



# New York State Education Department Chiropractic Practice Advisories and Interpretive Guidance

A COLLECTION OF ADVISORY OPINIONS, INTERPRETIVE LETTERS, AND PRACTICE ALERTS ISSUED BY THE NYSED OP TO HELP CHIROPRACTORS UNDERSTAND REGULATORY EXPECTATIONS AND APPLY STATE PRACTICE LAWS IN REAL-WORLD SITUATIONS.

COMPILED BY THE NEW YORK STATE CHIROPRACTIC ASSOCIATION



**THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,  
NY 12234**

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STATE BOARD FOR CHIROPRACTIC  
Office of the Professions  
Tel. (518) 474-3817 ext. 450  
Fax (518) 486-2981  
E-mail: CHIROBD@MAIL.NYSED.GOV

June 11, 2019

To Whom It May Concern:

In 1996, the Department undertook a review of current literature in the field, practices in other states, and applicable State and Federal law and regulation. In accordance with advice from the State Board for Chiropractic, it was determined that chiropractors licensed in this State may order TENS units to be self-administered by patients so long as the following conditions are met:

1. The use of TENS is warranted by the condition of the patient;
2. The licensee is competent in the use of TENS;
3. The licensee provides adequate training and monitoring of patient self-administration of TENS treatment;
4. The specific TENS unit has not been disapproved by the Federal Food and Drug Administration; and
5. The practitioner complies with any label requirements on the specific TENS unit.

Norman G. Cohen  
Executive Secretary



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STATE BOARD FOR CHIROPRACTIC  
Office of the Professions  
Education Building, 2<sup>nd</sup> floor  
Tel. (518)474-3817, ext. 450  
Fax (518)486-2981  
E-mail: CHIROBD@MAIL.NYSED.GOV

06/11/2019

To Whom It May Concern:

Section 6551 of Education Law defines the practice of chiropractic as "detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column."

The use of electrical devices by chiropractors is restricted to the above definition of practice, and, pursuant to section 73.3 of the Regulations of the Commissioner of Education, to those devices deemed appropriate to the practice of chiropractic by the Department and which have not been disapproved by the Federal Food and Drug Administration.

Consequently, chiropractors licensed in this State may conduct or order and interpret electrodiagnostic testing appropriate to the practice of chiropractic, which includes but is not limited to Doppler ultrasound, somatosensory evoked potentials (SSEP), nerve conduction velocity (NCV) studies, electroencephalography (EEG), magnetic resonance imaging (MRI), surface and needle electromyography (EMG), and auditory brainstem testing. Such testing may be conducted for the purpose of diagnosing "nerve interference and the effects thereof" resulting from or related to "distortion, misalignment or subluxation of or in the vertebral column."

Also, please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is "performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform." It is clearly the responsibility of the licensee to acquire appropriate education and training prior to provision of any professional service. Special certification in the use of any professional practice is not required prior to utilization, but certainly would provide evidence of competency in any event.

Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes as a defined violation the "ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient".

Insurance coverage for any procedure performed by licensed professionals is not determined by Education Law. Although this department may determine that a specific procedure is within the lawful scope of a given profession, that by itself does not constitute a requirement for reimbursing the cost of such a procedure under insurance benefit plans. Lawful scope of professional practice and insurance coverage are separate and distinct determinations made in accordance with Education Law and Insurance Law respectively.

Finally, it has been determined that so long as an individual is trained to administer a non-invasive electrodiagnostic test, there is nothing improper about having that individual mechanically administer such tests and record their results. Such activity is simply the operation of machinery and collection of data without any treatment, assessment of patient condition, or professional judgment or expertise being used. Thus, such activity is considered to be technician's work and not the practice of medicine, chiropractic or any other profession.

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June 11, 2019

To Whom It May Concern:

Chiropractic and Massage Therapy are two distinct and separate professions whose licensure and practice are authorized in New York State Education Law. Article 132 authorizes the licensure and practice of Chiropractic; Article 155 authorizes the practice of Massage Therapy.

Section 7805(1) of Article 155 of the New York State Education Law states that chiropractors are among those who are exempt from the requirement for licensure in the profession of massage for the practice of massage therapy. The scope of practice of chiropractic includes the use of massage as a treatment modality.

Therefore, a chiropractor may make determinations as to the necessity of massage therapy for a patient, and may either provide such services him/herself, employ a massage therapist to provide such services within the scope of his/her license, or refer the patient to a licensed massage therapist.

However, a chiropractor may not refer to him or herself as a Licensed Massage Therapist unless also licensed in that profession pursuant to Article 155.

