



CHIROPRACTIC LAW

Volume XII, Issue II

September, 2009

W e l c o m e

This issue of the Newsletter will focus on a review of **recent legislative changes** contained in the State's recent budget bill.

As with all issues of this newsletter, this issue also **references articles from recent scientific journals** that may be of interest to chiropractors. We will also summarize recent actions taken by the **Chiropractic Examining Board** in our attempt to keep you informed of proposed regulatory changes that may have a significant impact upon practice development.

We welcome any questions you might have relating to legal matters presented in this newsletter. We would be **pleased to add other chiropractors to our e-mail list**. Feel free to call our office to add a doctor's name to that list.

This office is a general and trial practice firm with particular experience in personal injury matters, workers compensation cases, insurance and small business/ contract issues. We **appreciate any referrals** and are always willing to **provide free initial consultation** to prospective clients at any convenient location. Our office is ready to provide legal services on those unique legal concerns affecting chiropractors, their practices, and their patients.

This newsletter is published periodically throughout the year. **Our objective** with this newsletter is to provide better communication between the legal and chiropractic professions so as to improve the chiropractor's understanding of major legal issues and **advance the greater utilization of chiropractic as a primary and effective source of health care**.

Chiropractic Law is published by:

RIEGLEMAN LAW OFFICES, s.c

Atty. Dan A. Riegleman

N63 W23965 Main Street

Sussex, WI 53089

(262) 246-4606

www.sussexlawyer.com

This newsletter is provided for general informational purposes only and any comments contained in this newsletter are not intended to serve as legal advice for any specific legal situation, since advice on a specific situation should be obtained from an attorney. All rights reserved. Reprints of information contained in this newsletter require written approval of author(s). This office reserves the rights to reprint any information contained in this newsletter.



Legal Changes in State's Budget Bill

On June 29, 2009, the Governor signed Wisconsin's new Budget Bill in Wisconsin Act 28. This legislation contains significant provisions affecting the chiropractor's standard and scope of practice. It is noteworthy that the Governor vetoed two clauses of the bill which would have imposed limitations on a chiropractor's renewal or continuation of license to practice. First, the Governor vetoed a provision which would have denied a license to an applicant who had defaulted on a student loan. Another veto involved sections of which would have imposed disciplinary standards on a licensee who was found guilty of inappropriate sexual contact with a patient.

This article reviews the major provisions which remained in the Budget Bill.

State Practical Examination

The new law requires that applicants for licensure participate in a State practical exam which is in addition to the current four (4) parts of the national exam. Given the

effective date of the new act, all applications received on and after December 1, 2010 will have to include evidence that the applicant participated in the State's Practical Examination. This legislation amending Wis. Stat. §446.02(3) permits the examining board to determine the contents of this State Practical Examination. Without providing specific content, the legislation requires that the Examination involve "subjects usually taught" in "reputable schools of chiropractic" and that the test be offered twice a year as scheduled by the Board.

Establishing Certifications for "Chiropractic Technicians" and "Chiropractic Radiological Technicians" – The new law creates Wisconsin Statutes §446.02(5) and §446.02(6) for the regulation of individuals who will require certification in order to provide adjunctive services within the chiropractor's offices. These individuals; whether trained or untrained, were previously referred to as "Chiropractic Assistants" or "CA's". Any of these individuals who engage in any form of adjunctive services must now be certified under this new law. The "Chiropractic Technician" ("CT") may perform adjunctive services; while a "Chiropractic Radiological Technician" ("CRT") may provide x-ray services on behalf of a chiropractor. While acting as a CRT, the chiropractor must continue to be on the premises supervising this certified individual. Apparently these new initials can now be appended to a person's name who is certified by the examining board after completing the examination requirements. The requirements for these new designations are being developed by the Board.

It is important to note that the new legislation contains a **definition of "adjunctive services"**. In general, these services are regarded as any activity which is "preparatory or complimentary to the practice of chiropractic". The statute specifically indicates that the following conduct constitutes adjunctive services:

- (1) The taking and preparation of preliminary patient histories;
- (2) Providing physiotherapy treatment;

As a result of this legislation, which will be effective on July 1, 2010, no Wisconsin Chiropractor may delegate the taking of x-rays or performance of adjunctive services to an employee within the office unless that individual is a CT or CRT.

