

LING LTD.
LOUIS LING
BOARD COUNSEL

TELEPHONE: (775) 233-9099

FAX: (775) 624-5086

E-MAIL: LOUISLING@ME.COM

MEMORANDUM

TO: Members of the Chiropractic Physicians' Board of Nevada
FROM: Louis Ling, Board Counsel
DATE: June 22, 2023
RE: Interrelationship of Chiropractic Assistant Licensure and Related Disciplines

At the Board's April 6, 2023 meeting, the Board directed that I opine on the use of chiropractic assistants and the relationship between their licensure and other licensed disciplines that may also work within a single chiropractic practice. With the rise of multidisciplinary practices, it is now not unusual for chiropractic physicians and their chiropractic assistants to work in practices with physical therapists (PTs), massage therapists (MTs), and athletic trainers (ATs). The question, as I understood it, is what relationship and supervision may a chiropractic physician have with the related disciplines and whether there are circumstances in which those people licensed in a related discipline must also be licensed as a chiropractic assistants. My analysis follows:

ANALYSIS

At the Board's April 6, 2023 meeting, the Board reviewed and discussed a memorandum dated December 21, 2022 that I had prepared for the Board related to those duties that could be delegated to a CA. In the course of that discussion, questions were raised about whether practitioners in related professions such as physical therapy, massage therapy, or athletic trainers needed to be also licensed as CAs.

In Nevada, there are two basic types of occupational licenses, independent practitioner licenses and dependent practitioner licenses. Independent practitioner licenses are for professionals under which they are responsible in and of themselves for their professional judgment, including their decisions about whether to perform a particular service or treatment, what service or treatment to provide, and performance of the service or treatment. In the health care realm, independent practitioners pertinent to the present inquiry would include chiropractic physicians, medical doctors, osteopathic physicians, advanced practice registered nurses, ATs, PTs, and MTs. Some independent practitioners, such as medical doctors and osteopathic physicians, have unlimited scopes of practice, while most independent practitioners have statutorily delimited scopes of practice.

Dependent practitioners are licensed to assist independent practitioners by being licensed to perform a circumscribed scope of practice under the direction and supervision

of a dependent practitioner. Dependent practitioners are not tasked with judgmental or professional tasks. Instead, they perform non-judgmental tasks and duties for which they can be trained either by educational institutions or through on-the-job training. Usually these paraprofessionals are referred to as practitioner extenders because they allow the independent practitioner to see and treat more patients than they could by themselves. A CA is a dependent practitioner and can only work under the direct supervision of a chiropractic physician.

Pertinent to the present inquiry, PTs are independent practitioners licensed under NRS and NAC chs. 640, MTs are independent practitioners licensed under NRS and NAC chs. 640C, and ATs are independent practitioners licensed under NRS and NAC chs. 640B. Each of these practices has their own limited scopes of practice under which each are licensed by their respective boards and are overseen and disciplined by those boards, all of which are co-equal sister boards to the Board.

In multi-disciplinary practices, lines of authority, overlapping scopes of practice, and employment and ownership relationships can make compliance complicated for all involved. Specifically related to the practices of chiropractic physicians and CAs, whether an MT, PT, or AT at the practice with a chiropractic physician must also be licensed as a CA will always depend upon a number of factors.

An MT, PT, or AT would not need to be licensed as a CA where a chiropractic physician refers one of his or her patients to the MT, PT, or AT for assessment and treatment uniquely within that practitioner's scope of practice. To examine the interrelationship between one of the affiliated practitioners and a chiropractic physician, let us assume a hypothetical patient who sustained an athletic injury at an intercollegiate event, thus qualifying the injury as an "athletic injury" under NRS 640B.021 such that the injury could be treated by an AT. Initially, whether the AT is employed by the chiropractic physician or is an independent contractor would effect some aspects of their relationship. For example, if the AT was an independent contractor, NAC 634.418(2) requires that the chiropractic physician would need to notify the patient that the AT is not his or her employee and that the services were being provided without the direct supervision or control of the chiropractic assistant. If, on the other hand, the AT was an employee of the chiropractic physician, NAC 634.418(1) requires that services provided by the AT would need to be under the direct supervision of the chiropractic physician. Where the AT is employed by the chiropractic physician, NAC 634.119 (defining "direct supervision") would require that the AT could only provide services when the chiropractic physician is actually present at the facility.

Regardless of whether the AT was an employee or an independent contractor, the AT would independently assess the patient and provide treatment within his or her scope of practice. Treatment by the AT would occur according to the mutual agreement with the patient. The chiropractic physician could not direct the assessment or treatment provided by the AT, nor could the AT direct the assessment or treatment provided by the chiropractic physician. They would each be providing services to the patient uniquely within the purview of each and independent of the other. Under HIPAA, the AT could

provide his or her assessment and progress notes to the chiropractic physician and vice versa to further the overall treatment goals for the patient.

An MT, PT, or AT would need to be licensed as a CA if the chiropractic physician wanted to directly manage, supervise, and control the services provided by the MT, PT, or AT or if the services provided fell outside the scope of practice of the MT, PT, or AT but fell within the scope of practice of a CA. A chiropractic physician might want to supervise and control the services provided by the MT, PT, or AT and might want to bill those services as having been performed by the chiropractic physician. In such a case, the MT, PT, or AT would also get licensed as a CA, and then the chiropractic physician could order the person to perform services within the scope of practice of a CA (as defined in NAC 634.348). Where the person was acting in the capacity of a CA (and, therefore, not as an AT, MT, or PT), the person could not provide services outside that scope of practice of a CA even if the person could perform those services under his or her licensure as an MT, PT, or AT. For all intents and purposes, the person would be a CA and would need to be treated by the chiropractic physician as such, despite the person's dual licensure as an MT, PT, or AT.

Additionally, if the practice had in-house radiology services, the MT, PT, or AT could only provide radiologic services if he or she was licensed as a CA since NAC 634.348(b) expressly authorizes CAs to take and develop radiographs, and NRS 653.430(3) and (4) exempts CAs and CAs-in-training from radiologic licensing. On the other hand, NRS 653.430(3) does not exempt MTs, PTs, or ATs from radiologic licensure under NRS ch. 653. In other words, a licensed CA can provide radiologic services without a radiologic license under NRS ch. 653, but an MT, PT, or AT cannot provide radiologic services unless he or she is also licensed under NRS ch. 653.

CONCLUSION

As can be seen, the interrelationship between chiropractic physicians, CAs, and affiliated practices such as MT, PT, and AT is multi-faceted. Nevada law allows the relationships to be structured several ways depending upon the needs and agreement of the chiropractic physician with an MT, PT, or AT. Whether the chiropractic physician employs the MT, PT, or AT or whether the MT, PT, or AT is an independent contractor is one important consideration. Whether the chiropractic physician wants to control and supervise the work of the MT, PT, or AT is another important consideration. The scope of work that the chiropractic physician will ask of the MT, PT, or AT is also an important consideration. Finally, a paramount consideration for the structuring of the relationship will be the applicable Nevada statutes and regulations in NRS and NAC chs. 634 and in other related chapters so that however the relationship is structured, it complies with Nevada law.