

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: December 21, 2022
RE: NAC 634.430(1)(b) and Issues of Consent in Treating a Minor Patient

At the Board's October 13, 2022 meeting, the Board directed that I research the issue related to NAC 634.430(1)(b) and the duty of a chiropractic physician to obtain consent before providing chiropractic services to a minor. My analysis follows:

ANALYSIS

NAC 634.430(1)(b) defines "conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public" to include: "(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.*" (Emphasis supplied.) Conduct unbecoming a person licensed to practice chiropractic is subject to discipline under NRS 634.018(10) and NRS 634.140(1) as "unprofessional conduct." Analytically, NAC 634.430(1)(b) raises two practical questions important to chiropractic physicians and their practices.

1. When Can a Minor Consent on His or Her Own?

The first question raised in NAC 634.430(1)(b) is explicit in the regulation, namely when is consent "required pursuant to NRS 129.030"? As might be expected, the answer to such a statutory question is found in the statute itself, but actually in the inverse. The general rule is that a minor cannot consent to receive medical services with the exceptions set out in NRS 129.030(1), which provides a list of four situations in which a minor could consent to treatment himself or herself, as follows:

1. Except as otherwise provided in NRS 450B.525, a minor may give consent for an examination or the services provided in subsection 3 for himself or herself or for this or her child, if the minor:

(a) Demonstrates in accordance with subsection 2 that he or she is living apart from his or her parents or legal guardian, with or without the consent of the parent, parents or legal guardian;

(b) Is married or has been married;

(c) Is a parent or has borne a child; or

(d) Is, in the judgment of a provider of health care, in danger of suffering a serious health hazard if health care services are not provided.

Pursuant to NRS 129.030(2), a minor can demonstrate that he or she is living apart from his or her parent or legal guardian with a written statement to that effect signed by: (1) a director or a governmental agency or nonprofit organization that provides services to the homeless, (2) a school social worker, a school counselor, or a person designated as a local educational agency liaison for homeless children, or (3) an attorney representing the minor. Pursuant to NRS 129.030(3), the services a qualified minor might consent to are, broadly, any medical services, which would include chiropractic services.

Importantly from a practical standpoint is that in NRS 129.030(4), a medical provider such as a chiropractic physician who wishes to provide services to a minor is obliged to “make prudent and reasonable efforts to obtain the consent of the minor to communicate with his or her parent, parents or legal guardian” and must note such efforts in the medical record. Even where the minor denies consent for the provider to contact the parent or legal guardian, the services may still be provided.

Therefore, as a best practice, if a minor seeks chiropractic services in the absence of a parent or legal guardian, the chiropractic physician must follow two steps. First determine if the minor is eligible to consent to the services by satisfying one of the four situations listed in NRS 129.030(1). Second, if so, and if the chiropractic physician obtains the proper substantiating paperwork (such as a written statement as set out in NRS 129.030(2) or evidence of marriage or parentage), the chiropractic physician then must seek consent from the minor to speak with a parent or legal guardian and should document either the granting of the consent (in which case the chiropractic physician must attempt to contact the parent or legal guardian) or the denial of consent (in which case the chiropractic physician may still provide services after documenting the denial of consent).

2. If NRS 129.030 Does Not Apply, Who May Consent to Treatment of a Minor

In most circumstances, NRS 129.030 will not apply and a chiropractic physician will need to obtain the consent of an adult before treating a minor. The two classes of adults who may give consent are parents and legal guardians.

Regarding the definition of “parent,” NRS 126.021(3) defines “Parent and child relationship” as being “the legal relationship existing between a child and his or her natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations.” In other words, a parent is either one of the two natural parents of a child or is one of the two adoptive parents of the child. Practically, if a person represents to a chiropractic physician that he or she is the parent of a minor, absent some reason to doubt the claim (which would be highly unlikely), a chiropractic physician can accept the representation and can act accordingly.

Regarding the definition of “legal guardian,” guardianship of a minor encompasses an entire chapter of the NRS, namely NRS ch. 159A. Though there is considerable procedure, process, qualifications, and conditions involved, all guardianship matters

ultimately result in a court ruling that a person not a parent to a minor is the minor's guardian. The end result of guardianship will be a court order – no court order, no guardianship.

Therefore, as a best practice, if a minor is in the presence of a person who represents himself or herself to be the parent of the minor, and there is no reason to doubt the representation, then a chiropractic physician can rely upon the representation and can seek consent to treat the minor from that person. If a minor is in the presence of a person who represents himself or herself to be a legal guardian of the minor, the chiropractic physician should seek from the guardian a copy of the court order imposing the guardianship. If the person is, in fact, a legal guardian, he or she should have a copy of such an order readily available and should not have issues with providing a copy. If the person is not, in fact, a legal guardian or if the person refuses to provide a court order, the chiropractic physician should decline to provide services to the minor.

CONCLUSION

When a chiropractic physician is presented with a minor for treatment, the chiropractic physician may treat the minor under one of two circumstances: (1) the minor can consent to treatment himself or herself if he or she establishes that he or she is entitled to do so under NRS 129.030; or (2) the parent or legal guardian consents to treatment of the minor where the circumstances establish that the adult is either the parent naturally or by adoption or that the adult is a legal guardian of the minor as evidenced by a court order appointing the adult to such guardianship.