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OPINION NO. 2018-03

BOARDS AND COMMISSIONS;
LICENSING; OUT-OF-STATE MEDICAL
PRACTITIONERS:

Out-of-state medical practitioners who specialize in "chiropractic radiology" must be licensed or certified in the state of Nevada when diagnosing or assisting with the diagnosis of patients who are physically located in Nevada.

Jason O. Jaeger, DC, Board President
Chiropractic Physicians' Board of Nevada
4600 Kietzke Lane, M-245
Reno, Nevada 89502

Dear Dr. Jaeger:

You requested a formal opinion from the Office of the Attorney General, on behalf of the Chiropractic Physicians' Board of Nevada (Board), concerning the following:

QUESTION PRESENTED

Must an out-of-state chiropractic radiologist obtain a Nevada license or certificate to interpret and provide written diagnostic imaging reports for a Nevada-licensed chiropractic physician who treats patients while they are physically located in Nevada?

SHORT ANSWER

Yes, although the analysis depends upon whether a chiropractic radiologist qualifies as a chiropractic physician or a chiropractor's assistant. The term "chiropractic radiologist" is not defined under Nevada law. However, the activities of chiropractic physicians and chiropractor's assistants are regulated by the Board. And regardless how such activities are characterized, a chiropractic radiologist's activities fall within the scope of the Board's regulatory authority. Therefore, an out-of-state medical practitioner who provides chiropractic radiology services must be licensed or certified by the Board when diagnosing or assisting with the diagnosis of a Nevada-based patient.

ANALYSIS

The Nevada Legislature declared the practice of chiropractic a profession subject to protection by the State. NRS 634.019. In doing so, it empowered the Board to "adopt reasonable regulations . . . to enable it to carry out its duties under [NRS Chapter 634]." NRS 634.030(2). The Board is authorized to adopt licensing and certification requirements, and to discipline persons for violating the professional standards outlined in NRS Chapter 634 and the regulations promulgated thereunder. Although current statutes and regulations do not define "chiropractic radiologist," the Board is legally obligated to license or certify any person who diagnoses or assists with the diagnosis of chiropractic patients who are located in Nevada.¹

While "chiropractic physician" is not defined, the term "chiropractic" means "the science, art and practice of palpating and adjusting the articulations of the human body by hand . . . and all methods of diagnosis." NRS 634.013 (emphasis added). Further, "diagnosis" is defined as "[t]he

¹ Your letter references NRS 629.515 and "telehealth," or the delivery of services from a provider of health care at a distant site to a patient using audio-visual communication technology. NRS 629.515(4)(c). A "provider of health care" must be licensed or certified in Nevada to diagnose, care, and treat patients through telehealth. NRS 629.515(1). Since "provider of health care" includes chiropractors, see NRS 629.031(1)(r), the telehealth provisions of Nevada law do not permit chiropractors to provide any services or treatments that would not otherwise be authorized by the provisions of NRS Chapter 634.

determination of a medical condition (such as a disease) by physical examination or by study of its symptoms” as well as the results of such a study. Diagnosis, BLACK’S LAW DICTIONARY (10th ed. 2014). “Practice” means the engagement in a profession. Practice, WEBSTER’S DICTIONARY (3d. ed. 1995). Licensees must maintain competency, which includes proficiency in the “production and interpretation of radiographs.”² NAC 634.412(1)(b). The Board determines competency by examining whether a licensee documents interpretations in writing and maintains them as part of a patient’s written record. NAC 634.412(2)(d). For licensing requirements, all applicants must pass an exam that includes the interpretation of X-rays. NRS 634.070(2)(b). The Board’s current application form states that Nevada has no reciprocity. For unlicensed activities, a person practicing chiropractic without a license is guilty of a category D felony, and a violation of any other provision is a misdemeanor offense. NRS 634.227(2)(a); NRS 634.230. The Board may discipline a licensee for unprofessional conduct, which includes employing any person, directly or indirectly, as a chiropractor’s assistant. NRS 634.018(15); NRS 634.140(1).

As it relates to the Board’s authority over a “chiropractor’s assistant,” this term means a person who holds a certificate and is dedicated to assisting in all permissible aspects of chiropractic practice under the direct supervision and responsibility of a chiropractic physician. NRS 634.125. The Board’s certification authorizes a chiropractor’s assistant to perform ancillary services. NAC 634.112. “Ancillary services” means services related to chiropractic practice that the assistant can perform under the certificate, including developing radiographs and educating a patient about his or her health. NRS 634.125; NAC 634.112; NAC 634.348(1)–(2). A chiropractor’s assistant may not engage in prohibited acts, such as diagnosing a patient. NAC 634.460(1). For certification requirements, applicants must pass exams that test radiographic technology. NAC 634.305(2)(a). For uncertified activities, a person may be disciplined for conduct “detrimental to the best interests of the public,” which involves unlawfully disclosing a patient’s information and receiving commissions for referrals. NRS 634.018(10); NAC 634.3475(1). Uncertified practitioners face the same penalties described above. NRS 634.227(2)–(3); NRS 634.230.