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June 11, 2019

To Whom It May Concern:

I write in response to your inquiry regarding chiropractic care of peripheral injuries. A formal Department opinion on that subject was issued in an August 31, 1999 letter from Frank Muñoz, Executive Coordinator for Professional Responsibility. The relevant portion of that opinion is reprinted below:

You questioned whether the law permits chiropractors to treat “primary peripheral joint injuries or dysfunctions.” We do not have the specific facts of the cases you mention concerning ACL tears or shoulder adhesive capsulitis. However, as a general proposition, the law would not allow a chiropractor to treat a tear of the ACL or to treat shoulder adhesive capsulitis where such treatment is unrelated to “removing nerve interference and the effects thereof where the interference is the result of or related to the distortion, misalignment or subluxation of or in the vertebral column.” When such injuries or dysfunctions have an associated nerve interference which is the result of or related to distortion, misalignment or subluxation of or in the vertebral column,” then Education Law §6551(1) authorizes chiropractors to provide treatment to remove the nerve interference. In addition, §6551(2) authorizes the use of x-ray by chiropractors “for the detection of structural imbalance, distortion, or subluxations in the human body.” The law authorizes chiropractors to work on extraspinal parts of the body, so long as the purpose of that treatment is “removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.”

The core techniques of chiropractic involve spinal manipulation or adjustment. If a chiropractor were to provide peripheral treatments exclusively, without also addressing the vertebral column in any way, the practitioner might be culpable in practicing negligently or fraudulently, and may be liable for charges of practicing beyond the authorized scope...

You asked if the original intent of using the word “structural” in the Education Law was to “limit Chiropractic to the treatment of joints, and prohibit treatment to soft tissue injuries/maladies and organ systems.” However, the law does not limit chiropractors to treating joints or prohibit them from dealing with soft tissue. Article 155 of Education law authorizes the licensure of massage therapists, and includes chiropractors in the list of exempt persons, thereby recognizing chiropractors’ lawful right to provide soft tissue treatment as part of the practice of chiropractic so long as that treatment is consistent with the definition of the scope of practice set forth in Education Law section 6551(1).

If you have additional questions, please contact the Board Office as listed above.

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June 11, 2019

To Whom It May Concern

I write in response to your inquiry regarding chiropractors in New York State using electromyography (EMG). This letter is based on past opinions of the Education Department that have been issued in response to various inquiries from members of the public.

Chiropractic use of EMG for the purpose of diagnosing a physical condition or disease is certainly restricted by the practice act in medicine and by several other provisions of the Education Law to appropriate licensed health practitioners practicing within the scope of their particular professions.

Education Law section 6551 defines the practice of chiropractic as "detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column," and "related" conditions.

EMG is a diagnostic tool which is useful for the purpose of detecting structural imbalance, etc., and related conditions. The use of EMG is currently deemed essential to the practice by the State Board for Chiropractic pursuant to section 73.3 of the Regulations of the Commissioner. Also, EMG devices have not been disapproved by the Federal Food and Drug Administration. Consequently, EMG may be used in the practice of chiropractic in this state, for the purpose of the diagnosis of "nerve interference and the effects thereof" resulting from "distortion, misalignment or subluxation of or in the vertebral column."

The same general principle of law may be applied to either needle insertion (invasive) EMG or surface EMG, which does not involve the use of needle electrodes, but uses surface sensors to monitor innervation with less accuracy. Any diagnostic testing utilizing electrical devices must conform to the same parameters as stated above.

Also please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is "performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform." It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any device before utilizing it in his or her professional practice. Special certification in the use of any device is not required prior to utilization in a professional practice, but certainly would provide evidence of competency in the event the licensee were charged with practicing beyond his or her level of competence.

Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes in the definition the "ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient" [emphasis added].

If you have further questions about this or other matters, please contact the Board office at the above numbers.

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April 17, 2001

To Whom It May Concern:

I write in response to your inquiry regarding chiropractic manipulation under anesthesia.

Section 6551(1) of the New York State Education Law provides: "The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column."

Section 6551(3) of the Education Law further provides: "A license to practice chiropractic shall not permit the holder thereof to treat for any infectious diseases such as pneumonia, any communicable diseases listed in the sanitary code of the state of New York, any of the cardio-vascular-renal or cardio-pulmonary diseases, any surgical condition of the abdomen such as acute appendicitis, or diabetes, or any benign or malignant neoplasms; to operate; to reduce fractures or dislocations; to prescribe, administer, dispense or use in his practice drugs or medicines; or to use diagnostic or therapeutic methods involving chemical or biological means except diagnostic services performed by clinical laboratories which services shall be approved by the board as appropriate to the practice of chiropractic; or to utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic. Nothing herein shall be construed to prohibit a licensed chiropractor who has successfully completed a registered doctoral program in chiropractic, which contains courses of study in nutrition satisfactory to the department, from using nutritional counseling, including the dispensing of food concentrates, food extracts, vitamins, minerals, and other nutritional supplements approved by the board as being appropriate to, and as a part of, his or her practice of chiropractic. Nothing herein shall be construed to prohibit an individual who is not subject to regulation in this state as a licensed chiropractor from engaging in nutritional counseling."

