

JIM GIBBONS
Governor
LAWRENCE DAVIS, DC
Acting President
DAVID G. ROVETTI, DC
Secretary
JACK NOLLE, DC
Member

STATE OF NEVADA



PAUL JACKSON
Consumer Member
SHELL MERCER, ESQ
Consumer Member
BENJAMIN LURIE, DC
Member
ANNETTE ZARO, DC
Member
CINDY WADE
Executive Director

CHIROPRACTIC PHYSICIANS' BOARD OF NEVADA

4600 Kietzke Lane, M-245
Reno, Nevada 89502
Fax (775) 688-1920

Telephone (775) 688-1921
Website: <http://chirobd.nv.gov>

Voice Mail (775) 688-1919
Email: chirobd@chirobd.nv.gov

NOTICE OF PUBLIC HEARING TO ADOPT REGULATIONS

**Notice of Hearing for the Adoption of Regulations of the
Chiropractic Physicians' Board of Nevada**

The Chiropractic Physicians' Board of Nevada will hold a **public hearing at 1:00 PM on Saturday, December 4, 2010 in the Conference Room I204 at Kietzke Plaza, 4600 Kietzke Lane, Reno, Nevada 89502.** The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations that pertain to chapter 634 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment. The proposed new regulation will revise Chapter 634 of the Nevada Administrative Code to address the following:

NAC 634.305 Examination for certification as chiropractor's assistant

NAC 634.368 Practice by applicant waiting to take examination

NAC 634.385 Continuing education of licensees

NAC 634.435 Health care records

NAC 634.630 Pleadings: Generally

Repeal of NAC 634.655 Depositions

The need for these amendments and the one repeal are as follows:

NAC 634.305 Examination for certification as chiropractor's assistant: It is a public safety concern that some chiropractor's assistant applicants have taken the chiropractic assistant test multiple times without passing the test yet, under the present regulation, they may continue performing chiropractor's assistant services as a trainee. It is proposed that, upon failing the test twice, the chiropractor's assistant applicant will be required to take a formal course prior to the next scheduled examination.

NAC 634.368 Practice by applicant waiting to take examination: Currently chiropractic college graduates who wish to gain clinical experience in Nevada must apply for certification as Chiropractor's Assistants and are limited to performing x-ray and physiotherapy. Allowing them

to provide all chiropractic services except chiropractic adjustments or manipulations under the direct supervision of a licensee will enhance their practical experience as well as provide assistance to the licensee.

NAC 634.385 Continuing education of licensees: Various changes to the continuing education requirements are made, including allowing chiropractors to obtain continuing education for participating in online seminars and courses, allowing courses related to billing and coding to count toward the required continuing education units, allowing all PACE-approved courses to automatically qualify for approval, and allowing chiropractors to obtain up to four hours of continuing education credit for attending board meetings.

NAC 634.435 Health care records: It has been determined that patient records are not always available in a timely manner. It is proposed that documentation within patient records must be made in legible written form within 72 hours.

NAC 634.630 Pleadings: Generally: Changing the word “complaint” to “notice of charges” will eliminate the confusion about complaints received from the public and the document by which the Board initiates disciplinary action. Enabling the grouping of similar violations into one cause of action will simplify and expedite the disciplinary process.

NAC 634.655 Depositions: Repeal of this regulation will expedite the disciplinary process.

2. A statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.

Copies of the text of the proposed regulation may be obtained from the Board by:

E-mail addressed to: chirobd@chirobd.nv.gov

Telephone call to: (775) 688-1921

Facsimile request to: (775) 688-1920

U.S. Mail request to: Chiropractic Physicians’ Board of Nevada, 4600 Kietzke Lane, Building M, Suite 245, Reno, Nevada 89502

Website access at: chirobd.nv.gov

3. A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608. The Board has held two workshops regarding the regulations at which it has received considerable input from effected practitioners and the state’s association that represents chiropractors statewide. In the course of these workshops, the Board has received no testimony or evidence that the regulations will impose a direct and significant economic burden upon a small business or will directly restrict the formation, operation or expansion of a small business. Rather, several of the regulations are intended to and will have beneficial effects upon the state’s chiropractors by modifying registration requirements for chiropractor’s assistants and authorizing expanded opportunities to licensee to receive continuing education credit.

4. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:

(a) Both adverse and beneficial effects. Most of the amendments and the one repeal will have no economic effect. The changes to the registration criteria for chiropractor’s assistants and chiropractic preceptorships may have a positive effect by allowing both

registration classifications to work in Nevada while attempting to complete registration requirements.

(b) Both immediate and long-term effects. Whatever positive effect the regulations may have will be both immediate and long-term.

5. The estimated cost to the agency for enforcement of the proposed regulation. None.

6. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency. None.

7. If the regulation is required pursuant to federal law, a citation and description of the federal law. None.

8. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions. None.

9. Whether the proposed regulation establishes a new fee or increases an existing fee. None.

Persons wishing to comment upon the proposed action of the Chiropractic Physicians' Board of Nevada may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Chiropractic Physicians' Board of Nevada, 4600 Kietzke Lane, Building M, Suite 245, Reno, Nevada 89502. Written submissions must be received by the Chiropractic Physicians' Board of Nevada on or before November 29, 2010. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Chiropractic Physicians' Board of Nevada may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the office of the Chiropractic Physicians' Board of Nevada, 4600 Kietzke Lane, Building M, Suite 245, Reno, Nevada 89502, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary. Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

A copy of this notice has been posted at the following locations:

1. Chiropractic Physicians' Board of Nevada, 4600 Kietzke Lane, Suite M245, Reno
2. Nevada State Library, 100 Stewart St., Carson City

3. Washoe County Courthouse, 201 S. Virginia St., Reno
4. Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas
5. Legislative Building, 401 South Carson St., Carson City

Copies may also be obtained from any of the public libraries listed below:

Carson City Library
900 North Roop St.
Carson City, NV 89702

Churchill County Library
553 South Main St.
Fallon, NV 89406

Clark County District Library
833 Las Vegas Blvd. North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane
Minden, NV 89423

Elko County Library
720 Court St.
Elko, NV 89801

Esmeralda County Library
Corner of Crook and 4th St.
Goldfield, NV 89013-0484

Eureka Branch Library
210 S. Monroe St.
Eureka, NV 89316-0281

Henderson District Public Library
280 S. Water St.
Henderson, NV 89105

Humboldt County Library
85 East 5th St.
Winnemucca, NV 89445-3095

Lander County Library
625 South Broad St.
Battle Mountain, NV 89820-0141

Lincoln County Library
93 Maine St.
Pioche, NV 89043-0330

Lyon County Library
20 Nevin Way
Yerington, NV 89447-2399

Mineral County Library
110 1st St.
Hawthorne, NV 89415-1390

Pahrump Library District
701 East St.
Pahrump, NV 89041-0578

Pershing County Library
1125 Central Avenue
Lovelock, NV 89419-0781

Storey County Library
95 South R Street
Virginia City, NV 89440-0014

Tonopah Public Library
167 Central St.
Tonopah, NV 89049-0449

Washoe County Library
301 S. Center St.
Reno, NV 89505-2151

White Pine County Library
950 Campton St.
Ely, NV 89301-1965

Per NRS 233B.064(2), upon adoption of any regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

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

LCB File No. R014-10

November 2, 2010

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

AUTHORITY: §§1 and 4-7, NRS 634.030; §2, NRS 634.030 and 634.105; §3, NRS 634.030 and 634.130.

A REGULATION relating to chiropractic; revising provisions relating to continued work by a chiropractor's assistant trainee under certain circumstances; requiring a supervising licensee to notify the Chiropractic Physicians' Board of Nevada within 5 business days after an applicant for a license to practice chiropractic leaves the employ of the supervising licensee; providing for the approval, endorsement and award of credit for certain continuing education of licensees; requiring certain documentation in, and availability of, health care records; revising provisions relating to advertisement of fees; revising provisions relating to forms and content of pleadings; and providing other matters properly relating thereto.

