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CHIROPRACTIC PHYSICIAN'S BOARD OF NEVADA

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NOTICE OF INTENT TO ACT UPON A PROPOSED REGULATION R007-19

Notice of Hearing for the Adoption of a Regulation of the Chiropractic Physicians' Board of Nevada

Intent to Adopt Regulation

NOTICE IS HEREBY GIVEN that the Chiropractic Physicians' Board of Nevada will hold a public hearing to consider amendments to Nevada Administrative Code (NAC) 634. The hearing is scheduled to begin at **8:45 a.m. on Thursday, August 29, 2019 at the Kietzke Plaza, 4600 Kietzke Lane, Suite G160, Reno, NV 89502.** The purpose of the hearing is to receive comments from all interested persons regarding the adoption of a regulation that pertains to Chapter 634 of the Nevada Administrative Code, LCB File No. R007-19.

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

1. The need for and the purpose of the proposed regulation.

The purpose of the proposed regulation is to clarify provisions related to continuing education for chiropractic physicians and to clarify provisions related to how the Board will process certain complaints made to the Board. In both cases, it is the Board's intent to make the regulations less burdensome and clearer.

2. Either the terms or substance of the proposed regulation or a description of the subjects and issues involved.

NAC 634. **Section 2:** Requires each chiropractic physician who is licensed pursuant to chapter 634 of NRS to annually submit a self-inspection form containing certain information regarding the practice of the licensee.

NAC 634 **Section 4:** Requires a licensee to ensure that his or her employees who provide certain services to a patient provide those services only under the direct supervision of the licensee. Section 4 also prohibits a licensee from authorizing an independent contractor to provide services to a patient in the office of the licensee unless the licensee has established procedures to notify the patient of certain information regarding the independent contractor's provision of those services.

- NAC 634 *Existing regulations set forth certain requirements for the approval or endorsement of educational seminars that satisfy continuing education requirements. (NAC 634.385) **Section 5** of this regulation eliminates the requirement that an original or copy of a certificate of attendance at a seminar be provided to the Board.*
- NAC 634. ***Section 3:** of this regulation provides that the Board may perform random audits of licensees and chiropractor's assistants to ensure compliance with requirements for continuing education.*
- NAC 634. ***Section 6:** of this regulation provides that the falsification of documentation concerning continuing education will be interpreted by the Board as a form of unprofessional conduct for the purposes of imposing disciplinary action.*
- NAC 634 *Existing law authorizes the anonymous filing of complaints alleging grounds for disciplinary action against a person practicing chiropractic in this State. (NRS 634.160) Existing regulations require a complaint to be signed and verified by the person making the complaint. (NAC 634.635) **Section 7** of this regulation eliminates these signature and verification requirements to conform with statute.*

3. If the proposed regulation is a permanent regulation, 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.

The text of the proposed regulation may be inspected and copied at the office of the Chiropractic Physicians' Board of Nevada, 4600 Kietzke Lane, Suite M245, Reno, NV 89502. Text of the proposed regulation may also be inspected online at <http://chirobd.nv.gov> or <http://leg.state.nv.us/register/2019Register/R007-19P.pdf>.

4. A statement of 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.

There are no anticipated adverse or beneficial economic effects on the chiropractic profession or public.

- (b) Both immediate and long term effects.

There are no anticipated immediate or long term economic effects on the chiropractic profession or public.

5. A statement identifying the methods used by the Chiropractic Physicians' Board in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608:

The CPBN's intent to consider potential additions, deletions, and amendments to NAC Chapter 634 was published on the agenda for the April 23, 2019 meeting. Representatives of the Nevada Chiropractic Association and the Nevada Chiropractic Council were present at this meeting, but neither testified or otherwise raised any concerns with the proposed regulation.

Copies of the April 23, 2019 Notice of Public Workshop to Consider the Proposed Regulation Changes and the Proposed Regulation Changes were e-mailed to all licensee's and chiropractor's assistants, whose email addresses are on file with the CPBN and were mailed to Nevada libraries. Three written responses were received, but none of the responses indicated that the regulation would have an effect positively or negatively on small businesses. Rather, the responses addressed concerns with the section of the regulation relating to the changes in the Board's complaint processing.

6. The estimated cost to the agency for enforcement of the proposed regulation.

There will be no significant cost to the Chiropractic Physicians' Board for enforcement of the proposed regulation.

7. A description of any regulations of other state or local government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The Chiropractic Physicians' Board is not aware of any similar regulations of other state or government agencies that the proposed regulations overlap or duplicate.

