.160; § 5, NRS 634.030 and 634.130; § 6, NRS 634.018 and 634.030.

A REGULATION relating to chiropractic; revising provisions relating to manipulation under anesthesia; revising provisions relating to education and training in dry needling; requiring a chiropractic physician or chiropractic assistant to provide certain information to the Chiropractic Physicians' Board of Nevada; revising requirements relating to self-inspection forms; revising provisions relating to credits for continuing education; revising provisions relating to actions which are grounds for disciplinary action; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Chiropractic Physicians' Board of Nevada to adopt regulations establishing the qualifications a chiropractic physician must obtain before he or she is authorized to perform dry needling, which must include, without limitation, the successful completion of didactic education and training in dry needling. (NRS 634.035) Existing regulations: (1) require a chiropractic physician who wishes to obtain certification to perform dry needling to have completed at least 50 hours of didactic education and training in dry needling offered or certified by certain entities; and (2) provide a list of such entities, which includes the Providers of Approved Continuing Education. (NAC 634.3668) **Section 2** of this regulation removes the Providers of Approved Continuing Education from the list of entities from which a chiropractic physician may complete such education and training.

Existing regulations require a chiropractic physician or chiropractic assistant who is licensed or certified by the Board to: (1) provide the Board with the address of his or her current legal residence; and (2) notify the Board, in writing, of any change in his or her legal residence within 15 days after the change. (NAC 634.380) **Section 3** of this regulation requires a chiropractic physician or chiropractic assistant to additionally provide the Board with the electronic mail address that he or she uses in the course of his or her professional practice.

Existing regulations require a licensee to biennially submit to the Board a self-inspection form prescribed by the Board on or before December 31 of each even-numbered year. (NAC 634.384) **Section 4** of this regulation removes this requirement and instead requires a licensee, within 10 business days after the receipt of a self-inspection form in relation to a complaint made

against the licensee, to complete and submit the form to the Board. **Section 4** also provides that a failure to complete and submit such a form is grounds for disciplinary action by the Board.

Existing law requires, with certain exceptions, a licensee in active practice within this State and a holder of a certificate as a chiropractic assistant in active practice within this State to attend certain hours of continuing education as a condition of renewing his or her license or certificate. (NRS 634.130) Existing regulations prescribe the circumstances under which the Board may approve or endorse an educational class or seminar for continuing education and attendance at such a seminar. Existing regulations additionally provide that as an alternative to the requirements prescribed for the approval or endorsement of attendance at such seminars, the Board will approve and endorse the attendance of a licensee or holder of a certificate at an educational seminar or seminars if the seminar or seminars have been granted recognition status by the Providers of Approved Continuing Education of the Federation of Chiropractic Licensing Boards and concern certain subjects. (NAC 634.385) **Section 5** of this regulation removes the requirement for the Board to approve and endorse the attendance of a licensee or a holder of a certificate at an educational seminar or seminars under such circumstances. Existing regulations additionally provide the manner in which a licensee or holder of a certificate may receive credit for continuing education. (NAC 634.385) **Section 5** provides that the Board will award credit for continuing education, not to exceed 4 hours per calendar year, to a licensee or holder of a certificate for his or her attendance at a meeting of the Board during the calendar year.

Existing law provides that certain actions including, among other things, unprofessional conduct, are grounds for initiating disciplinary action against a licensee or registrant pursuant to chapter 634 of the Nevada Revised Statutes. (NRS 634.140) Existing law defines “unprofessional conduct” to mean, among other things, conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public. (NRS 634.018) Existing regulations provide a nonexhaustive list of actions which the Board will interpret as “conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public.” Among other things, the Board includes in the list, participation in any verbal or written arrangement that involves capping or fee splitting and the performance of 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 by existing law. (NRS 129.030, NAC 634.430) **Section 6** of this regulation removes from the list explicit reference to an act which involves the performance of any chiropractic service on a patient who is under the age of 18 years without proper consent. **Section 6** additionally revises the definition of “capping” to include the use by a licensee of the services of a person who, with or without remuneration, refers a prospective new patient to the licensee: (1) at the scene of a traffic crash; (2) at a county jail or detention facility; or (3) within 72 hours after the prospective new patient has been involved in a motor vehicle accident or been injured as a result of the actions of another person, if the person who refers the prospective new patient is not licensed or certified as a provider of health care.