Section 1. NAC 634.305 is hereby amended to read as follows:

634.305 1. At least once each year, the Board will administer an examination to applicants for a certificate as a chiropractor's assistant.

2. The examination will consist of the following subjects, including, without limitation:

- (a) Radiographic technology, protection, quality control and positioning of the patient;
- (b) Ancillary procedures and applications relating to chiropractic; and
- (c) The provisions of NRS and NAC that are related to the practice of chiropractic.

3. An applicant who receives a score of at least 75 percent on the examination is entitled to a certificate as a chiropractor's assistant.

4. If an applicant fails to receive a score of at least 75 percent on the examination the first time he takes the examination, he may retake the examination within 1 year without payment of an additional fee.

5. If an applicant who receives training and employment as a chiropractor's assistant trainee pursuant to subparagraph (2) of paragraph (a) of subsection 2 of NAC 634.355 fails to receive a score of at least 75 percent on the examination after two attempts and wishes to continue working as a chiropractor's assistant trainee, the supervising licensee must, within 30 days after the date of the notice from the Board of the results of the examination, submit a plan for additional training to the Board. ~~[At its next meeting, the Board]~~ *The chair of the test committee will:*

(a) Approve or deny the plan; and

(b) Determine whether the chiropractor's assistant trainee may continue working as a chiropractor's assistant trainee.

6. *If, pursuant to paragraph (b) of subsection 5, the chair of the test committee determines that a chiropractor's assistant trainee may continue working as a chiropractor's assistant trainee, the chiropractor's assistant trainee may continue working as a chiropractor's assistant trainee if he or she:*

(a) *Pursuant to NAC 634.350, submits a new application for a certificate as a chiropractor's assistant and pays the required fee; and*

(b) Provides the chair of the test committee with proof that the chiropractor's assistant trainee is enrolled in an educational course in a subject described in subsection 2.

7. If a chiropractor's assistant trainee who has submitted an application pursuant to paragraph (a) of subsection 6 fails to pass any portion of the examination after two attempts, the chiropractor's assistant trainee:

(a) Shall not work as a chiropractor's assistant trainee; and

(b) May not submit a new application for examination for 1 year after the date of the most recent examination of which the chiropractor's assistant trainee failed to pass a portion of the examination.

8. An applicant for a certificate as a chiropractor's assistant who fails on two occasions to appear for an examination that he has been scheduled to take:

(a) Shall be deemed to have withdrawn his application;

(b) Forfeits any application fees paid to the Board; and

(c) Must, if he has been receiving training and employment as a chiropractor's assistant trainee pursuant to subparagraph (2) of paragraph (a) of subsection 2 of NAC 634.355, cease working as a chiropractor's assistant trainee.

↪ If the applicant applies thereafter for a certificate, the applicant must establish his eligibility for the certificate in accordance with the provisions of this chapter and chapter 634 of NRS.

9. As used in this section, "chair of the test committee" means the member of the Board who is assigned by the Board to serve as the chair of the committee that is created by the Board to administer an examination to applicants for a certificate as a chiropractor's assistant.

Sec. 2. NAC 634.368 is hereby amended to read as follows:

634.368 1. Except as otherwise provided in this section, an applicant for a license to practice chiropractic may perform chiropractic as specified in NRS 634.105 if:

(a) His completed application is on file in the office of the Board and he meets the requirements of NRS 634.090;

(b) The fee for the application has been paid; and

(c) The Board has approved a licensee to supervise the applicant after receiving from that licensee a completed form that is provided by the Board and which sets forth:

(1) The fact of the applicant's employment;

(2) The date that the applicant is to begin working for the supervising licensee;

(3) A statement in which the supervising licensee agrees to take responsibility for the applicant's work;

(4) The assurance of the supervising licensee that chiropractic adjustments or manipulations or any act prohibited by subsection ~~4~~ 5 will not be performed by the applicant; and

(5) The statement required pursuant to subsection 2.

