



# Colorado Medical Society

"Advocating excellence in the profession of medicine"

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August 22, 2012

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Division of Professions and Occupations  
1560 Broadway, Suite 1350  
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Re: Proposed Rulemaking 3 Colo. Code Regs. Section 707—1, Rule 7C-  
Supplemental Submission

The Colorado Board of Chiropractic Examiners has issued new proposed rule changes to the above referenced rule. The Colorado Medical Society (hereinafter "CMS") hereby submits this supplemental submission and incorporates by reference CMS' original submission dated August 9, 2012 attached hereto as Exhibit A and referred to herein as "CMS' original submission". CMS respectfully objects to this new proposed rule in its entirety.

The new proposed rule by the Colorado Board of Chiropractic Examiners seeks to expand Rule 7C by adding this additional language:

"Administer means by Oral Topical Inhalation and Injection.

All chiropractors that choose to administer homeopathic and botanical medicines, vitamins, and minerals, phytonutrients, antioxidants, enzymes and glandular extracts by means of injectable procedures shall be certified by the board. Applications for certification in Injectables shall be made in a manner approved by the Board. Certification in Injectables by the State Board of Chiropractic Examiners may be obtained by complying with the following:

1. Successfully complete a minimum of a combined total of 24 hours of theoretical study and supervised clinical instruction obtained from a college of chiropractic approved by the Council on Chiropractic Education (CCE) or the equivalent hours of study and clinical supervision obtained from an instructor recognized by the postgraduate facility of a chiropractic institution or approved by CCE to teach this course and
2. Passing a nationally recognized Injectable certification examination recognized by a CCE accredited chiropractic college."

## **Current Colorado Law**

The Chiropractic Practice Act specifically provides:

(1.7) "Chiropractic" means that branch of the healing arts that is based on the



premise that disease is attributable to the abnormal functioning of the human nervous system. It includes the diagnosing and analyzing of human ailments and seeks the elimination of the abnormal functioning of the human nervous system by the adjustment or manipulation, by hand or instrument, of the articulations and adjacent tissue of the human body, particularly the spinal column, and the use as indicated of procedures that facilitate the adjustment or manipulation and make it more effective and the use of sanitary, hygienic, nutritional, and physical remedial measures for the promotion, maintenance, and restoration of health, the prevention of disease, and the treatment of human ailments. "Chiropractic" includes the use of venipuncture for diagnostic purposes. "Chiropractic" does not include colonic irrigation therapy. "Chiropractic" includes treatment by acupuncture when performed by an appropriately trained chiropractor as determined by the Colorado state board of chiropractic examiners. Nothing in this section shall apply to persons using acupuncture not licensed by the board." *Section 12-33-102(1.7), C.R.S.*

"(2) "Chiropractic adjustment" means the application, by hand, by a trained chiropractor who has fulfilled the educational and licensing requirements of this article, of adjustive force to correct subluxations, fixations, structural distortions, abnormal tensions, and disrelated structures, or to remove interference with the transmission of nerve force. The application of the dynamic adjustive thrust is designed and intended to produce and usually elicits audible and perceptible release of tensions and movement of tissues or anatomical parts for the purpose of removing or correcting interference to nerve transmission and expression." *Section 12-33-102(2), C.R.S.*

(3) "Electrotherapy" means the application of any radiant or current energies of high or low frequency, alternating or direct, except surgical cauterization, electrocoagulation, the use of radium in any form, and X-ray therapy." *Section 12-33-102(3), C.R.S.*

(4) "Venipuncture" means the puncture of a vein for the withdrawal of blood for the purpose of diagnosis through blood analysis. Any blood analysis shall be done by a chiropractor or by a commercial laboratory." *Section 12-33-102(4), C.R.S.*

Colorado law further provides:

"A license to practice chiropractic entitles the holder to use the title "Doctor" or "Dr." when accompanied by the word "Chiropractor" or the letters "D.C.", and to use the title of "Doctor of Chiropractic". Such license shall not confer upon the licensee the right to practice surgery or obstetrics or to prescribe, compound, or administer drugs, or to administer anesthetics. Nothing in this article shall be construed to prohibit or to require a license for bona fide chiropractic students or interns in attendance upon a regular course of instruction in a lawfully operated chiropractic school or hospital with respect to performing chiropractic services within such school or hospital while under the direct supervision of a licensed chiropractor." *Section 12-33-118, C.R.S.*

