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MEMORANDUM

TO: Members of the Chiropractic Physicians' Board of Nevada
FROM: Louis Ling, Board Counsel
DATE: December 21, 2022
RE: NAC 634.348 and the Scope of "Assisting" by a CA to a DC

At the Board's October 13, 2022 meeting, the Board directed that I research the issue related to NAC 634.348 and what the scope of activities that may be performed by a chiropractor's assistant (CA) in "assisting" a chiropractic physician. My analysis follows:

ANALYSIS

Recently, the Board's office was asked about the extent to which a chiropractic physician could allow his or her CA to perform portions of the initial physical examinations of patients without the chiropractic physician's presence or participation in the physical examinations. In particular, the chiropractic physician described that he or she would like to allow his CAs to perform the following: "Orthopedic Tests, Neurological Exam, ROM Exam, Posture Exam, Consultations, and History." The chiropractic physician would perform the following: "Subluxations, Hypertonicity, and Muscle Spasms." In subsequent conversations with the chiropractic physician, the chiropractic physician indicated that he or she believed that he or she could allow the CA to perform the unsupervised portions of the initial physical examinations because NAC 634.348(2)(f) authorizes a CA to perform ancillary services, including, "Assisting the supervising licensee with an examination of a patient."

The word "assisting" appears three times in NAC 634.348, namely in subsections (2)(c) ("Assisting with the education of a patient concerning his or her health"), 2(d) ("Assisting a patient with exercise or rehabilitation activities"), and 2(f) ("Assisting the supervising licensee with an examination of a patient").

In order to best interpret the word "assisting" as it used in NAC 634.348, resort must first be made to the statutory authority enabling the regulation, namely NRS 634.123 - 624.127. NRS 623.123 authorizes a CA "to perform ancillary services relating to chiropractic, other than chiropractic adjustment, *under the supervision of a chiropractic physician.*" (Emphasis supplied.) NRS 634.125 further provides that ancillary services provided by a CA "must be rendered *under the supervision and control of a chiropractic physician.*" (Emphasis supplied.)

Synthesizing NRS 634.123, NRS 634.125, and NAC 634.348, it is clear that CAs are dependent practitioners, meaning that they depend upon another practitioner – namely a chiropractic physician – for their scope of work, authorization, training, and limitations. Stated plainly, a CA may never work independently from his or her supervising chiropractic physician; rather, the CA may only perform his or her duties always under the supervision and control of a chiropractic physician.

As it relates to the question at hand, the “assistings” contained in NAC 634.348(2)(c), (d), and (f) all require physical proximity to the person the CA is assisting. For example, under NAC 634.438(2)(c), practically speaking, a CA can only assist a patient with education by being in the same room as the patient, and under NAC 634.438(2)(d) a CA can only assist a patient with exercise or rehabilitation activities by being in the same space as the patient while the patient performs the activities.

In NAC 634.438(2)(f), the person who is the recipient of the assistance is the chiropractic physician while the chiropractic physician is examining a patient. Clearly, the examination of the patient is a chiropractic physician’s task, not a CA’s task. A physical examination is a critical clinical tool for the chiropractic physician because the results of the physical examination will guide his or her course of treatment and recommendations for the patient. The physical examination, therefore, is a clinical tool requiring clinical skill, judgment, and expertise for its success. Therefore, “assisting” with an examination might take the form of gathering routine data that does not require clinical judgment, such as taking a temperature, pulse, weight, height, and blood pressure, but “assisting” could not include performing any diagnostic testing (such as range of motion studies) or palpation assessments since those require clinical skill, judgment, and expertise of a chiropractic physician. In other words, if a CA were to perform the entirety of a physical examination, including diagnostics and assessment that require clinical skill, judgment, and expertise, the CA would not be “assisting” the chiropractic physician but would, instead, be supplanting and acting as the chiropractic physician.

CONCLUSION

Under NAC 634.438, a CA may “assist” a patient or chiropractic physician with activities that require physical proximity to the recipient of the assistance – either the patient or the chiropractic physician – but may not perform any service that requires clinical skill or judgment. As it particularly relates to physical examinations, the CA may acquire non-judgmental data such as height, weight, pulse, temperature, or blood pressure incident to a full physical examination, but any diagnostics or palpitations or any other portion of an examination that requires clinical skill, judgment, or expertise must be performed by the chiropractic physician.