Nothing in the above-quoted provisions of law would prohibit a chiropractor from performing spinal or extra-spinal manipulations on patients who are under anesthesia. However, the chiropractor is not authorized to order or administer anesthesia.

Any chiropractor licensed in New York State is obliged to know that he or she is competent to perform such a procedure by virtue of education or training. Also, the procedure must be warranted by the condition of the patient and, thus, does not constitute excessive treatment, which would be a violation of Part 29 of the Regents Rules on Unprofessional Conduct.

I would note that while it is permissible in New York State for chiropractors to perform manipulations on patients under anesthesia, the issues of obtaining hospital privileges and finding physicians willing to prescribe and administer anesthesia for this purpose must be addressed. Information regarding hospital privileges and appropriate conduct for a physician is within the jurisdiction of the New York State Department of Health. For that information, you may call or write to the General Counsel for the Department of Health, Corning Tower, 24th floor, Empire State Plaza, Albany, NY 12237, telephone (518)474-7553.

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April 17, 2001

To Whom It May Concern:

Current statute does not authorize chiropractors to use acupuncture as part of their practice. Article 160 of the Education Law authorizes those persons licensed in acupuncture to treat “diseases, disorders and dysfunctions of the body...by means of mechanical, thermal or electrical stimulation effected by the insertion of needles.” The definition of chiropractic in Article 132, section 6551, does not include such authorization.

Moreover, there is express language in the acupuncture law that establishes a pathway for physicians and dentists to meet regulatory requirements to be certified (not licensed) in acupuncture so they may offer those services within the lawful scope of medicine or dentistry, respectively. The law does not include a similar pathway for chiropractors or any other licensed health professionals.

Therefore, under current statutes, the practice of acupuncture is not within the lawful scope of chiropractic in this State and may not be provided by a chiropractor or any employee in the practice. In addition, physicians and dentists are the only licensees recognized under the law who may qualify as “certified acupuncturists.” Chiropractors may, however, meet requirements for licensure in the acupuncture profession, and offer such services separately under that license, but not as chiropractors. Any change in licensure requirements or scopes of practice involving chiropractic use of acupuncture in New York State would have to be pursued legislatively.

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Office of the Professions  
Education Building, 2<sup>nd</sup> floor  
Tel. (518)474-3817, ext. 450  
Fax (518)486-2981  
E-mail: CHIROBD@MAIL.NYSED.GOV

April 17, 2001

To Whom It May Concern:

Section 6551 of Education Law defines the practice of chiropractic as "detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column." [emphasis added]

Consequently, it is beyond the lawful scope of chiropractic in this State to adjust or provide any professional service to an animal.

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Executive Secretary



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Office of the Professions  
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April 17, 2001

To Whom It May Concern:

Article 162, §8351 of the New York State Education Law authorizes the licensure of certified athletic trainers. A person so licensed is authorized to provide services “under the supervision of a physician and limits his or her practice to secondary schools, institutions of postsecondary education, professional athletic organizations, or a person who, under the supervision of a physician, carries out comparable functions on orthopedic athletic injuries, excluding spinal cord injuries, in a health care organization.”

Consequently, a chiropractor may not employ a certified athletic trainer, since supervision must be provided by a physician licensed in the profession of medicine.

Personal trainers, exercise physiologists, fitness coaches and other trained persons in fields that may be related to athletic training are not regulated by Education Law. As unlicensed persons, they may be employed by a chiropractor, but may not provide services restricted to licensees, such as diagnostic examinations, clinical determinations, restricted skill procedures and rendering professional judgments.

If you have any additional questions, please contact the office at the numbers above.

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April 17, 2001

To Whom It May Concern:

I write in response to your inquiry regarding lawful scope of chiropractic practice in New York State and if using x-ray on extra-spinal parts of the human body falls within that scope.

Section 6551(1) of Education Law defines the practice of chiropractic as "detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column." [emphasis added].

Section 6551(2) of Education Law defines the chiropractic use of x-ray authorizing its use also for the "detection of structural imbalance, distortion, or subluxations in the human body." [emphasis added]

Consequently, to remove nerve interference and its effects, a chiropractor may detect and correct structural imbalance, distortion or subluxation in the human body, including extra-spinal parts, and may use x-ray as an imaging tool to assist in that process.

It is relevant to note that professional study in chiropractic includes diagnostic examination of neuromusculoskeletal conditions in extremities of the human body. Moreover, New York State licensed chiropractors are professionally responsible under the law for detecting conditions that: 1) contraindicate chiropractic care, 2) exceed the lawful scope of chiropractic treatment, and consequently, 3) warrant referral to another health professional.

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April 17, 2001

To Whom It May Concern:

Education Law, Article 132, section 6551(3), states that chiropractors licensed in this State may not "prescribe, administer, dispense or use in his practice drugs or medicines." Such durable medical equipment as cervical collars, cervical pillows, traction kits, support belts, whirlpool equipment, orthotic and other non-electrical devices are not "drugs or medicines." Consequently, such items may be purchased without prescription, and, thus, may be ordered or recommended by chiropractors for their patients within the definition of chiropractic practice in Article 132.

