

*Information Summary and Recommendations*

# Chiropractic Scope of Practice Sunrise Review

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For more information or additional  
copies of this report contact:

Health Systems Quality Assurance  
Office of the Assistant Secretary  
PO Box 47850  
Olympia, WA 98504-7850  
360-236-4612

John Wiesman, DrPH, MPH  
Secretary of Health

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## THE SUNRISE REVIEW PROCESS

A sunrise review is an evaluation of a proposal to change the laws regulating health professions in Washington. The Washington State Legislature's intent, as stated in chapter 18.120 RCW, is to permit all qualified people to provide health services unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Changes to the scope of practice should benefit the public.

The Sunrise Act (RCW 18.120.010) says a health care profession should be regulated or scope of practice expanded only when:

- Unregulated practice can clearly harm or endanger the health, safety or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
- The public cannot be effectively protected by other means in a more cost-beneficial manner.

If the legislature identifies a need and finds it necessary to regulate a health profession not previously regulated, it should select the least restrictive alternative method of regulation, consistent with the public interest. Five types of regulation may be considered as set forth in RCW 18.120.010(3):

1. *Stricter civil actions and criminal prosecutions.* To be used when existing common law, statutory civil actions, and criminal prohibitions are not sufficient to eradicate existing harm.
2. *Inspection requirements.* A process enabling an appropriate state agency to enforce violations by injunctive relief in court, including, but not limited to, regulation of the business activity providing the service rather than the employees of the business, when a service being performed for people involves a hazard to the public health, safety or welfare.
3. *Registration.* A process by which the state maintains an official roster of names and addresses of the practitioners in a given profession. The roster contains the location, nature and operation of the health care activity practices and, if required, a description of the service provided. A registered person is subject to the Uniform Disciplinary Act (chapter 18.130 RCW).
4. *Certification.* A voluntary process by which the state grants recognition to a person who has met certain qualifications. Non-certified people may perform the same tasks, but may not use "certified" in the title.<sup>1</sup> A certified person is subject to the Uniform Disciplinary Act.
5. *Licensure.* A method of regulation by which the state grants permission to engage in a health care profession only to people who meet predetermined qualifications. Licensure protects the scope of practice and the title. A licensed person is subject to the Uniform Disciplinary Act.

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<sup>1</sup> Although the law defines certification as voluntary, many health care professions have a mandatory certification requirement such as nursing assistants-certified, home care aides, and pharmacy technicians.

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## **EXECUTIVE SUMMARY**

### **Background**

Chiropractors have been licensed in Washington since 1919 under chapter 18.25 RCW and chapter 246-808 WAC. Chiropractors are experts in providing spinal manipulation. In Washington, they're authorized to diagnose, analyze and treat "the vertebral subluxation complex and its effects, articular dysfunction, and musculoskeletal disorders, all for the restoration and maintenance of health and recognizing the recuperative powers of the body. As part of the chiropractic differential diagnosis, a chiropractor shall perform a physical examination to determine the appropriateness of chiropractic care or the need for referral to other health care providers."<sup>2</sup> Chiropractic care doesn't include prescriptive authority; procedures involving the application of sound, diathermy or electricity; or any form of venipuncture.

There are currently 2,348 licensed chiropractors in Washington.<sup>3</sup> Requirements for licensure under RCW 18.25.020 include completion of "not less than one-half of the requirements for a baccalaureate degree" and graduation from a Council on Chiropractic Education (CCE) accredited chiropractic school or college consisting of a course of study of not less than 4,000 classroom hours of instruction. In addition, applicants must pass the National Board of Chiropractic Examiners (NBCE) examination.<sup>4</sup>

### **Proposal for Sunrise Review**

On May 23, 2013, Representative Eileen Cody, Chair of the House Health Care and Wellness Committee, asked the department to conduct a sunrise review of House Bill (HB) 1573 from the 2013 legislative session. This proposal would prohibit discrimination against chiropractors and require that licensed chiropractors be allowed to perform physical examinations for sports physicals and commercial drivers' licenses.

The applicant for this proposal is the Washington State Chiropractic Association (WSCA). The applicant describes this proposal as a clarification of the scope of practice, not an increase. The applicant report assessing the criteria required in chapter 18.120 RCW included the intent to propose amendments to HB 1573 as follows:

- Remove reference to the Washington Interscholastic Activities Association (WIAA);
- Apply the proposed legislation to all youth sports;
- Add an additional 18-hour training and examination requirement (with an optional challenge to the examination for chiropractors with current Diplomate American Chiropractic of Sports Physicians certification);
- Create an endorsement to licensure for those chiropractors with the additional qualifications to be able to perform pre-participation examinations (PPEs) for student athletes (although this was not clear in the proposal, the applicant made it clear during the public hearing that it intends this to be an endorsement); and

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<sup>2</sup> RCW 18.25.005(3)

<sup>3</sup> As of July 1, 2013

<sup>4</sup> Some chiropractic programs, such as the University of Western States in Oregon and Palmer College in Iowa, provide up to 4,600 classroom hours, exceeding the minimum requirements in statute.

- Require federal motor carrier training for doctors of chiropractic performing the physical examinations that meet the criteria of the Federal Motor Carrier Safety Administration.

In addition, at the public hearing, the applicant’s representative stated that there were additional amendments intended to occur last session to HB 1573 that would have included changes to the statutory definitions in the chiropractic scope of practice.

The department is required to evaluate the proposal requested by the legislature. We will attempt to address both the proposal and the many changes later suggested by the applicant.

## Recommendations

The department has determined that the sunrise criteria haven’t been met in the three versions of the proposal submitted because:

1. **The department doesn’t support adoption of HB 1573 as written.** HB 1573 doesn’t amend the definitions of chiropractic or chiropractic treatment or care in RCW 18.25.005. Physical examinations for student athletes and commercial drivers are clearly not within the existing statutory scope of practice for chiropractors in Washington.
2. **The department does not support the proposal submitted with the applicant report from the Washington State Chiropractic Association in July, which included a proposal to add additional educational requirements for chiropractors to perform physical examinations of student athletes and commercial drivers.** The applicant report also does not propose to amend the definitions of chiropractic or chiropractic treatment or care in RCW 18.25.005. The applicant’s proposal should not be enacted, even with the additional training it intends to include in amendment language, because the proposal still fails to amend RCW 18.25.005 to add the elements of a comprehensive physical examination to the chiropractic scope of practice.
3. **The department does not support expanding the chiropractic scope of practice to include PPEs for student athletes and commercial motor vehicle examinations (CMV exams) for commercial drivers.** Since the department interprets these physicals as outside the chiropractic scope of practice, we reviewed whether changing the definitions in RCW 18.25.005 to expand the scope would meet the sunrise criteria. The department found potential risk of patient harm if PPEs and CMV exams are added to the chiropractic scope of practice. Specifically:
  - Addition of PPEs and CMV exams would expand the chiropractic scope of practice well outside of the current scope of diagnosing and treating conditions relating to the musculoskeletal system.
  - PPEs and CMV exams are intended to be comprehensive physical examinations, not cursory screenings. These exams are sometimes the only examination a person receives regularly. For students, this includes the opportunity to receive age-appropriate vaccinations, which chiropractors can’t perform.
  - Chiropractic educational programs do not include adequate focus on pharmacology, which is necessary in both types of physical examinations.