2. The supervising licensee shall inform the applicant of the provisions of this section, and the applicant 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 of applicant) am an applicant for a license to practice chiropractic who is waiting to take the Board's examination. I have been informed by my supervising chiropractor (name of supervising chiropractor) of the content of the provisions of NAC 634.368. I understand those provisions, and I agree that I will not perform a chiropractic adjustment or any act prohibited by subsection ~~4~~ 5 of NAC 634.368 during this supervisory period.

.....

(date)

.....

(signature of applicant)

3. *An applicant who works for a supervising licensee under the provisions of this section and NRS 634.105 is not required to apply for or obtain a certificate as a chiropractor's assistant.*

4. The supervising licensee shall notify the Board ~~4~~ *within 5 business days after* the applicant leaves his employ and the date that the applicant ~~leaves~~ ~~4~~ *left such employ.*

5. In addition to the prohibitions set forth in NRS 634.105, an applicant shall not:

- ~~(a) Diagnose the condition of a patient;~~
- ~~(b) Establish a plan of treatment or prognosis for a patient;~~
- ~~(c) Perform any service, except at the direction and *direct* supervision of a licensee; or~~
- ~~(d)~~ **(b) Bill independently of the supervising licensee for any service rendered.**

~~[5.]~~ 6. Any violation of chapter 634 of NRS or this chapter by the applicant constitutes grounds for the Board to:

- (a) Prohibit the applicant from taking the examination for licensure ~~[4.]~~ *or place conditions upon the issuance of a license to the applicant*; and
- (b) Take appropriate disciplinary action against the supervising licensee.

Sec. 3. NAC 634.385 is hereby amended to read as follows:

634.385 1. Except as otherwise provided in subsection ~~[6.]~~ 7, 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, *or the participation of licensees in an on-line 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 *or participates in, as applicable*, 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) An original or a copy of a 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 odd-numbered year before the issuance of a renewal certificate.

3. *As an alternative to the method of approval and endorsement provided in subsection 2, the Board will approve and endorse the attendance of licensees at an educational seminar or seminars, or the participation of licensees in an on-line 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.*

4. The sponsor of the seminar or seminars shall ensure that each licensee attending *or participating in* that seminar ~~[is in attendance]~~ *attends or participates, as applicable*, 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.]~~ 5. The sponsor of a seminar shall allow any representative of the Board to attend *or participate in* all or part of the seminar in order to monitor the content of the course or lecture

and the procedures for taking attendance ~~{}~~ or *verifying participation*. 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.}~~ 6. 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}~~

7. *Except as otherwise provided in this subsection, 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}~~ *the building or management of a chiropractic practice . ~~{}~~ or*

~~{(b) The}~~ *For the purposes of this subsection, an educational class or seminar regarding the billing of insurance ~~{}~~*

~~{7.}~~ *shall not be deemed to be an educational class or seminar regarding the building or management of a chiropractic practice.*

8. 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.

9. *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 of NRS 634.130, even if the licensee completes that class or seminar more than once during that calendar year.*

10. *The Board will award credit on an hour-for-hour basis up to a maximum of 4 hours per renewal period to a licensee who attends a meeting of the Board, except that the Board will not award credit to a licensee who is the respondent in a disciplinary action for any hours that the licensee attends a meeting or hearing of the Board relating to the disciplinary action against the licensee.*

Sec. 4. NAC 634.435 is hereby amended to read as follows:

634.435 1. In addition to the requirements set forth in chapter 629 of NRS, a licensee shall ensure that the health care records of his patients:

(a) *Include documentation of treatment of a patient, as specified in subparagraph (3) of paragraph (e), within 72 hours after that treatment;*

(b) *Include documentation of information exchanged with a patient within 72 hours after that exchange;*

(c) Are clear, legible, complete and accurate;

~~((b))~~ (d) Remain confidential, where such confidentiality is required by law; and

~~((e))~~ (e) Contain the following information:

(1) A description of the chief complaint for which the patient sought treatment from the licensee;

(2) Documentation of any significant event that affects the chief complaint of the patient or the general history of the health of the patient; and

(3) An accurate record of the diagnostic and therapeutic procedures that the licensee has employed in providing chiropractic services to the patient, including, without limitation:

(I) Examinations and the results of those examinations;

(II) Diagnoses;

(III) Plans for treatment of the patient, including, without limitation, any changes in those plans and the reasons for those changes;

(IV) Areas of the body of the patient on which the licensee has performed chiropractic adjustments;

(V) Dates on which the licensee provided chiropractic services to the patient; and

(VI) A record of the response of the patient to treatment.