Notwithstanding that chiropractic use of such durable medical equipment as described above may be within the lawful scope of chiropractic practice in this State, there is no legal requirement at this time that mandates insurance coverage of the cost of such items. I am advised by Members of the State Board for Chiropractic that most practitioners recommending the use of such devices for their patients will first contact a patient's insurance carrier to determine whether or not the plan provides such coverage, and then notify the patient so that an informed decision about treatment can be made.

You may wish to seek additional information about legal requirements for insurance reimbursement by contacting the department responsible for administering Insurance Law, namely, the New York State Insurance Department, Consumer Services Bureau, Empire State Plaza, Agency Building 1, Albany NY 12257, telephone (518)474-4556.

Norman G. Cohen  
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Fax (518) 486-2981  
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April 17, 2001

To Whom It May Concern:

I write in response to your recent inquiry regarding whether or not chiropractors licensed in New York State are permitted to practice homeopathy.

Section 6551(3) of the Education Law prohibits chiropractors from using "diagnostic or therapeutic methods involving chemical or biological means except diagnostic services performed by clinical laboratories which services shall be approved by the board as appropriate to the practice of chiropractic." Section 6551(3) also authorizes chiropractors to use "nutritional counseling, including the dispensing of food concentrates, food extracts, vitamins, minerals, and other nutritional supplements approved by the board as being appropriate to, and as a part of his or her practice of chiropractic."

Homeopathic medicines include a variety of remedial substances, some of which are "biological" and cannot be classified as within the meaning of "food concentrates, food extracts, vitamins, minerals, and other nutritional supplements."

Accordingly, chiropractors licensed in New York State may make determinations as to the necessity of nutritional services for a patient, and provide those services and products, but cannot call such provision of professional service "homeopathy" within the meaning of Section 6551 of Education Law.

Norman G. Cohen  
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May 22, 2001

To Whom It May Concern:

I write regarding your inquiry about the use of physiotherapeutic modalities by chiropractors licensed in New York State. This letter is based on past opinions of the Education Department that have been issued in response to various inquiries from members of the public.

Adjunctive therapy modalities, sometimes referred to as "chiropractic physiotherapy," are addressed in Education Law, Section 6551(3), which states that "a license to practice chiropractic shall not permit the holder thereof to...utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic." Therapeutic devices directly or indirectly dependent upon electrical power that have been deemed appropriate to the practice of chiropractic include, but are not limited to: 1) electrical stimulation, 2) ultrasound, 3) traction, 4) diathermy, 5) hydrocollator or hot paks, 6) cryotherapy or cold paks, and 7) vibratory therapy.

Section 6505 of Education Law expressly allows for overlap among the professions, e.g., chiropractors may perform certain acts common to physical therapy so long as those acts are within the lawful practice definition of chiropractic. Furthermore, section 6732 does not protect the word "physiotherapy;" only the titles "physical therapist, physiotherapist or mechanotherapist" in connection with the provision of professional services.

Regarding specific devices, Part 73.3 of the Regulations of the Commissioner of Education provides that "pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the Federal Food and Drug Administration or its successors, or by the department." A list of such devices disapproved by the FDA is maintained and periodically updated by the office of the State Board for Chiropractic. You may wish to contact the FDA office in your area to obtain the most recent listing.

Also please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is "performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform." It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any electrical devices before utilizing them in his or her professional practice. Special certification in the use of such devices is not required prior to their utilization in a professional practice, but certainly would provide evidence of competency in any event.

Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which defines as a violation the "ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient."

To avoid any deceptiveness in advertising professional services, it is recommended that any chiropractor offering physiotherapy modalities in his or her practice should refer to those services by using the modifier "chiropractic." In that way, the public will not be misled to believe that those services will be provided by someone other than a licensed chiropractor.

Finally, insurance coverage for any procedure performed by licensed professionals is not determined by Education Law. Although we may determine that a specific procedure is within the lawful scope of a given profession, that by itself does not constitute a requirement for reimbursing the cost of such a procedure under insurance benefit plans. Lawful scope of professional practice and insurance coverage are separate and distinct determinations made in accordance with Education Law and Insurance Law respectively.

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July 17, 2001

To Whom It May Concern:

I write regarding your inquiry about chiropractic use of Magnetic Resonance Imaging (MRI) and CT scans of the brain in New York State.

The New York State Education Department has determined that Doctors of Chiropractic are not prohibited from ordering, administering or interpreting results of MRIs or CTs so long as the individual licensee knows he or she has the competence to perform that professional service and does so within the scope of practice of chiropractic, which is defined in section 6551(1) as:

...detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

It is relevant to note that professional study in chiropractic includes training in the use of MRI and Computerized Tomography. Noting the above-cited statutory reference to "removing nerve interference and the effects thereof", it follows that a chiropractor may conduct or order imaging studies to explore suspected neurological function as well as any contraindications to chiropractic care.