Existing regulations authorize a chiropractic physician who is licensed by the Board to perform manipulation on a patient who is under conscious sedation in the office of a physician 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. (NAC 634.3665) **Section 1** of this regulation replaces the reference to certification in the specialty of the management of pain with certification in the subspecialty of pain medicine to

reflect the specialty and subspecialty certificates currently offered by the American Board of Medical Specialties.

Section 1. 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 Division of Public and Behavioral Health of the Department of Health and Human Services and accredited by:

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

(2) The National Committee for Quality Assurance; 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 ~~H~~ *or* emergency medicine or ~~{the management of pain,}~~ *the subspecialty of pain medicine*, 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.

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

Sec. 2. NAC 634.3668 is hereby amended to read as follows:

634.3668 1. A chiropractic physician who wishes to obtain certification to perform dry needling must submit to the Board an application in the form prescribed by the Board. The application must include, without limitation, proof that the applicant has completed at least 50 hours of didactic education and training in dry needling offered or certified by:

- (a) The Federation of Chiropractic Licensing Boards, or its successor organization;
- (b) The American Chiropractic Association, or its successor organization;
- (c) The International Chiropractors Association, or its successor organization;
- (d) ~~The Providers of Approved Continuing Education, or its successor organization;~~
- ~~(e)~~ The American Medical Association, or its successor organization;
- ~~(f)~~ (e) The American Osteopathic Association, or its successor organization;
- ~~(g)~~ (f) The Accreditation Council for Continuing Medical Education, or its successor organization;
- ~~(h)~~ (g) The State Board of Oriental Medicine; or
- ~~(i)~~ (h) A school of chiropractic.

2. Except as otherwise provided in this subsection, a chiropractic physician who wishes to renew a certificate issued pursuant to this section must submit to the Board with each application to renew his or her license to practice chiropractic proof that he or she completed at least 4 hours of continuing education in dry needling during the immediately preceding biennium. A chiropractic physician is not required to complete such continuing education during the biennium in which the certificate is issued.

3. A chiropractic physician may perform dry needling only if he or she is certified pursuant to this section. A chiropractic assistant shall not perform dry needling.

Sec. 3. NAC 634.380 is hereby amended to read as follows:

634.380 1. A chiropractic physician or chiropractic assistant who is licensed or certified by the Board shall:

- (a) Provide the Board with the ~~{address}~~ :
 - (1) *Address* of his or her current legal residence; and

(2) Electronic mail address that he or she uses in the course of his or her professional practice; and

(b) Notify the Board, in writing, of any change in his or her legal residence within 15 days after the change.

2. In addition to providing the Board with the address of each office where he or she practices pursuant to NRS 634.129, and the address of his or her legal residence, a chiropractic physician or chiropractic assistant may provide the number of a post office box which is to be used as his or her mailing address.

Sec. 4. NAC 634.384 is hereby amended to read as follows:

634.384 ~~{Each}~~ A licensee shall ~~{biennially}~~, *within 10 business days after receiving a self-inspection form from the Board relating to a complaint, as described in NRS 634.160, made against the licensee, complete and* submit ~~{a}~~ *the* self-inspection form ~~{prescribed by}~~ *to* the Board. ~~{The}~~ *A failure to complete and submit the* self-inspection form ~~{must be received by the Board on or before December 31 of each even-numbered year. The Board will reject a self-inspection form submitted pursuant to this section if the form is incomplete.}~~ *is grounds for disciplinary action by the Board.*

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

634.385 1. Except as otherwise provided in subsection ~~{7,}~~ *6*, the Board may approve or endorse an educational class or a seminar if it concerns:

- (a) The practice of chiropractic;
- (b) Performing chiropractic adjustment;
- (c) Avoiding unprofessional conduct or malpractice including, without limitation, gross malpractice;

- (d) Performing manipulation;
- (e) Diagnosis and treatment of subluxation complex;
- (f) Compliance with this chapter or chapter 629 or 634 of NRS; or
- (g) Lifesaving skills, as described in subsection 4 of NRS 634.130.

2. The Board may approve or endorse the attendance by licensees or holders of certificates, in person or on-line, of 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 or 4 of NRS 634.130, as applicable;

(c) The seminar or seminars concern a subject described in subsection 1;

(d) The sponsor of the seminar or seminars ensures that each licensee and holder of a certificate who requests credit for continuing education to satisfy the requirement set forth in subsection 3 or 4 of NRS 634.130, as applicable, attends at least 50 minutes of each hour of instruction; and

(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;

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

(4) A major hospital, as defined in NRS 439B.115;

(5) An accredited university or college; or

(6) A regulatory body as defined in NRS 622.060.