2. A licensee who obtains the records of a patient of another licensee because of a change in the ownership of a practice shall:

(a) Report to the Board the transfer of the records; and

(b) Inform the Board, in writing, of the physical location of those records within 15 days after the change in ownership of the practice.

3. A licensee who retires, moves to another state or changes the status of his license from active to inactive shall inform the Board of the location at which the records of his patients may be obtained.

4. The administrator of the estate of a licensee who is deceased shall inform the Board of the location at which the records of the patients of the deceased licensee will be retained.

5. As used in this section, "patient" includes:

(a) A member of the licensee's family;

(b) A relative of the licensee; and

(c) A member of the licensee's staff,

↳ to whom the licensee provides chiropractic services.

Sec. 5. NAC 634.556 is hereby amended to read as follows:

634.556 1. Except as otherwise provided in this section, a licensee who advertises a specific fee or range of fees shall honor the advertised fee or range of fees for at least 90 days after the last date that the advertisement is broadcast or disseminated, unless the advertisement specifies a shorter period. If a specific fee or range of fees is advertised in a telephone directory or other type of media which is not published more frequently than annually, the licensee shall honor that fee or range of fees for at least 1 year after the publication of the telephone directory or other type of media.

2. If an advertisement states that a chiropractic service is being offered free of charge or at a discounted rate:

(a) The service must be provided at the advertised rate regardless of whether the service is to be paid for by the patient or a third party, such as an insurer.

~~(b) [The advertisement must state the price that the licensee ordinarily charges to provide the service, including, if applicable, that the licensee ordinarily provides the service free of charge.~~

~~(c)~~ The licensee who advertises the service shall ensure that:

(1) A patient to whom the service is provided receives and signs a statement of disclosure which sets forth:

(I) A detailed description of the service that will be provided free of charge or at a discounted rate.

(II) The amount that will be charged for any additional services that will be provided.

(III) If the offer to provide a service free of charge or at a discounted rate is valid for a limited time, the date on which that offer will end.

(2) A statement of disclosure that is required pursuant to subparagraph (1) is placed and maintained in the record of a patient to whom a service is provided free of charge or at a discounted rate.

3. If a licensee provides diagnostic services, including, without limitation, examinations and X rays, free of charge or at a discounted rate pursuant to an advertisement, the licensee shall provide those services in a sufficiently complete and thorough manner so as to allow the licensee to make a proper diagnosis.

4. No separate charge may be made for the professional evaluation of diagnostic tests or procedures which are provided free of charge or at a discount, regardless of whether the professional evaluation is made at the time of the initial office visit or at a later time.

Sec. 6. NAC 634.630 is hereby amended to read as follows:

634.630 1. Each pleading must be designated as an application, petition, ~~complaint,~~ *notice of charges*, answer or motion.

2. All pleadings, except motions and ~~complaints,~~ *notices of charges* brought by the Board on its own motion, must be verified.

3. The Board may allow any pleading to be amended or corrected or any omission therein to be supplied.

4. Pleadings will be liberally construed, and defects which do not affect substantial rights of the parties will be disregarded.

5. *If, within a notice of charges, a member of the Board's staff groups similar violations into one cause of action, that grouping is for administrative convenience only and does not affect the authority of the Board to take disciplinary action for each separate violation.*

Sec. 7. NAC 634.655 is hereby repealed.

TEXT OF REPEALED SECTION

634.655 Depositions. (NRS 634.030) The Board or any party to a proceeding before it may depose witnesses in the manner prescribed for deposition of witnesses in civil actions.