Finally, insurance coverage for any procedure performed by licensed professionals is not determined by Education Law. Although we may determine that a specific procedure is within the lawful scope of a given profession, that by itself does not constitute a requirement for reimbursing the cost of such a procedure under insurance benefit plans. Lawful scope of professional practice and insurance coverage are separate and distinct determinations made in accordance with Education Law and Insurance Law respectively.

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March 12, 2002

To Whom It May Concern:

I write in response to your inquiry regarding chiropractors licensed in New York State providing nutritional service and products.

Chiropractic and nutrition/dietetics are two distinct and separate professions whose licensure is authorized in Title VIII of the New York State Education Law. Section 6551(3) of Article 132 of Education Law states that chiropractors may provide nutritional services and products as part of the practice of chiropractic. Therefore, a chiropractor may make determinations as to the necessity of nutritional services and products for a patient.

Moreover, since chiropractors are so authorized, they may employ certified nutritionists or certified dieticians to provide such services within the scope of their license. In the relationship between provider and patient, the chiropractor must remain as the provider and the certified nutritionist or certified dietician must be an employee, not an independent contractor, providing services to the patient.

Norman G. Cohen  
Executive Secretary



**THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,  
NY 12234**

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STATE BOARD FOR CHIROPRACTIC  
Office of the Professions  
Education Building, 2<sup>nd</sup> floor  
Tel. (518)474-3817, ext. 450  
Fax (518)486-2981  
E-mail: CHIROBD@MAIL.NYSED.GOV

March 25, 2002

To Whom It May Concern:

I write regarding your inquiry about chiropractic use of Magnetic Resonance Imaging (MRI).

The New York State Education Department has determined that Doctors of Chiropractic are not prohibited from ordering, administering or interpreting results of MRIs so long as the individual licensee knows he or she has the competence to perform that professional service and does so within the scope of practice of chiropractic, which is defined in section 6551(1) as:

...detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

It is relevant to note that professional study in chiropractic includes diagnosis of and adjustive techniques for neuromusculoskeletal conditions in the human body, including extremities. Also, training in the use of MRI is contained in the curriculum of professional chiropractic education. A chiropractor licensed in New York State may order, administer, and/or interpret results of MRIs.

Finally, insurance coverage for any procedure performed by licensed professionals is not determined by Education Law. Although we may determine that a specific procedure is within the lawful scope of a given profession, that by itself does not constitute a requirement for reimbursing the cost of such a procedure under insurance benefit plans. Lawful scope of professional practice and insurance coverage are separate and distinct determinations made in accordance with Education Law and Insurance Law respectively.

Norman G. Cohen  
Executive Secretary



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April 16, 2002

To Whom It May Concern:

I write in response to your inquiry regarding chiropractic manipulation under anesthesia.

Education Law, section 6551(1) states: "The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column."

Section 6551(3) further states: "A license to practice chiropractic shall not permit the holder thereof to treat for any infectious diseases such as pneumonia, any communicable diseases listed in the sanitary code of the state of New York, any of the cardio-vascular-renal or cardio-pulmonary diseases, any surgical condition of the abdomen such as acute appendicitis, or diabetes, or any benign or malignant neoplasms; to operate; to reduce fractures or dislocations; to prescribe, administer, dispense or use in his practice drugs or medicines; or to use diagnostic or therapeutic methods involving chemical or biological means except diagnostic services performed by clinical laboratories which services shall be approved by the board as appropriate to the practice of chiropractic; or to utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic. Nothing herein shall be construed to prohibit a licensed chiropractor who has successfully completed a registered doctoral program in chiropractic, which contains courses of study in nutrition satisfactory to the department, from using nutritional counseling, including the dispensing of food concentrates, food extracts, vitamins, minerals, and other nutritional supplements approved by the board as being appropriate to, and as a part of, his or her practice of chiropractic. Nothing herein shall be construed to prohibit an individual who is not subject to regulation in this state as a licensed chiropractor from engaging in nutritional counseling."

Nothing in the above-quoted provisions of law would prohibit a chiropractor from performing spinal or extra-spinal manipulations on patients who are under anesthesia. However, the chiropractor is not authorized to order or administer anesthesia.

Any chiropractor licensed in New York State is obliged to know that he or she is competent to perform such a procedure by virtue of education or training. Also, the procedure must be warranted by the condition of the patient and, thus, would not constitute excessive treatment, which would be a violation of Part 29 of the Regents Rules on Unprofessional Conduct.