- Although chiropractic training includes basic understanding of body and organ systems, including the cardiovascular system, the department is unable to find that it prepares chiropractors to potentially be the sole evaluator of all or most medical conditions.
- The additional trainings proposed by the applicant do not appear to adequately bridge the gap in training, especially considering the range of education obtained by current licensees. The Diplomate American Chiropractic of Sports Physicians specialty certification training's primary focus also appears to be on spinal and extremity manipulation, exercise physiology, and sports-specific biomechanics without a corresponding focus on broader medical conditions and pharmacology.
- Examining a patient to evaluate his or her overall health should be done by a primary care provider who can use their broad spectrum of training, clinical residency, and experience to conduct the evaluations, and whose daily practice includes functions of primary care.

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## SUMMARY OF INFORMATION

### Background

Chiropractors have been licensed in Washington since 1919 to diagnose, analyze and treat “the vertebral subluxation complex and its effects, articular dysfunction, and musculoskeletal disorders, all for the restoration and maintenance of health and recognizing the recuperative powers of the body.” Chiropractors are experts in providing spinal manipulation.

In Washington, chiropractors are regulated by the Chiropractic Quality Assurance Commission (commission) under chapter 18.25 RCW and chapter 246-808 WAC. “As part of a chiropractic differential diagnosis, a chiropractor shall perform a physical examination...to determine the appropriateness of chiropractic care or the need for referral to other health care providers.”<sup>5</sup> Chiropractic care does not include prescriptive authority; application of sound, diathermy or electricity; or any form of venipuncture.

As of July 1, 2013, there were 2,348 licensed chiropractors in Washington. Requirements for licensure under RCW 18.25.020 include completion of “not less than one-half of the requirements for a baccalaureate degree” and graduation from a CCE-accredited chiropractic school or college consisting of a course of study of not less than 4,000 classroom hours of instruction. In addition, applicants must pass the National Board of Chiropractic Examiners (NBCE) examination.

### Proposal for Sunrise Review

On May 23, 2013, Representative Eileen Cody, chair of the House Health Care and Wellness Committee, asked the department to conduct a sunrise review on House Bill 1573 from the 2013 legislative session, which would prohibit discrimination against chiropractors and require that licensed chiropractors be allowed to perform physical examinations for sports physicals and commercial drivers’ licenses. House Bill 1573, “An act relating to clarifying the prohibitions against discriminating against licensed chiropractors,” included the following language:

“The state and its political subdivisions, including school districts, and all officials, agents, employees, or representatives thereof, are prohibited from in any way discriminating against licensed chiropractors in performing and receiving compensation for services covered by their licenses. Licensed chiropractors must be allowed to perform sports physicals for school athletes and physical examinations required for commercial driver’s licenses.”

Notwithstanding any other provision of law, the state and its political subdivisions, and all officials, agents, employees, or representatives thereof, are prohibited from entering into any agreement or contract with any individual, group, association, including the Washington interscholastic activities association, or corporation which in any way, directly or indirectly, discriminates against licensed chiropractors in performing and receiving compensation for services covered by their licenses.”

On June 25, 2013, the Washington State Chiropractic Association (WSCA) submitted its applicant report assessing the criteria required in chapter 18.120 RCW. The applicant states this

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<sup>5</sup> RCW 18.25.005(3)

proposal is a clarification of their scope of practice, not an increase. The applicant report included the intent to propose amendments to HB 1573 as follows:

- Remove reference to the WIAA;
- Apply the proposed legislation to all youth sports;
- Add an additional 18-hour training and examination requirement (with an optional challenge to the examination for chiropractors with current Diplomate American Chiropractic of Sports Physicians certification);
- Create an endorsement to licensure for those with the additional qualifications to be able to perform PPEs. (Although this was not clear in the proposal, the applicant made it clear during the public hearing that it intends this to be an endorsement); and
- Require Federal Motor Carrier training for doctors of chiropractic performing the physical examinations that would meet the criteria of the Federal Motor Carrier Safety Improvement Administration.

In addition, the applicant stated at the public hearing that there were additional amendments intended to occur last session to HB 1573 that would have included changes to the definitions in the chiropractic scope of practice.

## **Public Participation and Hearing**

The department received the request from the legislature to conduct this sunrise review on May 23, 2013, and received the applicant report on June 25, 2013. Interested parties were notified of the sunrise review on June 28, and given the opportunity to provide written comments on the proposal through August 2. We posted the proposal and all applicant materials to the department's website. A public hearing was held August 6, 2013. Written comments were accepted through August 2, and there was an additional comment period after the hearing through August 16. (See Appendix D for public hearing transcript and Appendix E for written comments).

We shared a draft report with the applicant and interested parties October 23 and invited rebuttal comments. The rebuttals and department responses are summarized beginning on page 23 (full rebuttal comments are attached as Appendix H).

Nine people testified at the hearing in support of the proposal and nine in opposition. In addition, we received 15 letters in support of the proposal and 23 in opposition. The following is a summary of the written and oral comments we received during our review.

### **Support**

Themes in the oral and written comments in support of the proposal:

- This was just an oversight in the statute that physicals weren't included.
- It's discrimination against chiropractors that they cannot perform these physicals.
- Chiropractors are well trained and fully prepared to conduct these physicals. They have access to all medical diagnostic tools that are available to other health care providers.

- There's a misunderstanding about chiropractic education, diagnostic ability, and didactic training. Many opposing comments are emotionally charged and hold no factual evidence.
- There's an access issue with primary care providers. Chiropractors often help patients find primary care physicians who are accepting new patients.
- Many patients would prefer a certified sports trainer to do their physicals because they trust them, and their chiropractors know their history.
- Chiropractors conduct PPEs for professional sports teams, Olympic teams, colleges, and high schools across America.
- It was suggested that the sunrise reviewers might wish to visit one or more chiropractic colleges to observe the curriculum and the hands-on doctor/patient relationships being taught.
- Opposing comments attempt to engender concern and fear about potential negative outcomes associated with the proposal. Ironically, the negative outcomes cited are associated with medical physicians' provision of these exams.
- Washington is one of the few remaining states that restrict chiropractors from performing physicals. It's a disservice to Washington residents.
- These are screenings, not treatment.

The applicant offered a response to perceived inaccuracies heard during testimony and to written testimony received by the department. (Appendix C).