Legal counsel for the Board indicated in a July 27, 2009 memorandum to the Board Members that the **implementation of the certification requirement** involves two (2) time periods depending upon the treatment of two separate groups. First, for those trained technicians who are currently working with a chiropractor, the department may grant certificates to applicants between July 1, 2009

and June 30, 2010 if the applicant provides sufficient evidence to the Board that the individual has met the training requirements under current rules and has performed delegated services under the supervision of a chiropractor on both June 30, 2009 and at the time the individual applies for a certificate. Second, for those prospective technicians who do not or cannot obtain certification before July 1, 2010, new requirements will be added to the application process beginning July 1, 2010. At that time, the prospective applicant will have to pay a fee, submit evidence of an approved education, submit evidence of an arrest or conviction record, if any, and complete any other requirements which may be established by the Board.

It is interesting to note that the Board will establish criteria as to whether an **arrest or conviction record** will result in denial of approval. In general, any crime would have to be substantially related to the applicants professional activities before the certification could be denied under the States discrimination laws.

At this point, it is not clear what the Board will require as **educational requirements** for the certifications. A doctor who employs an individual who will not be providing any form of adjunctive services can continue to employ that person without the need for obtaining the new certifications. As such, the

“front desk” employees can continue to provide exclusive services in the area of receptionist duties, insurance processing, filing, etc. without it becoming necessary for them to obtain any certifications. It is important that any business cards or other advertising information does not designate these types of individuals as “CT” or “CRT”. Although not verified by the Board, it is likely that these types of individuals can continue to carry some type of designation as “CA”; provided that the designation of their duties is not misleading to the public.

Until this time, the prominent form of training and information relevant to the certification was provided by **Moraine Park Technical College (MPTC)**. It is the editors understanding that Moraine Park Technical College welcomes the continuing education requirements for certifying staff and believes that it is an excellent opportunity to reinforce and supplement the diploma and associate degree graduates of their existing program. MPTC desires that the terms “Chiropractic Technician” and “Chiropractic Technologist” be reserved for people formerly trained to work as assistants to doctors of chiropractic. MPTC also regards it as in the public’s interest to know that a person designated as a CT or Chiropractic Technologist is a trained staffed person, much like there is a different expectation for a patient or the public when a licensed nurse is giving care as compared to a nursing assistant. Other healthcare designations include those of physical therapists, physical therapy assistant, and physical therapy aid. It is MPTC’s understanding that the National Board of State Chiropractic Licensing Boards will be conferring with Wisconsin’s Chiropractic Licensing Board as to the appropriate titling and educational standards. MPTC believes that it would be against the national dialogue on this subject if a low standard is set for the title of CT. It is interesting to note that the designation “Chiropractic Technologist” has been used by the graduates of Palmer College of Chiropractic CT programs for over 40 years; while MPTC has now provided a chiropractic technician program for 14 years.

It is likely that there will be new and ongoing costs for the practicing chiropractor due to this new certification requirement. A CT will have to acquire six (6) credits of continuing education; while a CRT will need twelve (12) credits of continuing education in order to renew their license at the first renewal and all subsequent renewals. The first renewal after the effective date for certification will be December 15, 2010.

Duty to Refer – The new legislation resolves a controversial issue within the profession relating to a chiropractor’s duty to refer patients to a medical doctor. For years, Wisconsin Chiropractors have had the “duty to inform” patients when a condition was no longer treatable through chiropractic. Under the new law, doctors will have a “duty”

to specifically refer the patient to a physician. Approximately five (5) years ago, the Board attempted to administratively change this “duty to inform” to a “mandatory duty to refer” upon the initial recommendation of the Wisconsin Chiropractic Association (WCA). After its Membership aggressively challenged this initiative, the WCA formally retracted its position and the Board ultimately voted not to change the regulations. [Editors note – readers of this newsletter will recall that several issues were devoted to addressing persuasive reasons for not imposing the duty to refer.]

Apparently, the current Board of the WCA again decided to recommend this change directly to the legislative process. However, this time the WCA gave very little notice to its membership about the proposed change. This duty to refer was inserted into the Budget Bill during conference negotiations.

The new law establishes Wisconsin Statute §446.02 (11d) mandating a **duty to refer in certain circumstances**. Specifically, a chiropractor must discontinue the rendering of chiropractic services anytime the doctor “determines or reasonably believes that the patient’s condition is not treatable by the practice of chiropractic, or will not respond to further practice of chiropractic by the chiropractor.” Upon discontinuing chiropractic services, the chiropractor is required to “inform the patient

patient of the reasons for discontinuing the practice of chiropractic” and “refer the patient to a physician” licensed under a separate chapter of the statutes. This section of the Statute defines a “physician” as an individual possessing a degree of doctor of medicine or doctor of osteopathy.