8. If the regulation is required pursuant to federal law, a citation and description of the federal law.

This proposed regulation is not required by federal law.

9. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

This proposed regulation does not include any provision that is more stringent than a federal regulation that regulates the same activity.

10. The time when, the place where and the manner in which interested persons may present their views regarding the proposed regulation.

Persons wishing to comment upon the proposed action of the Chiropractic Physicians' Board of Nevada may appear and make oral comment at the scheduled public hearing, or may address their comments, data, views, or arguments, in written form, to the Chiropractic Physicians' Board of Nevada, Attention: Julie Strandberg, 4600 Kietzke Lane, Suite M245, Reno, Nevada 89502-5000, by fax at 775-688-1920, or by email: chirobd@chirobd.nv.gov. Written submissions must be received by the Chiropractic Physicians' Board on or before August 22, 2019. If no person who is directly affected by the proposed action appears to request to make an oral presentation, the Chiropractic Physicians' Board may proceed immediately to act upon any written submission.

Copies of the notice and the regulations to be adopted or amended will be available at the Chiropractic Physicians' Board of Nevada, 4600 Kietzke Lane, Suite M245, Reno, NV 89502. A copy of this notice and the regulation to be adopted or amended has been submitted for posting for inspection by members of the public during business hours at the Nevada State Library and Archives, 100 Stewart Street, Carson City, NV 89701, and all counties at the main public library. Copies of this notice and the proposed regulation will be mailed to members of the public upon request.

This notice and the text of the proposed regulation has been submitted to 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.us>. This information is also available at the Chiropractic Physicians' Boards' website at <http://chirobd.nv.gov>.

Upon adoption of any regulation, the agency, if requested to do so by an interested person either before adoption 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 of intent to act upon a regulation has been emailed to all licensees and chiropractor's assistants whose email addresses are registered with the Chiropractic Physicians' Board, and mailed to all persons who have requested in writing that they be placed upon a mailing list, which is maintained by the Chiropractic Physicians' Board for this purpose.

A copy of this notice has been posted at the following locations on August 26, 2019:

*Carson City Public Library - Carson City, NV.
Clark County Library- Las Vegas, NV.
Douglas County Public Library -Minden, NV.
Humboldt County Pub Libr. - Winnemucca, NV
Elko County Public Library -Elko, NV
Lincoln County Public Library -Pioche, NV
Pershing County Public Library-Lovelock, NV
Tonopah Public Library -Tonopah, NV
White Pine County Public Library-Ely, NV
Office of the Attorney General-Reno, NV
Chiropractic Physicians' Board of Nevada*

*Churchill County Public Library - Fallon, NV.
Battle Mt. Public Library-Battle Mt., NV.
Goldfield Public Library - Goldfield, NV.
Lyon County Public Library -Yerington, NV
Eureka Branch Public Library-Eureka, NV
Mineral County Public Library-Hawthorne, NV
Storey County Public Library - Virginia City, NV
Washoe County Public Library-Reno, NV
Office of the Attorney General -Las Vegas, NV
Grant Sawyer Office Bldg., Las Vegas, NV*

Copies may be obtained in person, by mail, or by calling 775-688-1923.

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

Carson City Library
900 North Roop St.
Carson City, Nevada 89702-3101

Churchill County Library
553 South Main Street
Fallon, Nevada 89406-3306

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

Douglas County Library
1625 Library Lane
Minden, Nevada 89423-0337

Elko County Library
720 Court St.
Elko, Nevada 89801

Esmeralda County Library
Corner of Crook & 4th Street
P.O. Box 430
Goldfield, Nevada 89013-0430

Eureka County Library
10190 Monroe Street
Eureka, Nevada 89316

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

Battle Mountain Branch Library (Lander County)
625 South Broad Street
Battle Mountain, Nevada 89820

Lincoln County Library
63 Main Street
Pioche, Nevada 89043

Lyon County Library System
20 Nevin Way
Yerington, Nevada 89447-2399

Mineral County Public Library
P.O. Box 1390
Hawthorne, Nevada 89415

Pershing County Library
1125 Central Avenue
Lovelock, Nevada 89419

Storey County Public Library (CLOSED
instead, send to the Storey County Clerk's
Office, see below)