## **Opposed**

Themes in the oral and written comments in opposition to the proposal:

- Chiropractors are not qualified and may miss critical issues. Chiropractic teaching falls short of teaching the necessary skill set, especially regarding the ability to diagnose simple or complex patterns of disease and injury. The lack of clinical training in cardiac pathologies and concussion evaluation could be devastating to a young athlete.
- PPEs should be completed by a medical doctor or medical clinician who has the training, background and skills to perform them and recognize heart disease.
- All medical practitioners should stay within their legal scope of practice.
- These visits may be the only time a child or teen sees his or her doctor. The physical addresses the whole patient, and the ideal examiner is the primary care physician who knows a patient's medical history.
- It's a critical time to perform vaccinations, which chiropractors cannot do. In addition, chiropractors do not have prescriptive authority.
- The proposal is antithetical to efforts in the medical community to improve athlete safety on the playing field. Extensive work is being done preventing sudden cardiac death based on trained evaluation of the history and physical examination, proper use of non-invasive cardiovascular testing, and a solid understanding of the conditions associated with sudden cardiac death in athletes.
- The proposal doesn't contain appropriate oversight. It doesn't support the team approach to medical care and the physician-led model.
- The Washington State Medical Association, Washington Osteopathic Medical Association, and Washington State Nurses Association wrote in opposition, citing inadequate training to provide comprehensive physical examinations. They also stated there isn't data supporting the need to expand the scope of practice due to a claimed

shortage of primary care providers, nor is the claim supported that this expansion would benefit the public.

- Sports physicals ascertain medical health status, not chiropractic health status; they should solely remain the professional responsibility of medical practitioners.
- The Athletic Trainers Association asserts that chiropractic training doesn't emphasize the main issues that affect young athletes such as sudden cardiac arrest, heat-related illnesses, concussions and other medical issues.

## **Education and Training**

RCW 18.25.025 authorizes the commission to grant accreditation to chiropractic schools and colleges. The statute requires chiropractic educational programs to include minimum hours of chiropractic curriculum in the following areas:

- Principles of chiropractic – 200 hours;
- Adjustive technique – 400 hours;
- Spinal roentgenology – 175 hours;
- Symptomology and diagnosis – 425 hours; and
- Clinic – 625 hours.

RCW 18.25.020 and WAC 246-808-040(3)(b) require chiropractic educational programs to be a minimum of 4,000 class hours of instruction over a four-year academic term. Some chiropractic programs, such as the University of Western States in Oregon and Palmer College in Iowa, include additional class hours. According to the applicant, these programs include 500 hours of anatomy, 400 hours of physiology, 1,500 hours of diagnosis, and 2,000 hours of clinic, where students see student-patients and patients from the surrounding communities under supervision.

The University of Western States in Oregon and Palmer College of Chiropractic in Iowa submitted comments stating its programs prepare graduates to provide comprehensive health examinations. These colleges included the following information about their programs:

- Palmer College states that of the 4,620 total contact hours of instruction, 570 are in diagnosis, 300 are in radiology procedures and interpretation, and 945 are in practical clinical experiences in the Palmer Chiropractic Clinic system.<sup>6</sup>
- The University of Western States indicates nearly 1,000 of their 4,200 to 4,600 hours of training covers all aspects of ambulatory care patient evaluation, and the analysis and employment of best practices therein. This education includes didactic and practical skills instruction in emergency procedures, physical examination of each body region and system, laboratory diagnosis, differential diagnosis, imaging, triage, evidence based practice, etc. In addition to didactic instruction and practical application, clinical practice training rotations include extensive experience in the application of these competencies on a very diverse array of patients in ambulatory care settings.<sup>7</sup>

Dr. Gary Schultz, representing the applicant at the hearing, stated that chiropractors are trained in all the essential elements that are required in PPEs and CMV exams as a part of their core training. This training includes basic sciences, clinical sciences, and clinical experiences, which

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<sup>6</sup> Letter from Palmer College in response to proposal, dated August 30, 2013

<sup>7</sup> Letter from University of Western States submitted in response to proposal, dated July 26, 2013

incorporate all areas of the body. It isn't an education focused simply on the neuromuscular skeletal system, but he admits there is a focus in that area because it is the primary area of treatment for most chiropractors' practice. Dr. Schultz further stated that the very broad education prepares chiropractors to diagnose any condition that would likely walk through an ambulatory care center's doors. He said at the very least, chiropractors are responsible to be able know what they can and can't treat and to be able to refer appropriately for conditions they encounter that are not within their scope.

We received many comments in response to this proposal stating that chiropractors have no training outside the musculoskeletal system. Our review of the documentation submitted by the applicant and others shows this to be an oversimplification. Current chiropractic programs provide broad medical training, including supervised clinical training; however, it is minimal in comparison to the substantial training they receive in aspects of chiropractic care. In addition, chiropractic programs are not required to include training in pharmacology. Some programs offer some training in this area, but the amount varies from program to program. Chiropractic schools don't require clinical rotations specific to areas such as family medicine, internal medicine, or pediatrics.

There are voluntary specialty certifications for chiropractors that include:

- American Chiropractic Board of Sports Physicians:
  - Certified Chiropractic Sports Physician (CCSP) which includes 100 hours of class time.
  - The Diplomate American Chiropractic of Sports Physicians which requires a CCSP and an additional 200 class hours, 100 hours of practical experience, plus an examination.

These specialty certifications include a small portion of broad medical training, but the primary focus appears to be on spinal and extremity manipulation, as well as exercise physiology and sports-specific biomechanics or occupational treatment.

- The Department of Labor and Industries offers the following certifications:<sup>8</sup>
  - Chiropractic Consultant Program. Chiropractors with additional clinical and workers' compensation-specific training may be certified to perform second opinion consultations for attending doctors to assist evaluation and care recommendations when a worker's recovery isn't meeting expectations. Training includes 180 post-graduate hours in subject areas such as diagnostic assessment, neurology, occupational health practices, and orthopedics. Only 20 hours are allowed in chiropractic technique.
  - Independent Medical Examiner (IME) certification. Chiropractors with two years of experience as a chiropractic consultant and who have taken an IME seminar may be certified to provide an independent assessment of a patient's status, including rating for permanent impairment.

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<sup>8</sup> <<http://www.lni.wa.gov/ClaimsIns/Providers/ProjResearchComm/IICAC/default.asp#4>>, accessed September 11, 2013

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## **Current Regulation and Practice of Chiropractors**

RCW 18.25.005 defines the chiropractic scope of practice:

- (1) Chiropractic is the practice of health care that deals with the diagnosis or analysis and care or treatment of the vertebral subluxation complex and its effects, articular dysfunction, and musculoskeletal disorders, all for the restoration and maintenance of health and recognizing the recuperative powers of the body.
- (2) Chiropractic treatment or care includes the use of procedures involving spinal adjustments and extremity manipulation. Chiropractic treatment also includes the use of heat, cold, water, exercise, massage, trigger point therapy, dietary advice and recommendation of nutritional supplementation, the normal regimen and rehabilitation of the patient, first aid, and counseling on hygiene, sanitation, and preventive measures. Chiropractic care also includes such physiological therapeutic procedures as traction and light, but does not include procedures involving the application of sound, diathermy, or electricity.
- (3) As part of a chiropractic differential diagnosis, a chiropractor shall perform a physical examination, which may include diagnostic x-rays, to determine the appropriateness of chiropractic care or the need for referral to other health care providers. The chiropractic quality assurance commission shall provide by rule for the type and use of diagnostic and analytical devices and procedures consistent with this chapter.
- (4) Chiropractic care shall not include the prescription or dispensing of any medicine or drug, the practice of obstetrics or surgery, the use of x-rays or any other form of radiation for therapeutic purposes, colonic irrigation, or any form of venipuncture.