The referral can be made in written or oral format. Under either format, the referral must describe the chiropractor’s “findings.” If a referral is made in a **written manner**, the chiropractor:

- (1) Must provide the patient with a copy; and
- (2) Must maintain a copy of the written referral in the patient’s records.

If the referral is in an **oral format**, the chiropractor:

- (1) Shall orally communicate the referral directly to the physician;
- (2) Shall orally notify the patient about the referral;
- (3) Shall make a written record of the oral referral which includes the name of the physician referred and the date of the referral; and
- (4) Must maintain a copy of the written record of the oral referral on the patient’s records.

It should be noted that this statute allows a chiropractor who discontinues chiropractic care to “provide maintenance, supportive, and wellness care” of the patients while the patient is being treated by another healthcare professional. Should the **patient request ongoing services** from the chiropractor, despite the referral to a physician, the chiropractor may “continue to provide maintenance, supportive and wellness care” to the patient.

[Editors note – there continues to be a number of significant legal consequences which follow this important legislative change. These concerns were expressed in prior newsletters and will continue to be addressed in future issues of this e-newsletter.]

Waiver of Patient’s Co-payments – An interesting section of the law allows chiropractors to waive all or a portion of a patient’s co-payment, co-insurance, or a deductible in situations where the doctor finds that non-waiver of such charges would cause a financial hardship. The criteria for a financial hardship will be subsequently determined by rules of the Chiropractic Examining Board. The chiropractor will have to receive written documentation supporting the patient’s claim or financial hardship. This provision became effective June 30, 2009. Chiropractors may wish to wait until the Board adopts a rule on this issue before offering any discounts to patients. Any

discounts offered to the patients should be carefully documented in the patient’s file.



It’s Regulation Time

➤ During the March meeting, the Board reviewed correspondence relating to the **creation of the physical therapy examining board**. This correspondence reviewed the legislation formerly known as 2007 Assembly Bill 545, which is now a bill drafted by the legislative reference bureau – 0273/6. The board unanimously voted to take “no position” on the formation of the physical therapy examining board.

➤ During the March meeting, the Board reviewed a practice question from a doctor regarding the **ability to practice chiropractic from the doctor’s home office**, or at the doctor’s home or workplace of a client. After considering the matter, the Board concluded that there was no specific prohibition against practice at these locations provided that the doctor complied with applicable rules and statutes on practice standards.

➤ During the May meeting, the members of the Chiropractic Examining Board had an opportunity to thoroughly discuss “Motion 189” which had just pass the Joint Finance Committee as a pending provision of the new

budget bill. Although amendments could still be made to that motion, the board discussed key provisions of that motion which eventually became part of the new legislation affecting chiropractors in Wisconsin. The individual board members eventually voted on whether they supported key provisions of the joint finance committee motion. In order to gain a greater perspective of the individual board member's position on these types of key issues, contained below is a summary on how the individual board members voted on those key provisions:

Requiring State Practical Examination:

Steven Conway	–	no;
Wendy Henrichs	–	yes;
James Koshick	–	yes;
Steven Silverman	–	no;
Kathleen Schnieder	–	yes;
Maina Moore	–	yes;

Duty to refer:

Steven Conway	–	no;
Wendy Henrichs	–	yes;
James Koshick	–	yes;
Steven Silverman	–	no;
Kathleen Schnieder	–	yes;
Maina Moore	–	yes;

Certificate requirements for chiropractic technicians and chiropractic x-ray technicians:

Steven Conway	–	yes;
Wendy Henrichs	–	yes;
James Koshick	–	yes;
Steven Silverman	–	no;
Kathleen Schnieder	–	yes;
Maina Moore	–	yes;

Waiver of patient co-pays due to hardship:

Steven Conway	–	no;
Wendy Henrichs	–	yes;
James Koshick	–	yes;
Steven Silverman	–	no;
Kathleen Schnieder	–	yes;
Maina Moore	–	yes;

After evaluating each major provision, members Koshick and Moore moved to support the inclusion of the motion while the following members opposed the inclusion – Conway, Schnieder, and Silverman.

[This newsletter reviews the legal implication of these significant legislative changes.]