With respect to “chiropractic radiologists,” the American Chiropractic Board of Radiology (ACBR) describes them as consultants for referring

² A “licensee” means a chiropractic physician who is licensed by the Board pursuant to NRS chapter 634. NAC 634.121.

physicians who recommend, supervise, and interpret radiological studies and imaging procedures. See AM. CHIROPRACTIC BD. RADIOLOGY, DEFINITION OF A CHIROPRACTIC RADIOLOGIST (2014). Chiropractic radiologists advise physicians on the need for radiologic services and whether to avoid certain diagnostic procedures. See Peter Hildebrandt, What Is Chiropractic Radiology?, RADIOLOGY TODAY, Aug. 2010, at 20. The ACBR certifies chiropractic radiologists who pass an exam and undergo post-graduate training.³ See *id.*

In your request for an opinion, you have described how an out-of-state chiropractic radiologist reviews images, renders a written report that contains diagnostic conclusions, and returns it to the referring chiropractic physician in Nevada. Your description of the out-of-state practitioner's activities implicates the Board's authority over "chiropractor's assistants" and the practice of chiropractic generally.⁴

The description implicates the practice of chiropractic because the out-of-state practitioner appears to engage in diagnosis by studying radiographic images and preparing a written report for use in Nevada. The written report is presumably used by the Nevada-based chiropractor as a basis for his or her plan of treatment. One could perhaps argue that these activities do not amount to diagnosis by the out-of-state practitioner if the referring physician plays a superseding role in formulating a final plan of treatment based upon his or her own independent judgment. Even so, the out-of-state practitioner's activities

³ Other jurisdictions define "chiropractic radiology" as a specialized practice area and model the qualifications after the ACBR requirements. See 21 N.C. ADMIN. CODE 10.0304(d) (2018); OHIO ADMIN. CODE 3701-83-51(B) (2018).

⁴ As interpreted by the federal courts, the Commerce Clause of the U.S. Constitution prohibits a state agency from imposing regulatory measures that discriminate against, or unduly burden interstate commerce. See *Wyoming v. Oklahoma*, 502 U.S. 437, 454, 112 S.Ct. 789, 800, 117 L.Ed.2d 1 (1992). However, when professional services are rendered by an out-of-state provider to a person who is physically located within the state, the state agency in question will generally have the authority to regulate the out-of-state provider according to the same terms and conditions as are applied to in-state providers. See *e.g. Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court*, 949 P.2d 1, 5–6 (Cal. 1998) (linking unauthorized practice of law to advising client by "telephone, fax, computer, or other modern technological means.").

implicate the definition of "chiropractor's assistant" because the out-of-state practitioner engages in ancillary services by assisting the referring chiropractic physician with the production and interpretation of the patient's images. Regardless of how these activities are characterized, the Board has an obligation under NRS Chapter 634 and the Board's existing regulations to license, certify and/or regulate the activities in some manner.

CONCLUSION

Since Nevada has no reciprocity with other states, an out-of-state chiropractic radiologist must be licensed or certified by the Board to diagnose or assist with the diagnosis of a Nevada patient. Under the Board's current regulations, this will be true even if the out-of-state practitioner works under the supervision of a Nevada-licensed chiropractic physician. Since the Board has the power to adopt and/or amend regulations interpreting and implementing the provisions of NRS Chapter 634, it has the ability to streamline, clarify and/or simplify the licensure or certification process as it relates to the performance of chiropractic radiology by out-of-state practitioners.⁵

Sincerely,

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Attorney General

By: 

Patty Walsh
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PW/klr

⁵ This is not to be confused with the power to recognize "reciprocity" with other states. To recognize reciprocity would be to eliminate most if not all Nevada-specific licensure or certification requirements for practitioners licensed in other states. While California permits reciprocity, Washington prohibits it but makes exceptions for those with "substantially equivalent" qualifications who pass an exam. See WASH. REV. CODE § 18.25.040 (2018); WASH. ADMIN. CODE § 246-808-135 (2018). Adoption of the California model would require a statutory amendment, while adoption of some version of the Washington model could likely be implemented through the rule-making process described in NRS Chapter 233B.