Chiropractors are currently required to perform physical examinations, but the purpose of those examinations is to determine the appropriateness of chiropractic care or the need for referral, not to assess the overall health of an individual. Current Washington law limits the practice of chiropractors to diagnosis, analysis, and care or treatment for restoration and maintenance of health of conditions relating to the musculoskeletal system.

## **Regulation in Other States**

Washington's chiropractic licensing requirements are similar to those in other states, some with much broader scopes of practice. However, public expectations, regulatory policy, and legislatively created scope of practice are quite different. Three other states were mentioned during testimony comparing scopes of practice: Oregon, Michigan and Colorado. This report focuses on those states for comparison, which shows the diverse regulatory policies regarding the practice of chiropractic these states have based on their authorizing environments.

### **Michigan**

Of the three states, Michigan is most like Washington in its approach to the chiropractic scope of practice. Michigan doesn't allow chiropractors to perform pre-participation examinations or commercial motor vehicle examinations exams.

An opinion by Michigan Attorney General<sup>9</sup> makes it clear that physical examinations aren't within the scope of chiropractic practice:

Public health code doesn't include within chiropractic practice general physical examinations, including: analysis of blood, hair, urine samples, physical observations of throat, mouth, eyes, taking of pulse and blood pressures, and examination of lungs and abdomen, even if information such as that which can be ascertained from urine specimens and blood pressure test would be helpful, if not health preserving, in preparation for chiropractic treatment, since statute limits scope of chiropractic in determining existing subluxations or misalignments of the spine.

Michigan's chiropractic scope of practice statute is a part of Michigan Public Health Code (Excerpt) Act 368 of 1978, Section 333.16401:

(e)"Practice of chiropractic" means that discipline within the healing arts that deals with the human nervous system and the musculoskeletal system and their interrelationship with other body systems. Practice of chiropractic includes the following:

(i) The diagnosis of human conditions and disorders of the human musculoskeletal and nervous systems as they relate to subluxations, misalignments, and joint dysfunctions. These diagnoses shall be for the purpose of detecting and correcting those conditions and disorders or offering advice to seek treatment from other health professionals in order to restore and maintain health.

(ii) The evaluation of conditions or symptoms related to subluxations, misalignments, and joint dysfunction through any of the following:

## Oregon

Oregon has a required form and protocol for PPEs (ORS 336.479). PPEs are required for all students participating in extracurricular sports in grades seven through 12. ORS 336-479 Section 1 (5) (e) allows a licensed chiropractor who "has clinical training and experience in detecting cardiopulmonary diseases and defects" to perform PPEs. The clinical training and experience is assumed, by the Oregon Board of Chiropractic Examiners, under the basic chiropractic licensing requirements.

However, Oregon clearly has a different policy view of chiropractic than Washington. Oregon defines a chiropractic physician as an attending physician and allows chiropractors to perform minor surgery and to use antiseptics and local anesthetics in connection with surgery.<sup>10</sup> With additional certifications, they can perform proctology<sup>11</sup> and natural childbirth.<sup>12</sup> They are seen as primary care physicians and may sign birth and death certificates and conduct school physicals.<sup>13</sup> They also perform physicals required by the United States Department of Transportation (USDOT). They may not "administer or write prescriptions for, or dispense drugs, practice optometry or naturopathic medicine or do major surgery"(ORS 684.015 (3)).

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<sup>9</sup> Attorney General, on Behalf of People v. Beno (1985) 373 N.W.2d 544, 422 Mich. 293

<sup>10</sup> <<http://www.leg.state.or.us/ors/684.html>>

<sup>11</sup> OAR 811-015-0030 (2)

<sup>12</sup> OAR 811-015-0030(4)

<sup>13</sup> Oregon Board of Chiropractic Examiners

## **Colorado**

In Colorado, the rules regulating PPEs are left to individual schools or school districts or are delegated to the Colorado High School Athletics Association (CHSAA). Colorado High School Athletics Association requires PPEs to be conducted for student athletic participation in middle school, junior high and high schools.<sup>14</sup> For chiropractors to perform PPEs for junior high and high school student athletes in Colorado, CHSAA requires initial certification and recertification every two years. The initial certification class is seven continuing education hours and covers topics of patient history and physical examination, guidelines for student sports participation in Colorado, and legal precautions.<sup>15</sup>

Colorado chiropractors may not perform surgery, practice obstetrics, treat cancer or prescribe legend drugs. Colorado chiropractors may perform an EKG/ECG if they have the required 120 hours of initial and related clinical with didactic training and demonstrated competency in cardiac medicine.<sup>16</sup>

## **Background on PPEs**

A PPE is a physical examination that is generally required of student athletes prior to participation in school sports. The goal is to help maintain the health and safety of the athlete in training and competition. PPEs require evaluation of a wide range of body parts, such as eyes/ears/nose/throat, lymph nodes, heart, lungs, abdomen, skin and genitourinary system (for males). They also require an assessment of conditions such as asthma, diabetes, hernia, and heart conditions. The examiner is expected to determine whether a student athlete can safely participate in sports or whether clinical contraindications to practice or participation exist. (See Appendix F for the authorization form recommended by the WIAA).

These physical examinations have taken on more importance in recent years due to an increase in adverse events such as sudden cardiac deaths occurring in young athletes. An underlying or undetected heart condition that increases the risk of sudden cardiac arrest is one of the serious concerns that often escape detection during a PPE. The American Academy of Pediatrics estimates that approximately 2,000 people under the age of 25 die from sudden cardiac arrest in the United States each year. Student athletes run a significantly greater chance of experiencing sudden cardiac arrest than a non-athlete of the same age.<sup>17</sup> Sudden cardiac arrest usually stems from a structural/functional defect in the heart or an electrical disorder. About 40 percent are caused by hypertrophic cardiomyopathy, an excessive thickening of the heart muscle.

