

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

LCB File No. R140-05

October 3, 2005

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 section 1 of Senate Bill No. 174 of the 73rd Session of the Nevada Legislature, chapter 502, Statutes of Nevada 2005, at page 2820 (NRS 634.1295); §4, NRS 634.030 and 634.135; §5, NRS 634.018 and 634.030.

A REGULATION relating to chiropractic; establishing the form, size, contents, placement and maintenance of written disclosures that a licensee who does not maintain professional liability insurance is required to post or give to his patients; requiring a licensee to submit information to the Chiropractic Physicians' Board of Nevada before authorizing his employees or independent contractors retained by him to provide certain services to his patients; increasing the fee for a review of certain courses by the Board; including additional conduct within the Board's interpretation of certain conduct which falls within the statutory definition of "unprofessional conduct"; and providing other matters properly relating thereto.

Section 1. Chapter 634 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *Each written disclosure that is posted by a licensee pursuant to paragraph (a) of subsection 1 of section 1 of Senate Bill No. 174 of the 73rd Session of the Nevada Legislature, chapter 502, Statutes of Nevada 2005, at page 2820 (NRS 634.1295), must:*

(a) Be printed in boldface capital letters on paper that is at least 8 1/2 inches by 11 inches in size;

(b) Not contain text that is smaller than a 42-point Times New Roman font or less than 1/2 inch in height; and

(c) *Be in substantially the following form:*

IMPORTANT NOTICE TO MY PATIENTS

I, (NAME OF CHIROPRACTOR), DO NOT MAINTAIN
PROFESSIONAL LIABILITY INSURANCE.

2. Each written disclosure that is given to a patient by a licensee pursuant to paragraph (b) of subsection 1 of section 1 of Senate Bill No. 174 of the 73rd Session of the Nevada Legislature, chapter 502, Statutes of Nevada 2005, at page 2820 (NRS 634.1295), must:

- (a) Be printed in boldface letters on paper that is at least 8 1/2 inches by 11 inches in size;***
- (b) Be captioned in capital letters in text that is not smaller than a 28-point Times New Roman font or less than 1/4 inch in height;***
- (c) Not contain text that is smaller than a 18-point Times New Roman font or less than 1/4 inch in height; and***
- (d) Be in substantially the following form:***

ACKNOWLEDGMENT OF LACK OF PROFESSIONAL LIABILITY INSURANCE

***I, (name of patient), acknowledge that I am aware that
(name of chiropractor) does not maintain professional liability insurance coverage.***

.....
(date)

.....
(signature of patient)

3. A written disclosure described in subsection 2 must be signed by the patient before the licensee provides any chiropractic treatment or care to the patient.

4. After a written disclosure described in subsection 2 is signed by a patient, the licensee shall maintain the written disclosure as a part of the record of the patient.

Sec. 3. *1. A licensee may authorize a person to provide services for his patients in the office of the licensee, other than chiropractic or clerical services, only if the licensee submits the information required by subsection 2 to the Board, on a form prescribed by the Board, at least 15 days before the person commences providing the services.*

2. The form prescribed by the Board pursuant to subsection 1 must include:

- (a) The name, business telephone number and license number of the licensee;*
- (b) The name of the person who will be providing the services for the patients of the licensee;*
- (c) The type of services that the person will be providing for the patients of the licensee;*
- (d) The address of the location at which the person will be providing the services for the patients of the licensee;*
- (e) The date on which the person will begin providing the services for the patients of the licensee;*
- (f) A statement indicating that the person will not be providing chiropractic services, including, without limitation, taking X rays, services that involve the use of physiotherapeutic equipment and massage therapy;*
- (g) A statement indicating whether the person who will be providing the services is an employee of the licensee or is retained by the licensee as an independent contractor;*

(h) A copy of any license or certificate that authorizes the person to provide the services that he will be providing for the patients of the licensee;

(i) A statement indicating that the licensee will ensure that a copy of any license or certificate that is provided to the Board pursuant to paragraph (h) is available to each patient of the licensee for whom the person provides services; and

(j) The signature of the licensee.

3. A licensee shall ensure that each employee of the licensee who provides services for the patients of the licensee in the office of the licensee, other than chiropractic or clerical services, provides those services only under the direct supervision of the licensee.

4. A licensee who authorizes an independent contractor to provide services in the office of the licensee pursuant to the provisions of this section shall establish procedures which ensure that each patient of the licensee to whom the independent contractor provides services is notified that:

(a) The independent contractor is not an employee of the licensee;

(b) The services provided by the independent contractor in the office of the licensee are not provided under the supervision or control of the licensee; and

(c) The licensee will not bill the patient or the insurance company of the patient for any services provided by the independent contractor.

5. A licensee shall notify the Board within 15 days after an employee or independent contractor who is authorized pursuant to this section to provide services to the patients of the licensee leaves the employ of or is no longer retained by the licensee.

Sec. 4. NAC 634.200 is hereby amended to read as follows:

634.200 1. The Board will charge and collect the following fees:

For an application for a license to practice chiropractic	\$200.00
For an examination for a license to practice chiropractic	100.00
For an application for, and the issuance of, a certificate as a chiropractor's assistant or chiropractor's assistant for massage	100.00
For an application for a temporary license to practice chiropractic pursuant to NRS 634.115	50.00
For an examination for a certificate as a chiropractor's assistant or chiropractor's assistant for massage	50.00
For the issuance of a license to practice chiropractic	200.00
For the issuance of a temporary license to practice chiropractic pursuant to NRS 634.115	50.00
For an annual renewal of an active license to practice chiropractic.....	300.00
For the annual renewal of an inactive license to practice chiropractic	100.00
For the annual renewal of a certificate as a chiropractor's assistant or chiropractor's assistant for massage	50.00
For the restoration to active status of an inactive license to practice chiropractic	300.00
For reinstating a license to practice chiropractic which has been suspended or revoked	500.00
For reinstating a certificate as a chiropractor's assistant or chiropractor's assistant for massage which has been suspended or revoked	35.00

For reinstating an inactive license to practice chiropractic which has been suspended or revoked	100.00
For a review of any subject on the examination.....	25.00
For the issuance of a duplicate license or certificate or for changing the name on a license or certificate	35.00
For written certification of licensure	25.00
For providing a list of persons who are licensed to practice chiropractic to a person who is not licensed to practice chiropractic	25.00
For providing a list of persons who were licensed to practice chiropractic following the most recent examination of the Board to a person who is not licensed to practice chiropractic	10.00
For a set of mailing labels containing the names and addresses of the persons who are licensed to practice chiropractic in this State	35.00
For a check which is made payable to the Board that is dishonored upon presentation for payment	25.00
For providing a copy of the statutes, regulations and other rules governing the practice of chiropractic in this State	25.00
For each page of a list of continuing education courses which have been approved by the Board.....	0.50
For a review by the Board of a course offered by a chiropractic school or college or a course of continuing education in chiropractic.....	10.00 25.00

2. The fees set forth in this section are not refundable.

Sec. 5. 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.
- (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~~ *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) 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 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.

(r) 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.

(s) 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 section 1 of Senate Bill No. 174 of the 73rd Session of the Nevada Legislature, chapter 502, Statutes of Nevada 2005, at page 2820 (NRS 634.1295), and section 2 of this regulation.

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, 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.