3. ~~{As an alternative to the method of approval and endorsement provided in subsection 2, the Board will approve and endorse the attendance by licensees or holders of certificates, as applicable, in person or on-line, of an educational seminar or seminars if the seminar or seminars have been granted recognition status by the Providers of Approved Continuing Education of the Federation of Chiropractic Licensing Boards and concern a subject described in subsection 1.~~

~~—4.}~~ The sponsor of the seminar or seminars shall ensure that each licensee or holder of a certificate, as applicable, 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.

~~{5.}~~ 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 or 4 of NRS 634.130, as applicable, shall pay the full registration fee.

~~{6.}~~ 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.

~~{7.}~~ 6. Except as otherwise provided in this subsection, the Board will not award credit for continuing education to a licensee or holder of a certificate, as applicable, for an educational class or seminar that is of a nonclinical nature, including, without limitation, an educational class or seminar regarding the building or management of a chiropractic practice. For the purposes of this subsection, an educational class or seminar regarding proper billing procedures shall not be

deemed to be an educational class or seminar regarding the building or management of a chiropractic practice.

~~18.1~~ 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.

~~19.1~~ 8. Continuing education hours earned through the completion of a specific educational class or seminar may be counted only once during a calendar year toward the hours of continuing education required by subsection 3 or 4 of NRS 634.130, as applicable, even if the licensee or holder of a certificate completes that class or seminar more than once during that calendar year.

~~110.1~~ 9. The Board will award credit for continuing education to a licensee or a holder of a certificate for all educational classes or seminars which are approved and endorsed by the Board pursuant to this section and are attended by the licensee or holder of a certificate.

10. The Board will award credit for continuing education, not to exceed 4 hours per calendar year, to a licensee or a holder of a certificate for attending a meeting of the Board during the calendar 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.
- (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.~~

~~(e)~~ Performing manipulation on a patient under anesthesia without complying with the requirements set forth in NAC 634.3665.

~~(d)~~ (c) 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)~~ (d) Participating in any verbal or written arrangement that involves capping or fee splitting.

~~(f)~~ (e) 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 which fail to disclose pertinent information or which 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)~~ (f) 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)~~ (g) 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, including, without limitation, falsifying documentation concerning continuing education.

~~(i)~~ (h) 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)~~ (i) 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)~~ (j) Being in default on the payment of a student loan.

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

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

~~(n)~~ (m) 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.

~~(n)~~ **(n)** Engaging with a patient in a romantic or dating relationship unless the patient is the spouse of the licensee.

~~(o)~~ **(o)** 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.

~~(p)~~ **(p)** 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.

~~(q)~~ **(q)** Knowingly giving a false or factually unsupported opinion in a peer review, records review, independent medical examination or chiropractic examination for the purpose of reducing a payment or reimbursement to a licensee for the care or treatment of a patient.

~~(r)~~ **(r)** Failing to either post a written disclosure or give a written disclosure to a patient and maintain the written disclosure concerning a lack of maintaining professional liability insurance in accordance with the requirements of NRS 634.1295 and NAC 634.445.

~~(s)~~ **(s)** Practicing chiropractic while impaired by alcohol, the use of illicit drugs, the unauthorized or improper use of a prescription drug or controlled substance, or any known or diagnosed mental illness or cognitive deficit.

~~(a)~~ (f) Paying or receiving any remuneration in such a manner and amount as would constitute a violation of 42 U.S.C. § 1320a-7b(b), regardless of whether the patient for whom the remuneration is paid or received is a patient under a federal health care program.

2. A patient's consent to, initiation of or participation in sexual behavior or involvement in a romantic or dating relationship with a licensee does not excuse the conduct of the licensee.

3. As used in this section:

(a) "Capping" means the use by a licensee of the services of ~~fat~~:

(1) 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.

(2) A person who, with or without remuneration, refers a prospective new patient to the licensee:

(I) At the scene of a traffic crash;

(II) At a county or city jail or detention facility; or

(III) Within 72 hours after the prospective new patient has been involved in a motor vehicle accident or been injured as a result of the actions of another person, if the person who refers the prospective new patient is not 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 or the laws of another state or the District of Columbia.

(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 or her spouse or between a licensee and a person who was a patient after the chiropractic physician-patient relationship has been terminated for a reasonable time.

(d) “Sexual relations” means:

(1) Sexual intercourse.

(2) Any touching of sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the licensee for the purpose of arousing or gratifying the sexual desire of either the licensee or the patient.