Medical providers must be aware of the warning signs and symptoms of sudden cardiac death and respond appropriately with comprehensive cardiovascular evaluation, referral, treatment, and activity restrictions. Work is being done on preventing sudden cardiac death based on trained evaluation of patient history and physical examination, proper use of non-invasive cardiovascular testing, and a solid understanding of the conditions associated with sudden cardiac death in athletes. The Nick of Time Foundation, a nonprofit organization dedicated to preventing sudden

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<sup>14</sup> Colorado High School Athletics Association, <<http://www.chsaa.org/home/pdf/StateStauteHandbook.pdf>>

<sup>15</sup> Colorado Chiropractic Association

<sup>16</sup> Examiners 3 CCR 701-1 Colorado state Board of Chiropractic Examiners Rules and Regulations

<sup>17</sup> Pediatrics, Volume 129, Number 4. April 2012. American Academy of Pediatrics Policy Statement

cardiac arrest in athletes, is one organization that is working to restructure the PPE with stricter regulations.

Many children being examined through PPEs have other diagnosed or undiagnosed medical conditions in addition to those on the standard PPE clearance form that may impact their ability to play sports safely. Many of these children are on medications for conditions such as asthma or attention deficit hyperactivity disorder (ADHD), which may carry risk of drug interactions with other prescription and over-the-counter medications. In 2009, it was reported that over a quarter of children in the United States were taking at least one medication on a chronic basis.<sup>18</sup> In addition, according to CDC prevalence rates:

- The national child asthma rate is 9.5percent,<sup>19</sup> many of whom use at least a rescue inhaler;
- In 2007-2008, between 3.7 and 4.7 percent of children in Washington State were on medication for ADHD.<sup>20</sup>

Individual school districts in Washington have been given authority by the legislature to make rules regarding their interscholastic activities, including PPEs. RCW 28A.600.200 states:

“Each school district board of directors is hereby granted and shall exercise the authority to control, supervise and regulate the conduct of interschool athletic activities and other interschool extracurricular activities of an athletic, cultural, social or recreational nature for students of the district. A board of directors may delegate control, supervision and regulation of any such activity to the Washington interscholastic activities association or any other voluntary nonprofit entity and compensate such entity for services provided; subject to the following conditions . . .”

A school district may contract with the WIAA for administration of its athletic activities. Although the WIAA includes in its handbook a sample form for school districts to use for PPEs, there is a wide variety in the forms actually used by the various school districts and the WIAA’s 800-member high schools and middle/junior high schools.

## **Background on Commercial Driver’s License Physicals**

Commercial motor vehicle data shows that more than 3,000 truck crashes per year result from the driver having a heart attack or other physical impairment.<sup>21</sup> A medical eligibility clearance (or CMV) exam is required to help prevent medically unqualified drivers from operating commercial vehicles on our highways.

The CMV exam for interstate drivers includes many of the same items/conditions that are included in a PPE, such as cardiovascular conditions (Appendix G). These examinations also include requirements to evaluate and discuss mental health conditions, alcoholism, the effects of medications, and non-disqualifying medical conditions that require remedial care, including:

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<sup>18</sup> “So Young and So Many Pills.” *The Wall Street Journal*, December 28, 2010. Study conducted by Medco Health Solutions Inc. 2009.

<sup>19</sup> <<http://www.cdc.gov/asthma/asthmadata.htm>>, accessed September 11, 2013

<sup>20</sup> <<http://www.cdc.gov/ncbddd/adhd/data.html>>, accessed September 11, 2013

<sup>21</sup> 2007 Study by the Washington State Department of Licensing, <<http://www.dol.wa.gov/driverslicense/cdlmedicalcertificates.html>>

- Possible side effects and interactions of prescription and over-the-counter medications that could negatively affect driving.<sup>22</sup>
- Diabetes exemptions that may require blood glucose monitoring.<sup>23</sup>

Due to safety concerns, the USDOT's Federal Motor Carrier Safety Administration (FMCSA) has set up a required registry for all health care providers who wish to conduct these examinations for interstate drivers. It describes the registry as:

The National Registry of Certified Medical Examiners (National Registry) is a new FMCSA program. It requires all medical examiners (MEs) who wish to perform physical examinations for interstate commercial motor vehicle (CMV) drivers to be trained and certified in FMCSA physical qualification standards. Medical examiners who have completed the training and successfully passed the test are included in an online directory on the National Registry website.<sup>24</sup>

The medical examiner training reviews FMCSA-specific knowledge about CMV drivers and the physical and mental demands of the job. This training is required because specialized knowledge of CMV drivers is not included in health care practitioner education and licensure requirements. The training ensures that candidates have baseline instruction in FMCSA's CMV driver physical qualification standards, medical guidelines, and medical examiner responsibilities. Medical scope of practice is defined by each state and demonstrates the practitioner's clinical knowledge. The medical examiner training builds on that clinical knowledge and applies it to the fitness for duty determination for CMV drivers.

If a licensed chiropractor is authorized to perform general physical exams under state statute, they are able to complete the federal training and take the certification test to become a CMV examiner.<sup>25</sup> Forty-eight states allow chiropractors to perform CMV exams. Because the performance of physical examinations for reasons other than chiropractic care or referral to another health care provider is outside of the scope of practice for chiropractors in Washington as defined in RCW 18.25.005, chiropractors aren't eligible for FMSCA registry.

## **Definition of the Problem and Why Regulation is Necessary**

The applicant states that the problem it is trying to remedy with the proposal is the arbitrary selection of which health care providers are allowed to perform PPEs and CMV exams in Washington.

These physical examinations are clearly outside the existing chiropractic scope of practice. Allowing performance of these physicals would be a substantial increase to the current scope. This would require the examiner to take on the role of primary care provider, examining and diagnosing systems and issues of the whole body, including assessing possible side effects and interactions of medications. Chiropractors have limited training in pharmacology and no prescriptive authority in

<sup>22</sup> Medical Examination Report for Commercial Driver Fitness Determination Form # 649F (6045), <<http://www.fmcsa.dot.gov/documents/safetyprograms/Medical-Report.pdf>>

<sup>23</sup> Medical Advisory Criteria for Evaluation Under 49CFR Part 391.41, <<http://www.fmcsa.dot.gov/rules-regulations/administration/medical.htm>>

<sup>24</sup> <<https://nationalregistry.fmcsa.dot.gov/NRPublicUI/home.seam>>

<sup>25</sup> Federal Motor Carrier Safety Administration. 49 C.F.R. Section 390.5 Definitions, <<http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.aspx?reg=390.5>>

Washington. CMV exams may necessitate the examiner to make highly subjective decisions, such as whether cardiovascular disease should disqualify an individual, or whether a diabetic whose condition is adequately controlled by medication and diet should be allowed to drive.<sup>26</sup>

The applicant states that chiropractic education prepares chiropractors to perform PPE exams competently. It states that many chiropractors perform cardiopulmonary exams in their offices on a daily basis; however, it acknowledges that not all chiropractors have maintained the level of competency to perform PPEs at the level they should be performed. This is the reason the applicant has stated it is requesting the endorsement to only allow chiropractors with additional training and testing to perform PPEs. This specialty training includes an 18-hour course for PPEs or Diplomate American Chiropractic of Sports Physicians sports medicine certification. The applicant states that chiropractors who don't specialize in PPEs and CMV exams will simply choose not to do them, just as medical doctors don't perform every type of service within their scope of practice.