## **Colorado Rules**

Board Rule 7, 3 Colo. Code Regs. Section 707-1, sets forth the scope of practice for chiropractors and Rule 7C defines “nutritional remedial measures” as follows:

“Nutritional Remedial Measures” as referenced in section 12-33-102(1), C.R.S., means that a doctor of chiropractic may administer, prescribe, recommend, compound, sell and distribute homeopathic and botanical medicines, vitamins, minerals, phytonutrients, antioxidants, enzymes, glandular extracts, non-prescription drugs, durable and non-durable medical goods and services.”

## **Colorado Policies**

The relevant Board of Chiropractic Examiners policies are:

Policy 30-7 DETERMINATION OF SCOPE OF PRACTICE In determining whether a specific individual act or practice is within the lawful scope of practice of a licensed Colorado chiropractor, the Board may consider the following:

- If the act is allowed by statute,
- if it advances or is not harmful to the life, health, property and the public welfare of the people of this State,
- if the procedure is taught at or through a CCE accredited chiropractic college or equivalent,
- if the practitioner has demonstrated competency through didactic and clinical training.
- The Board then may also consider if the act or practice constitutes generally accepted practice among Colorado chiropractors and its basis in:
  - doctoral (professional) level didactic and clinical training
  - post-doctoral (post-professional) level didactic and clinical training
- Policy 30-9 PRACTICES WITHIN THE SCOPE OF CHIROPRACTIC PRACTICE BY STATUTE ARE: Practices within the scope of chiropractic in Colorado include, but are not limited to:
  - Use of spirometry devices for therapeutic or diagnostic purposes.
  - Ordering or performing of CT scan, MRI, and thermography
  - Use of TENS therapy by licensees who are qualified to practice electrotherapy.
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- All blood, saliva, urine and hair laboratory testing consistent with the clinical presentation.
- All forms of physiotherapy and oxygen therapy
- Paraspinal surface electromyography
- Nerve conduction velocity (NCV)
- Needle electromyography
- Electrocardiography (EKG/ECG)
- Electrotherapy/Physical Remedial Measures
- Animal chiropractic
- Acupuncture
- Dry needling
- Manipulation under anesthesia (MUA)

Topical administration in conjunction with acupuncture needles of vitamins, minerals, phytonutrients, antioxidants, enzymes, glandular extracts, botanical and homeopathic medicines for diagnostic and therapeutic purposes by doctors of chiropractic certified by the Board in acupuncture. (Revised March 11, 2010.)

## **Supplemental Legal Arguments**

**A. The Chiropractic Act sets forth the scope of practice of a licensed Colorado chiropractor to include “adjustments and manipulations, by hand or instrument” and does not include the practices of “administration”, “injection”, and “prescription”.**

In resolving whether Rule 7C exceeds the intent of statutory language relating to the scope of practice of chiropractors, the statutory language should be reviewed. In construing statutory provisions, full effect must be given to the legislative intent. *Conte v. Meyer*, 882 P.2d 962, 965 (Colo.1994). If the legislative intent is immediately conveyed by the commonly understood and accepted meaning of the statutory language, there is no need to look further and must give effect to the statute as written. *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542, 545 (Colo.1995). Legislative history may be reflected by successive drafts of bills and amendments. *Three Bells Ranch v. Cache La Poudre*, 758 P.2d 164 (Colo. 1988).