I would note that while it is permissible in New York State for chiropractors to perform manipulations on patients under anesthesia, the issues of obtaining hospital privileges and finding physicians willing to prescribe and administer anesthesia for this purpose must be addressed. Information regarding hospital privileges and appropriate conduct for a physician is within the jurisdiction of the New York State Department of Health. For that information, you may call or write to the General Counsel for the Department of Health, Corning Tower, 24th floor, Empire State Plaza, Albany, NY 12237, telephone (518)474-7553.

Norman G. Cohen

Executive Secretary



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April 25, 2002

To Whom It May Concern:

As regards the rendering of a chiropractic diagnosis or analysis, including differential diagnostic work-ups, New York State Education Law authorizes such activity within the lawful scope of chiropractic practice in New York State. The following excerpt of a 1994 response to an attorney addresses this matter:

You asked if chiropractors are permitted to perform examinations and render diagnostic impressions to determine if a patient can be treated within the lawful scope of chiropractic treatment. Education Law, section 6509(2) defines negligence and incompetence as acts of professional misconduct. Were a chiropractor to treat a patient without first having determined the need for treatment, he or she may be practicing negligently or incompetently. Moreover, without an initial work-up, a chiropractor may be treating a patient with conditions beyond the lawful scope of treatment as specified in Education Law, section 6551(3), but that need care from a health practitioner licensed in another profession. Therefore, it is not merely permitted that chiropractors may perform chiropractic diagnostic examinations, it is required for safe, competent and lawful practice...

[Further], given the express statutory prohibition on chiropractors treating specified conditions, it is the legal responsibility of a chiropractor to formulate chiropractic diagnostic impressions of conditions outside the lawful scope of chiropractic treatment for the purpose of [identifying contraindications to chiropractic care and] referral to another licensed health care professional. Failure to do so may constitute professional misconduct.

Finally, Education Law, section 6551 authorizes chiropractors to use such diagnostic testing modalities as x-ray, clinical laboratory services, and electrical devices. Electrical devices may include, but are not limited to Doppler ultrasound, somatosensory evoked potentials (SSEP), nerve conduction velocity (NCV) studies, electroencephalography (EEG), magnetic resonance imaging (MRI), surface and needle electromyography (EMG), and auditory brainstem testing. Such testing may be ordered or conducted within the statutory definition of practice of chiropractic for the purpose of diagnosing "nerve interference and the effects thereof" resulting from or related to "distortion, misalignment or subluxation of or in the vertebral column."

Norman G. Cohen

Executive Secretary



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May 23, 2002

To Whom It May Concern:

Section 6551 of Education Law defines the practice of chiropractic as "detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column."

Also, the use of electrical devices by chiropractors is restricted to the above definition of practice, and, pursuant to section 73.3 of the Regulations of the Commissioner, authorizes the use of those devices deemed appropriate to the practice of chiropractic by the Department and which have not been disapproved by the Federal Food and Drug Administration.

In a May 28, 1998 letter from the Department's Office of Counsel, it was stated:

It is the Department's position that ultrasound may be used by chiropractors in their practice on condition that:

- (1) The use is consistent with the scope of practice of chiropractic (Education Law §6551); and
- (2) The licensee is personally qualified and competent to use ultrasound (see 8NYCRR §29.1[b][9]).

Norman G. Cohen  
Executive Secretary



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June 28, 2002

To Whom It May Concern:

I write in response to your inquiry regarding the scope of practice for chiropractic assistants.

New York State does not authorize the licensure or practice of chiropractic assistants. A licensed chiropractor in this State may hire unlicensed persons to perform various functions within the office practice, but none that are restricted to licensees, such as provision of physiotherapeutic modalities or taking of x-rays. To do so would be practicing a profession without a license, a class E felony.

However, it has been determined that so long as an individual is trained to administer a non-invasive electrodiagnostic test, there is nothing improper about having that individual mechanically administer such tests and record their results. Such activity is simply the operation of machinery and collection of data without any treatment, assessment of patient condition, or professional judgment or expertise being used. Thus, such activity is not the practice of medicine or chiropractic; it is only technician's work.

Norman G. Cohen  
Executive Secretary



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August 12, 2002

### **“COMMUNICATION”**

Webster’s dictionary defines “communication” as a transmitting, a giving or exchanging of information, messages, etc. Doctors of Chiropractic have a variety of daily opportunities to communicate with patients and the public at large.