In order to determine the adequacy of the endorsement proposed by the applicant, the department examined the core chiropractic training of currently licensed chiropractors. These practitioners may have been trained 30 years ago or last year, creating a wide diversity in training. In addition, even current chiropractic programs necessarily have a primary focus on chiropractic treatment, leaving much less time devoted to primary medical education. Some chiropractic programs like the University of Western States exceed the minimum accreditation requirements and incorporate a broader focus on medical training, but not all schools do the same. The department isn't convinced that the specialty certifications for sports medicine chiropractors include enough focus on broad medical training to adequately address the gap.

Concerns have been identified about how PPEs are currently being performed by other medical professions, including allegations that physicians miss underlying or undetected heart conditions that increase the risk of sudden cardiac arrest. These are concerns beyond the scope of this review. Expanding the chiropractic scope of practice won't address these issues. They are currently being debated in the broader health care system and the discussions are leaning toward increased regulations for those providers already performing them.

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<sup>26</sup> Medical Advisory Criteria for Evaluation Under 49CFR Part 391.41, <<http://www.fmcsa.dot.gov/rules-regulations/administration/medical.htm>>

## **REVIEW OF PROPOSAL USING SUNRISE CRITERIA**

The Sunrise Act, chapter 18.120 RCW, does not specifically address a proposal to modify or expand a profession's scope of practice; but RCW 18.120.010(2) states that when considering regulating health professions for the first time, the profession should be regulated only when:

- Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
- The public cannot be effectively protected by other means in a more cost-beneficial manner.

The department has applied the criteria in RCW 18.120.010(2) to HB 1573.

### **First Criterion: Unregulated practice can harm or endanger health or safety.**

This criterion has not been met.

Chiropractors are currently a thoroughly regulated profession. The public health and safety benefit of adding PPEs and CMV exams to the chiropractic scope of practice hasn't been proven, and the potential for harm is present. There is evidence that highly trained providers currently conducting PPEs sometimes miss the warning signs of heart conditions, or do not perform PPEs properly. Allowing providers with less training to perform PPEs won't alleviate this issue and may inadvertently compound the problem.

Chiropractic schools include supervised clinical training in many areas, including recognition of cardiac conditions. However, it's minimal in comparison to the substantial training they receive in aspects of chiropractic care; and not all currently licensed chiropractors receive this level of education. In addition, chiropractic programs aren't required to include training in pharmacology, although some programs offer some training in this area. The Diplomate American Chiropractic of Sports Physicians specialty certification has a strong focus on spinal and extremity manipulation, exercise physiology and sports-specific biomechanics.

### **Second Criterion: The public needs and will benefit from assurance of professional ability.**

This criterion has not been met.

There are adequate laws and rules in place to assure the public of chiropractors' initial and continued professional ability for their current scope of practice. Chiropractors are clearly authorized to provide all aspects of care that deal with diagnosis or analysis and care of treatment of musculoskeletal disorders, including spinal adjustments, extremity manipulation, and other modalities. This includes physical examinations determining whether chiropractic treatment is appropriate or whether a referral is necessary to another health care provider. All licensed chiropractors have received training to provide these services.

The three versions of the proposal under review don't contain this assurance because:

- They do not change the chiropractic scope of practice in RCW 18.25.005 to include comprehensive physical examinations.
- Even if the department recommended language to clearly add these examinations in the chiropractic scope of practice, the applicants have not shown adequate training and supervised clinical experience to assure the public of the professional ability of currently practicing chiropractors to perform PPEs or CMV exams.
- Chiropractors have limited training in pharmacology, which can play a significant part in both types of physical examinations.

**Third Criterion: Public protection cannot be met by other means in a more cost beneficial manner.**

This criterion has not been met.

Public protection is already in place with the current scope of practice of chiropractors. Although the applicant shared anecdotal stories of children who could not find a health care provider to perform a PPE, and has concerns that there may not be sufficient providers to perform CMV exams in the future, they haven't submitted actual evidence that the public will be denied these services if this proposal isn't granted.

Issues have been identified with the PPE. These include studies showing that physicians don't always follow appropriate guidelines and that critical health conditions are often missed. This seems to indicate a need for stricter regulations and guidelines for those already conducting the physicals to follow. None of the versions of the proposal considered address these issues.



## DETAILED RECOMMENDATIONS TO LEGISLATURE

In the course of the sunrise review, the department considered three different versions of the proposal and determined the sunrise criteria have not been met:

1. **The department does not support adoption of HB 1573 as written.**

*Rationale:*

HB 1573 does not amend the definitions of chiropractic or chiropractic treatment or care in RCW 18.25.005. Physical examinations for student athletes and commercial drivers aren't within the current chiropractic scope of practice.

2. **The department does not support the proposal submitted with the applicant report from WSCA in July, which included a proposal to add additional educational requirements for chiropractors to perform PPEs and CMV exams.**

*Rationale:*

The applicant report also does not propose to amend the definitions of chiropractic or chiropractic treatment or care in RCW 18.25.005. The applicant's proposal shouldn't be enacted, even with the additional training it intends to include in amendment language because the proposal still fails to amend RCW 18.25.005 to add the elements of a comprehensive physical examination to the chiropractic scope of practice.

3. **The department does not support expanding the chiropractic scope of practice to include PPEs and CMV exams.** The legislature requested that the department assess whether the proposal meets the sunrise criteria for expanding the scope of practice for chiropractors. The department interprets these physicals as outside the chiropractic scope of practice and they would be an expansion of that scope, as indicated in the request from the legislature. Therefore, we reviewed whether changing the definitions in RCW 18.25.005 expanding the scope to include these physicals would meet the sunrise criteria.

*Rationale:*

The department found potential risk of patient harm if PPEs and CMV exams are added to the chiropractic scope of practice. Specifically:

- Addition of PPEs and CMV exams would expand the chiropractic scope of practice well outside of their current capacity of diagnosing and treating conditions relating to the musculoskeletal system.
- PPEs and CMV exams are intended to be comprehensive medical examinations, not cursory screenings. These exams are sometimes the only examination the person receives regularly. For students, this includes the opportunity to receive age-appropriate vaccinations, which chiropractors can't perform.
- Chiropractic educational programs don't include adequate focus on pharmacology, which is necessary in both types of physical examinations.
- Although chiropractic training includes basic understanding of body and organ systems, including the cardiovascular system, the department is unable to find that it prepares chiropractors to potentially be the sole evaluator of all or most medical conditions.