On October 15, 2008, the Office of Policy, Research and Regulatory Reform (hereinafter "OPR"), issued its report and recommendations of the "2008 Sunset Review: Colorado State Board of Chiropractic Examiners". Therein, recommendation 4 states: "Section 12-33-102(1), C.R.S., defines 'chiropractic' and needs to be updated ... Modern chiropractic includes the use of certain instruments that adjust subluxations of the spine. This should be specified in the definition of chiropractic to more accurately reflect the use of technology by chiropractors." OPR October 15, 2008 Sunset Review Report at page 25. To that end, OPR recommended that the term 'instrument' be added to the definition of 'chiropractic' as follows:

"Chiropractic" means that branch of the healing arts that is based on the premise that disease is attributable to the abnormal functioning of the human nervous system. It includes the diagnosing and analyzing of human ailments and seeks the elimination of the abnormal functioning of the human nervous system by the adjustment or manipulation, by hand or instrument, of the articulations and adjacent tissue of the human body, particularly the spinal column, and the use as indicated of procedures that facilitate the adjustment or manipulation and make it more effective and the use of sanitary, hygienic, nutritional, and physical remedial measures for the promotion, maintenance, and restoration of health, the prevention of disease, and the treatment of human ailments. *Id.* at page 26.

In response to DORA's recommendations, Mr. Kevin Heupel, attorney for Bob Nelson, D.C., wrote to CMS stating that the OPR recommendations do not go far enough to reflect current chiropractic practice. Specifically, Mr. Heupel proposed an amendment in the 2009 legislative session to the definition of "chiropractic" as follows:

"Chiropractic means the branch of the healing arts . . . It includes the diagnosing and analyzing of human ailments, and seeks elimination of abnormal functioning of the human nervous system by the adjustment or manipulation, by hand, instrument, administration, injection or prescription, of the articulation and adjacent tissue of the human body. . . ." (Attached hereto as Exhibit B and incorporated herein by this reference is Heupel Law letter to CMS dated February 3, 2009 discussing these proposed amendments.)

Mr. Heupel's letter clearly demonstrates that a chiropractor's scope of practice is limited, by statute, "to adjustment or manipulation, by hand or instrument", and does not include invasive procedures such as injections, prescriptions and administrations.

As set forth in CMS' original submission, in 2010, House Bill 10-1416, the chiropractors again sought to expand their scope of practice to include "administering formulary (including nutritional remedial measures) limited to topical, subcutaneous, and intramuscular routes of administration." The Colorado General Assembly considered and ultimately rejected this expansion of the scope of practice of chiropractors.

Based on the express limitations of a chiropractor's scope of practice as set forth in Colorado law, the term "administer" in the current Rule 7C cannot be interpreted to



include injections, oral, topical and inhalation. Further, interpreting the term "administer" to include injections, oral, topical and inhalation would be contrary to Section 12-33-118, C.R.S., that expressly prohibits a chiropractor from prescribing, compounding or administering drugs. There is simply no statutory authority for chiropractors to inject, administer, or prescribe and the Chiropractic Act limits their scope of practice to adjustments or manipulations by hand or instruments.


Accordingly, the new proposed Rule 7C exceeds the scope of statutory authority for which it is written, and would be void, as a matter of law, as misconstruing current law. Repeatedly, the chiropractors have requested the Colorado General Assembly to expand their scope of practice to include administration, injections and/or prescriptions. Each of these attempts has been considered and ultimately rejected.

**B. New Proposed Rule 7C is in violation of the Board of Chiropractic Examiners Policy 30-7.**

Policy 30-7 provides, in part, that the Board of Chiropractic Examiners in determining whether a specific individual act or practice is within the lawful scope of practice of a licensed Colorado chiropractor, the Board may consider the following: If the act is allowed by statute and if it advances or is not harmful to the life, health, property and the public welfare of the people of this State.

Injections and other invasive procedures performed by chiropractors exceed the scope of practice authorized by Colorado law. Injections may cause a patient to have a severe allergic or other adverse action. Chiropractors are not trained in treating these serious medical conditions. Allowing injections to be given by chiropractors creates serious patient safety risks, including to the life, health and well being of the patient. In addition, Policy 30-9 specifically limits nutritional remedial measures to topical administration. Therefore, consistent with both policies, the Board of Chiropractic Examiners should not adopt this new proposed rule.

Respectfully submitted,

A handwritten signature in cursive script that reads "Susan Koontz".

Susan Koontz, JD  
General Counsel  
Colorado Medical Society