Some of the ways a Doctor of Chiropractic may communicate include:

- **ADVERTISING:** Doctors of Chiropractic commonly use print or electronic media, promotional seminars, or lay lectures to communicate methods of chiropractic care to patients and the public. A responsible Doctor takes care that the presented material is within the scope of chiropractic practice in New York State and is reflective of his or her education and technical expertise. An ethical practitioner is sensitive to advertising that is not in the public interest, i.e., false, fraudulent, deceptive or misleading.
- **PATIENTS:** Communication with your patient is paramount, especially that which involves direct clinical interaction in an office setting. Inadequate or ineffective communication may lead patients to misinterpret clinically warranted procedures as “inappropriate” or, worse, “violative”, e.g., placement of the practitioner’s hand or knee or body during an adjustive technique. If a patient files a complaint of a boundary violation or any other alleged act of professional misconduct, the Office of Professional Discipline must initiate an investigation. Making the effort to communicate to your patients about the specifics of clinically warranted chiropractic procedures and techniques is an extremely valuable investment of your time. This is an example of where it is critical as a professional to be proactive rather than reactive.
- **RECORDKEEPING/DOCUMENTATION:** Your patients’ files/charts can contain a broad spectrum of consent forms, examination forms as well as daily office entries. In reality, records are vehicles of communication with your patients, other health professionals, lawyers, judges, workers’ compensation board and other third party administrators, peer and utilization review parties, and state regulatory agencies. As a licensed professional, you are responsible for formatting your clinical documentation clearly and accurately, and for securing the confidentiality of your patients’ records. This area of responsibility has been heightened by the promulgation of federal regulations to implement the Health Insurance Portability and Accountability Act (HIPAA).

The members of the New York State Board for Chiropractic want you to remember that communication is a platform for information and education, which can protect the public by enhancing the provision of care entrusted to every licensee authorized to practice the chiropractic profession in this State.



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To Whom It May Concern:

I write in response to your recent inquiry regarding employment of chiropractors by physicians licensed in this state.

The fundamental principle of professional regulation holds that professional services should only be provided by those persons who have been adequately educated and trained and have provided evidence of having met acceptable standards of competence, judgment, and safety. Accordingly, sections 6512 and 6513 of the Education Law make it a violation to offer professional services or use professional titles restricted to licensees.

The hiring of licensees in one profession by those licensed in another profession is only permitted when it conforms to the legal requirements designed to protect the consumer from unlicensed practice and unnecessary charges represented by referral fees and fee splitting arrangements. For example, since section 6512 restricts certain practices to licensees in specific professions, a person licensed in one profession may not employ anyone licensed in other professions whose scopes of practice include restricted acts in which the employing licensee may not engage. Therefore, chiropractors may not employ physicians who are authorized to prescribe medication or do other medical functions not within the definition of a chiropractor's responsibilities. However, a physician may employ a chiropractor since the lawful scope of the practice of medicine subsumes the practice of chiropractic.

There is regulatory allowance for licensees to delegate professional responsibilities to certain individuals while maintaining the assurance of public safety and welfare. Section 29.1(b)(10) of the Rules of the Board of Regents on unprofessional conduct states:

"Unprofessional conduct in the practice of any profession licensed or certified pursuant to title VIII of the Education Law shall include...delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience or by licensure to perform them." [emphasis added]

Under that rule, while a licensee may delegate an act to an individual licensed in another profession, and who is trained to perform that act, it is still the licensee who is responsible under the law for the provision of all the services in his or her professional practice.

Moreover, in a 1998 opinion issued by the Department's Office of Counsel, "any chiropractic service, provided by a chiropractor who is an employee of a physician, is limited to those services which are incident to the physician's medical practice. Furthermore...the physician employing the chiropractor to provide those services must be competent to engage in appropriate supervision of the chiropractor's activities. This is a consequence of the provisions of the professional misconduct statutes and regulations which govern the practices of both physicians and chiropractors."

Finally, any person hired by a physician to provide services in his/her medical practice is an employee of that physician, not an "independent contractor." Thus, a chiropractor employed by a physician is not authorized in any way to "direct the patient's care" nor is the physician permitted to give "the chiropractor complete control" over the patients. An "absentee doctor" may be culpable under professional misconduct law, which addresses such violations as negligence and fraud.

Norman G. Cohen  
Executive Secretary

## Activities of Daily Living

“Section 6551 of Education Law defines the practice of chiropractic as 'detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.'

“...Section 6505 of Education Law, states [that] 'no definition of the practice of a profession shall be construed to retrain or restrict the performance of similar acts authorized in the definition of other professions.'

“...activities of daily living training appear[s] to fall within an area of practice common to a number of professions. So long as [that] practice [is] within the statutory description of chiropractic and [is] not used to treat conditions prohibited in Article 132, section 6551(3), then [it] may be preformed by chiropractors licensed in this state.

“Also, please note that the Board of Regents Rules on Unprofessional conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training prior to provision of any professional practice. Special certification in the use of any professional practice is not required prior to utilization, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes as a defined violation the 'ordering or excessive tests, treatment, or sue of treatment facilities not warranted by the condition of the patient.’”<sup>1</sup>

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<sup>1</sup> Letter from: Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Lewis J. Bazakos, MS, DC, Past President, New York State Chiropractic Association, April 1, 1994.

# Acupressure

“The use of the term 'acupressure' is not specifically regulated by law.

Therefore, it may be used freely by anyone. However, its use by a licensed professional may lead to professional discipline if such use constitutes misleading advertising. The danger is using the term 'acupressure' is that it could be confused with 'acupuncture.' Acupuncture is a legally authorized profession in New York State, and the practice and use of such title is restricted to persons duly licensed in that profession.