- The additional trainings proposed by the applicant don't appear to adequately bridge the gap in training, especially considering the range of education obtained by current licensees. The Diplomate American Chiropractic of Sports Physicians specialty certification training's primary focus also appears to be on spinal and extremity manipulation, exercise physiology, and sports-specific biomechanics without a corresponding focus on broader medical conditions and pharmacology.
- Examining a patient to evaluate their overall health should be done by a primary care provider who can use their broad spectrum of training, clinical residency, and experience to conduct the evaluation.

## REBUTTALS TO DRAFT REPORT

The department shared a draft report and recommendations with interested parties and invited comments before finalizing the report. We received three letters of rebuttal and one letter of correction that are summarized below. In addition, we received four letters in support of the draft recommendations. These letters aren't addressed below but are included in Appendix H.

### Applicants

We received two letters of rebuttal from members of the applicant group, Lori Grassi and Dr. Lorri Nichols. We'll summarize the rebuttals and corrections below, along with our response or actions. The full rebuttals are included in Appendix H.

### Lori Grassi

1. **Correction:** The applicant identified an error in the background sections of the report reflecting the date when chiropractors were first licensed in Washington.

#### Department Response

The department made an inadvertent error in this date in both the Executive Summary and Summary of Information sections of the report. The date was changed in both places to indicate chiropractors have been licensed in our state since 1919.

2. **Correction:** The applicant identified an error in citations where the department used the term "may" in relation to chiropractors performing physical examinations to determine the appropriateness of chiropractic care or the need for referral to other health care providers.

#### Department Response

This was also an inadvertent error. The department was aware that the statute (RCW 18.25.005(3)) uses the term "shall." We have corrected the report to indicate that chiropractors are required to perform these types of examinations to determine the appropriateness of chiropractic care or the need for referral to other health care providers.

3. **Information from Hearing:** The applicant was concerned that the department didn't include information it provided at the public hearing about intended amendments that didn't make it into HB 1573 last session that would have included changes to the definitions.

#### Department Response

The department has added the applicant's stated intent into the report. However, one of the three versions of the proposal we reviewed included expanding the scope of practice under appropriately amended definitions. Our task in this sunrise review was to review the proposal submitted. We cast a broad net in what we evaluated based on Representative Cody's direction that we provide "an assessment of whether the proposal meets the sunrise criteria for expanding the scope of practice," in her request for sunrise review that we provide

- 4. Correction:** The applicant identified an inaccuracy regarding pharmacology training, where the department had stated that chiropractors don't have training in pharmacology. The applicant stated that chiropractors do have pharmacology in their core curriculum and that they review all prescription and over-the-counter medications as part of their basic intake and examination. The applicant specifically referenced the 2013 CCE Accreditation Standards, where it states that "toxicology" is required as part of the clinical sciences requirements, which include, physical, clinical and laboratory diagnosis; neurology; spinal adjustment/manipulation, and other topics, as well as a review of course materials of chiropractic colleges where toxicology or pharmacology were mentioned.

The applicant also took issue with the reference to chiropractors not having prescriptive authority within the report, stating that these examinations don't require prescribing, nor medical interventions.

#### **Department Response**

**Pharmacology training:** The department acknowledges inconsistencies in where we referenced chiropractic training in pharmacology. We have corrected any statement that indicates chiropractors have no pharmacology training. We did not intend to infer there is't training in this area, only that there are varying levels of education in pharmacology, based on when and where a chiropractor graduated. The applicant references in rebuttal comments a CCE Accreditation Standard requirement for a toxicology component. Toxicology and pharmacology are not the same, with toxicology dealing with poisons and their effect; and pharmacology dealing with drug origins, composition, use, and reactions.<sup>27</sup>

**Prescriptive authority:** We acknowledge that PPEs and CMV examinations don't specifically require prescribing medications. Our intent was to show that because chiropractors don't have prescribing rights, most schools provide only minimum training in pharmacology.<sup>28</sup> We have clarified this in the report. In addition, lack of prescriptive authority becomes an issue if the PPE is a child's only annual examination because vaccinations are a safe and effective way to keep children from getting 14 serious and sometimes deadly diseases.

- 5. Multiple Subjects:** The applicant's rebuttal number five had many different components so we are addressing those in pieces.

**A. Performing physicals is outside the chiropractic scope of practice:** The applicant indicated disagreement with the department's assessment that performing physicals is outside the chiropractic scope of practice for the reasons summarized below:

- The department has alleged chiropractors aren't qualified to perform physicals that would identify both chiropractic and non-chiropractic-related medical conditions. "An exam is an exam."

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<sup>27</sup> Taken from Merriam-Webster definitions

<sup>28</sup> A 2010 press release from National University of Health Sciences stated it has determined that chiropractic physicians would need 90 hours of pharmacology to be able to prescribe safely from a limited formulary. It states that it offers chiropractic students 90 hours. <<http://www.nuhs.edu/news/2010/8/nuhs-prepares-dcs-for-limited-prescription-powers-in-nm/>>

- Because chiropractors are required to perform physical examinations within the chiropractic differential diagnosis, PPEs and CMV exams are also within their scope of practice. The applicant points to the CCE standards included with the applicant report materials as evidence supporting this claim, which the applicant feels the department has ignored.
- The department's assessment in the report that chiropractors cannot perform physicals for purposes other than chiropractic care is also incorrect. It provided the commission's interpretive statement CH-12-13-12 to the department as evidence of this.

### **Department Response**

The department disagrees with these assertions. The current scope of practice in law limits chiropractors to performing physical examinations to determine the appropriateness of chiropractic care or the need for referral to other health care providers, not to do an overall health assessment of an individual. Interpretive statement CH-12-13-12 discusses independent *chiropractic* examinations at the request of a third party and doesn't support the applicant's claim. It states that if a chiropractor provides diagnosis or analysis but stops short of providing care or treatment, the activities are still considered the practice of chiropractic. For instance, if a chiropractor only reviews a patient's file without a physical examination of the patient, that patient review is still considered the practice of chiropractic.

- B. Chiropractic Education:** The applicant stated evidence has already been provided to show that chiropractors are trained to perform these physical exams, including a letter from the University of Western States on the curriculum, but the department ignored this training and subjected chiropractors to a double standard.

### **Department Response**

The department disagrees with this assessment. We reviewed all of the documents the applicant provided and have responded to the educational questions.

- C. Heart Conditions Undetected by Physicians:** The applicant stated that the department acknowledged the existence of heart attacks following USDOT physicals and sudden cardiac death events in athletes who have undergone PPEs as a concern, but didn't attribute these events as occurring in "the medical community's watch."

### **Department Response**

The department has acknowledged these events occur in PPEs already being conducted (on page 14 under Background on PPEs and on page 17 under Definition of the Problem and Why Regulation is Necessary). In response to the applicant's concern, we added more specific language on page 17 that discusses heart conditions undetected by physicians.

- D. Document Reference:** The department had referenced a document on the WSCA's website in a statement about a chiropractor's training being intended for recognizing conditions outside the scope of chiropractic for referral to other health care providers. The applicant stated information from the University of Western States was provided that we should have reviewed, rather than choosing a state association document.