Storey County Treasurer and Clerk's Office
Drawer D
Virginia City, Nevada 89440

Tonopah Public Library System
P.O. Box 449
Tonopah, Nevada 89501-2102

Washoe County Library System
301 South Center Street
Reno, Nevada 89501-2102

White Pine County Library
950 Crampton Street
Ely, Nevada 89301

**PROPOSED REGULATION OF
THE CHIROPRACTIC PHYSICIANS' BOARD OF NEVADA
LCB File No. R007-19**

June 25, 2019

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

AUTHORITY: §§2, 4, 6 and 7, NRS 634.030; §§3 and 5, NRS 634.030 and 634.130, as amended by section 6 of Assembly Bill No. 457, chapter 365, Statutes of Nevada 2019, at page _____

A REGULATION relating to chiropractors; requiring chiropractic physicians to annually submit certain forms regarding their practices; providing for random audits to ensure compliance with continuing education requirements; establishing certain requirements and prohibitions relating to the provision of certain services to patients of a chiropractic physician; revising the requirements for the approval or endorsement of seminars for continuing education; revising provisions regarding the acts which will be interpreted by the Chiropractic Physicians' Board of Nevada as being included within unprofessional conduct for the purposes of imposing disciplinary action; eliminating certain requirements for the filing of certain complaints; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this regulation requires each chiropractic physician who is licensed pursuant to chapter 634 of NRS to annually submit a self-inspection form containing certain information regarding the practice of the licensee.

Section 4 of this regulation requires a licensee to ensure that his or her employees who provide certain services to a patient provide those services only under the direct supervision of the licensee. **Section 4** also prohibits a licensee from authorizing an independent contractor to provide services to a patient in the office of the licensee unless the licensee has established procedures to notify the patient of certain information regarding the independent contractor's provision of those services.

Existing regulations set forth certain requirements for the approval or endorsement of educational seminars that satisfy continuing education requirements. (NAC 634.385) **Section 5**

of this regulation eliminates the requirement that an original or copy of a certificate of attendance at a seminar be provided to the Board.

Section 3 of this regulation provides that the Board may perform random audits of licensees and chiropractor's assistants to ensure compliance with requirements for continuing education.

Section 6 of this regulation provides that the falsification of documentation concerning continuing education will be interpreted by the Board as a form of unprofessional conduct for the purposes of imposing disciplinary action.

Existing law authorizes the anonymous filing of complaints alleging grounds for disciplinary action against a person practicing chiropractic in this State. (NRS 634.160) Existing regulations require a complaint to be signed and verified by the person making the complaint. (NAC 634.635) **Section 7** of this regulation eliminates these signature and verification requirements to conform with statute.

Section 1. Chapter 634 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *Each licensee shall annually submit a self-inspection form prescribed by the Board. The self-inspection form must be received by the Board between January 1 and March 31. The Board will reject a self-inspection form submitted pursuant to this section if the form is incomplete.*

Sec. 3. 1. *The Board may perform random audits of licensees and chiropractor's assistants or audits that are based on complaints or charges against licensees or chiropractor's assistants to ensure compliance with the requirements for continuing education.*

2. *If the Board chooses to conduct an audit of a licensee or chiropractor's assistant, the Board will notify the licensee or chiropractor's assistant, as applicable, of its decision to conduct an audit. The licensee or chiropractor's assistant, as applicable, shall provide to the*

Board detailed information and documentation concerning the hours of continuing education claimed.

Sec. 4. 1. *A licensee shall ensure that each of his or her employees who provides services other than chiropractic or clerical services to a patient of the licensee provides those services only under the direct supervision of the licensee.*

2. *A licensee shall not authorize an independent contractor to provide services to a patient in the office of the licensee unless the licensee has established procedures to ensure that the patient is notified that:*

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

(b) The services are not provided under the direct supervision or control of the licensee.

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

634.385 1. Except as otherwise provided in subsection 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, or chiropractors' assistants certified, in this State for the purpose of ensuring an optimum quality of chiropractic health care.

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 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 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 . ~~†; 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 or holder of a certificate, as applicable, 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 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.

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. 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. 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. 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.

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 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.

10. 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.

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.

(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 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 ~~[]~~, *including, without limitation, falsifying documentation concerning continuing education.*

(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 the patient is the spouse of the licensee.

(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 NRS 634.1295 and NAC 634.445.

(t) 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.

(u) 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 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 or her spouse or between a licensee and a person who was a patient after the chiropractor-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.

Sec. 7. NAC 634.635 is hereby amended to read as follows:

634.635 1. A complaint as described in NRS 634.160 may be made against a licensee charging him or her with one or more of the causes set forth in chapter 634 of NRS for which he or she is subject to disciplinary action.

2. The original complaint must be in writing ~~{, signed and verified by the person making it}~~ and filed with the Executive Director of the Board.