➤ During the May meeting, the Board had an opportunity to review several scope of practice questions submitted by Doctors Choice, P.L.D.S., a laboratory services broker for Quest Diagnostics and several other national laboratories. This business submitted a number of questions involving a doctor's scope of practice which were addressed by the Board during the meeting. Those questions and the Board's responses are referenced below:

“Are Wisconsin Chiropractors permitted to order routine, diagnostic laboratory tests?”

Board Answer: Yes.

“Are Wisconsin Chiropractors or their staff legally permitted to perform venipunctures and/or capillary

sticks for performing routine, diagnostic laboratory tests?”

Board Answer: Chiropractors–yes; Staff–no.

“Excluding obstetrical procedures, are Wisconsin Chiropractors legally permitted to perform specimens such as pap smears and cultures?”

Board Answer: Agreed that further research and discussion are required on this question.

“Are Wisconsin Chiropractors legally permitted to surgically remove any tissue(s) for the purpose(s) of histological evaluation (biopsy)?”

Board Answer: No.

“When a Wisconsin Chiropractor orders a laboratory analysis on a blood specimen, does fee splitting occur if the chiropractor received a fee (either from the patient or the insurance company) which was over and above the fee charged by the laboratory?”

Board Answer: Asked the laboratory to condense the issue presented in its submission to a concrete question that the Board can address at a subsequent meeting.

➤ During the May meeting, the Board voted to require that the written assessment associated with the receipt of a nutritional

counseling certificate must be in a closed – book format.

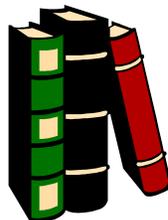
➤ A website to evaluate on-line education was mentioned during the May meeting. That useful website is www.mycourse.com

➤ During the August meeting, the Board had an opportunity to review the legislation that requires chiropractors to be proficient in the **use of automated external defibrillator (AED)** in order to obtain a license to practice in the State. The Board reviewed the proposed rule which requires a chiropractor to complete an approved course within twenty-four (24) months immediately prior to application for initially licensing, renewal, or reinstatement. The rule allows chiropractors to count one credit earned at an AED course towards the 40 credits of continuing education required each biennium. Interestingly, the neighboring states of Minnesota, Michigan, Illinois, and Iowa do not require chiropractors to be proficient in the use of an AED as a requirement for licensure and renewal. The Wisconsin Chapter of the American Red Cross offers various training programs which cost between \$40 and \$60.

➤ In an important news release, the ICA announced that its 640 page **ICA Best practices and practice guidelines** have now been accepted for inclusion in the National Guideline Clearinghouse (NGC). The NGC

is a comprehensive database of evidence-based clinical practice guidelines and related documents. NGC is an initiative of the Agency for Healthcare Research and Quality (AHRQ), of the US Department of Health and Human Services. The NGC website is www.guideline.gov A text of the guideline can be obtained from the ICA at 800-423-4690. The text of the document is also available at the NGC website

[**Editor’s note:** Many commentators on the current, national healthcare debate believe that “evidenced based research” may become critical in evaluating accepted standards and reimbursement rates should the federal government establish a national healthcare plan. Evidence supporting the effectiveness of chiropractic may become even more important as this national debate continues.]



Useful Reading

Listed below are several recent research articles which may be of interest to the Wisconsin chiropractor:

✓ The study showing **evidence of reversal of disc prolapse** through repeated extension is presenting in Spine, February 15, 2009; 34(4): 344-350. The study confirmed that repeated flexion or flexion/side

flexion causes disc prolapse. However, the study noted that reversal loading through repeated extension or extension/side flexion directs the displaced portion of the nucleus back towards the center of the disc; particularly where the prolapse is not associated with large loss of disc height. This does not appear to be the case where there has been major loss of disc heights and the prolapse is more severe.

✓ A study analyzing the extent of **musculoskeletal disease** in children and teenagers is presented in The Journal of Musculoskeletal Medicine, February 2009; 26(2): 49-57.

✓ A study analyzing the benefits of alternative medicine for **irritable bowel syndrome** is presented in The Canadian Family Physician, February, 2009.

✓ A meta-analysis of the evidence on changes on the **velocity of blood flow** in the vertebral artery is presented in The Journal of Manual and Manipulative Therapy, 2009; 17(1): 46-57.

.....

We welcome your “feedback” and comments about this newsletter – Please call our offices at any time to discuss this newsletter further.