### **Department Response**

We reviewed all of the materials provided from the applicant on the University of Western States curriculum. Our choice to reference the WSCA document wasn't intended to replace the school curriculum but an attempt to capture a middle ground between the varying educational programs. After further review, we have removed the statement entirely.

- E. Diplomate American Chiropractic of Sports Physicians Training:** The applicant took issue with the statement that only four percent of the examination is focused on the PPE.

### **Department Response**

That wasn't the exact context of the statement; however, the department has removed this statement because we have attempted to clarify our position related to this sports medicine certification that isn't based solely on the examination components.

- 6. PPEs are not screening exams:** The applicant argues that the department is incorrect in stating that PPEs aren't merely screenings, but are intended to be comprehensive physical evaluations.

### **Department Response**

The department firmly believes that PPE and CMV exams both require comprehensive physical examinations to determine whether an individual can safely participate in sports or drive commercial vehicles. In order to conduct thorough examinations, the providers performing these physicals should be qualified to make subjective decisions on conditions that may disqualify individuals with conditions like diabetes or asthma from safely participating in sports or driving commercial vehicles. These providers must also be able to assess and discuss side effects and interactions of prescription medications. The instructions for performing CMV exams in CFR 391.43 state "The purpose of this history and physical examination is to *detect the presence of physical, mental, or organic conditions* of such a character and extent as to affect the driver's ability to operate a commercial motor vehicle safely. The examination should be conducted carefully..." (emphasis added).

### **Review of the Proposal Using Sunrise Criteria**

The applicant also had issues with how the department addressed the sunrise criteria in the report. The main points included:

- **First Criterion** - The applicant disagreed with the department's statement "allowing providers with less training to perform PPEs won't alleviate the issue" of highly-trained providers currently conducting PPEs missing warning signs of heart conditions. The applicant stated this is penalizing the chiropractic profession and limiting patient access, and is not appropriate.

### **Department Response**

We don't feel this is penalizing the chiropractic profession. In reviewing scope of practice expansions, the department must look at whether the proposal ensures adequate training, which we feel the current proposals under review don't contain.

The fact that another profession does or doesn't perform PPEs adequately isn't relevant to the review.

- **Second Criterion** – The applicant stated that this criterion requires the scope of practice language to be changed in order to avoid lack of clarity, but “is clearly not a reason to recommend chiropractors that should not perform these exams.” The applicant also stated the department disregarded the information provided on education and training that qualifies chiropractors to be authorized to perform CMV physicals, as well as the decision of the federal government.

**Department Response**

We clearly stated that changes to the definitions in RCW 18.25.005 must occur in order to accomplish an increase in the scope of practice for chiropractors. The department disagrees that we disregarded the information provided on chiropractic education and the decision of the federal government.

- **Third Criterion** – The applicant stated this criterion has already been met because chiropractors are already regulated.

**Department Response**

The department disagrees with this statement because public protection is in place with the current scope of practice, but the sunrise proposals don't contain similar assurances.

- **References** – The applicant referenced materials provided with the original sunrise application as well as follow-up after the hearing about American Heart Association guidelines for use in PPEs. The materials discussed lack of compliance with the guidelines by providers doing PPEs.

**Department Response**

The department acknowledged this lack of compliance with appropriate guidelines in the report, as well as other issues identified with the way PPEs are currently being conducted. We saw these as issues to be addressed, but not with this proposal.

**Dr. Lorri Nichols, DC, CCEP**

1. **Use of “may” regarding conducting physicals** - Dr. Nichols addressed the incorrect use of “may” in relation to conducting physical examinations and stated that the department made a significant error that she feels represents a bias about chiropractic education, training and daily practice. She further stated this demonstrates that the department is under an unfortunate and incorrect opinion that HB 1573 would be an expansion rather than what she states is really a clarification of the scope of practice. She also added that the information the applicant presented shows chiropractors have adequate education and training, including the Diplomate American Chiropractic of Sports Physician and CCSP specialties.

### **Department Response**

We addressed this issue in our response to Ms. Grassi's rebuttals above, acknowledging the unintentional error and amending it in the report. We disagree that this is a clarification for reasons stated in our responses to Ms. Grassi's rebuttal statements.

- 2. Screenings or Physicals** – Dr. Nichols also disagreed with the department's assessment that these examinations are intended to be comprehensive physical examinations. She reiterated Ms. Grassi's argument that doctors who perform these examinations don't prescribe medications.

### **Department Response**

Please see responses to Ms. Grassi's rebuttal comments above.

## **Dr. Ben McCay, DC**

- 1. Physical Examination** – “There is no RCW that says comprehensive physical exams are not part of the chiropractic scope of practice. The ‘physical examination’ I was taught in school is comprehensive.”

### **Department Response**

The department reiterates our position that the physical examinations required for PPEs and CMV exams aren't currently included in the chiropractic scope of practice in statute. We have addressed the education and training in our above responses.

- 2. Prescriptive Authority** – Prescriptive authority isn't necessary to perform the PPE, only to treat a condition upon referral to an MD.

### **Department Response**

The department addressed this issue in our responses above.

- 3. Diplomate American Chiropractic of Sports Physicians Certification** – It is incorrect to state the Diplomate American Chiropractic of Sports Physicians certification focuses primarily on spine, extremities, etc. It is 25 percent emergency medicine, including showing proficiency as an emergency medical technician. Other parts include extensive training in the management of concussion and keys to a proper cardiac exam.

### **Department Response**

In reviewing the Diplomate American Chiropractic of Sports Physicians certification materials, the department is unconvinced that this training bridges the gap in education, especially considering the divergent range of education obtained by current licensees.

- 4. MDs Currently Performing PPEs** – Dr. McCay states that many MDs doesn't have a “daily practice that includes functions of primary care,” providing examples such as orthopedists and many sports physicians who can perform PPEs.

### **Department Response**

The department has acknowledged issues with the current performance of PPEs and continues to assert that the proposal doesn't address these problems.

- 5. No solid evidence the number of deaths in sports will increase if DCs were allowed to perform PPEs** – He states that “the number one killer in sports (hypertrophic



cardiomyopathy) is not traditionally detected through a routine examination. Clues to HCM are only found in the patient history. Therefore, there remains no solid evidence that the number of deaths in sport will increase if DCs were allowed to perform PPEs.”

**Department Response**

The department doesn't allege to have evidence to this effect, only that there is a problem with the current process that this proposal doesn't address.

**Washington East Asian Medicine Association**

The association requested a correction to a statement in the draft report that chiropractors are allowed to perform dry needling in Oregon. They stated this is no longer correct due to a judicial stay issued by the Oregon Court of Appeals of the enabling administrative rule.

**Department Response**

The association is correct that dry needling by chiropractors in Oregon is under judicial scrutiny. We have removed the reference to the use of dry needling in Oregon on page 13.

