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CHIROPRACTIC PHYSICIANS' BOARD OF NEVADA

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NOTICE OF PUBLIC WORKSHOP

Intent to Adopt Regulations

NOTICE IS HEREBY GIVEN that the Chiropractic Physicians' Board of Nevada will hold a public workshop to consider amendments to Nevada Administrative Code (NAC) 634. The workshop is scheduled to begin at 11:00 AM on Saturday, May 15, 2010 at the Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 4401, Las Vegas, Nevada 89101. These workshops will be conducted in accordance with NRS 241.020, Nevada's Open Meeting Law.

AGENDA

1. Introduction of workshop process
2. Internet Website Posting of Statement Regarding Chiropractic Regulations
3. Statement Regarding Chiropractic Regulations

Internet Website Posting of Statement Regarding Chiropractic Regulations

The proposed changes 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 634.556 Advertisement of fees
- NAC 634.630 Pleadings: Generally
- Repeal of NAC 634.655 Depositions

Statement Regarding Proposed Chiropractic Regulation Changes

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. If the applicant fails to pass the test after two additional attempts, he/she would be precluded from performing chiropractor's assistant work or training for one year.

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: There currently is no provision that prevents a licensee from receiving credit for attending the same exact seminar several times during a renewal period. As evidenced by the violations that are occurring, there is a need for licensees to receive education in insurance billing and coding.

NAC 634.435 Health care records: It has been determined that patient records are not always generated and available in a timely manner and are occasionally illegible to anyone but the Doctor. It is proposed that patient records must be updated within 72 hours of a patient's visit and available in legible written form upon request within 10 working days.

NAC 634.556 Advertisement of fees: The existing regulation, which was an attempt at "truth in advertising", has caused considerable confusion and unintended consequences and appears to be defective. Removal of the regulation will resolve this problem.

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 reduce the requests for discovery and simplify the disciplinary process.

Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence may submit the material to Cindy Wade, Executive Director, no later than May 11, 2010 at the following address:

Chiropractic Physicians' Board of Nevada
4600 Kietzke Lane, Suite M245
Reno, NV 89502
Facsimile: 775-688-1920

Members of the public who require special accommodations or assistance at the workshop are required to notify Cindy Wade, Executive Director, in writing at the Chiropractic Physicians' Board of Nevada, 4600 Kietzke Lane, Suite M245, Reno, Nevada 89502, or by calling 775-688-1921 no later than May 11, 2010.

A copy of the notice and the proposed regulations are on file for inspection and/or may be copied at the following location during normal business hours:

Chiropractic Physicians' Board of Nevada
4600 Kietzke Lane, Suite M245
Reno, NV 89502

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 be obtained in person, by mail, or by calling 775-688-1921.

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.

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

LCB File No. R014-10

March 8, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted; matter in green type is new material added after the Board's meeting on March 13, 2010.

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

A REGULATION relating to chiropractic; revising provisions relating to chiropractor's assistant trainees; revising provisions relating to continuing education of licensees; revising provisions relating to health care records; revising provisions relating to advertisement of fees; 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 chairman 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 chairman 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 the chiropractor's assistant trainee:*

- (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) *Prior to the next scheduled examination, attends 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, he may not:*

- (a) *Work as a chiropractor's assistant trainee; or*
- (b) *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.

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, "chairman of the test committee" means the member of the Board who is assigned by [the President of] the Board to serve as the chairman of the committee that is created by the [President] Board to administer an examination to applicants for a certificate as a chiropractor's assistant.*

Sec. *NEW1* 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 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 of NAC 634.368 during this supervisory period.

.....
(date)

(signature of applicant)

3. The supervising licensee shall notify the Board *within 5 business days after* [if] the applicant [leaves] *left* his employ and the date that the applicant [leaves] *left*.

4. 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. 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 *or to otherwise condition the granting of his license*; and

(b) Take appropriate disciplinary action against the supervising licensee.

6. An applicant for a license who works for a supervising licensee according to the provisions of this section is not required to be registered as a chiropractor's assistant or a chiropractor's assistant trainee.

Sec. 2. 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 , *or the participation of licensees in an online 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) 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. 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~~ *the* building or management of a chiropractic practice. [~~to~~]

~~—(b) [The provisions of this subsection do not apply to an]~~ *For the purposes of this section, an educational class or seminar regarding the billing of insurance in a chiropractic practice shall not be considered to be regarding the building or management of a chiropractic practice.*

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. *Continuing education hours earned through completing a specific course may be counted only once during a calendar year toward the hours of continuing education required by section 3 of NRS 634.130, even if the licensee completes that course more than once during that calendar year.*

Sec. 3. 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) *Document treatment of, or information exchanged with, a patient within 72 hours after that treatment or exchange;*

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

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

~~[(c)]~~ (d) Contain the following information [~~;~~]; *and*

(e) *Are made available within ten days upon receipt of a request made pursuant to NRS 629.061:*

(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. 4. 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. *NEW2* 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. *Within a notice of charges a member of the Board's staff may group similar violations into one cause of action, but 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. *NEW3* NAC 634.655 is repealed in its entirety.

TEXT OF REPEALED SECTION

NAC 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.