“The history of the term 'acupressure' appears to relate closely to the term 'acupuncture' in concept and in approach to professional treatment techniques, except that 'acupressure' does not involve the use of invasive needles. However, the relationship between the two terms and techniques is not so close as to inescapably constitute a danger of confusing the public as to which technique was being offered.

“Therefore, the term 'acupressure' may be use by chiropractors in their advertising. However, caution must be exercised to ensure that the term 'acupressure' is adequately defined to the public and adequately distinguished from 'acupuncture.' In that way, it could be argued that the advertising chiropractor was not attempting to mislead the public.<sup>2</sup>

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<sup>2</sup> Letter from Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Vincent T. Apicella, Esq, Jericho, New York, April 22, 1991

# Adjunctive Therapy Modalities

“...in response to an inquiry to the State Board for Chiropractic regarding the use of electrical devices by chiropractors licensed in New York State. [S]even categories of devices were listed, all of which are directly or indirectly dependent upon electrical power for use as an adjunctive treatment device. The categories... listed are: 1) electrical stimulation, 2) ultrasound, 3) traction, 4) diathermy, 5) hydrocollator or hot packs, 6) cryotherapy or cold packs, and 7) vibratory therapy.

“Education Law, section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provides that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the Federal Food and Drug Administration or its successors, or by the department.'

“I am informed that none of the electrical devices in the above categories have been disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The State Education Department has] sought the advice of the State Board for Chiropractic and [the Department has] concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above adjunctive treatment modalities before utilizing them in his or her professional practice.”<sup>3</sup>

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<sup>3</sup> Letter from Henry A. Fernandez, Esq, Deputy Commission for the Professions, Office of the Professions, New York State Education Department to: Lewis J. Bazakos, MS, DC, President, New York State Chiropractic Association, February 6, 1991

# Adjunctive Therapy Procedures

“...in response to [an] inquiry regarding lawful scope of chiropractic practice in New York State and the extent to which a chiropractor may use such adjunctive procedures as 'therapeutic exercises, neuromuscular re-education, functional activities, gait training, activities of daily living training, contrast baths, isokinetic or isometric exercises ...'”

“Section 6551 of Education Law defines the practice of chiropractic as 'detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.'”

“'Therapeutic exercise' is specifically a part of the practice of physical therapy as defined in section 6731(a) of Education Law. However, it has been determined that such exercises, when used to assist in correcting vertebral subluxation or its effects, may be used by a chiropractors as part of his or her practice. This interpretation is consistent with section 6505 of Education Law, which states 'no definition of the practice of a profession shall be construed to retrain or restrict the performance of similar acts authorized in the definition of other professions.'”

“Likewise, neuromuscular re-education, functional activities, gait training, activities of daily living training, contrast baths, isokinetic or isometric exercises, e.g., Cybex, Hubbard tank, pool therapy all would appear to fall within an area of practice common to a number of professions. So long as those practices are within the statutory description of chiropractic and are not used to treat conditions prohibited in Article 132, section 6551(3), then they may be preformed by chiropractors licensed in this state.

“Also, please note that the Board of Regents Rules on Unprofessional conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training prior to provision of any professional practice. Special certification in the use of any professional practice is not required prior to utilization, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes as a defined violation the 'ordering or excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.'”<sup>4</sup>

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<sup>4</sup> Letter from: Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Lewis J. Bazakos, MS, DC, Past President, New York State Chiropractic Association, April 1, 1994.

# Advertising

The Regents Rules of Unprofessional Conduct, Part 29.1(b)(12)(i), states in part that,

“Advertising or soliciting not in the public interest shall include... [that which] is false, fraudulent, deceptive, misleading, sensational or flamboyant... [and which] represents intimidation or undue pressure.”

For example, a slogan such as: “Acupressure: No Dangerous Needles,” is “ill-advised” since “it promotes unwarranted fear of a legally authorized profession whose licensees have met all the statutory requirements for same and competent practice. Scare tactics in advertising are in violation of the Regents Rules on Unprofessional Conduct.”<sup>5</sup>

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<sup>5</sup> Letter from Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Vincent T. Apicella, Esq, Jericho, New York, April 22, 1991

# Anabolic Steroids

“New York State Education Law, section 6551(3), states

“A license to practice chiropractic shall not permit the holder thereof to... dispense or use in his practice drugs or medicines; or to use diagnostic or therapeutic methods involving chemical or biological means except diagnostic services performed by clinical laboratories which services shall be approved by the board as appropriate to the practice of chiropractic; or to utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.

“Chiropractors in [New York State] may not 'dispense or use' any pharmaceutical, including anabolic steroids, in their practices.”<sup>6</sup>

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<sup>6</sup> Letter from Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Gerald A. Gordineer, Esq, Rochester, MI, April 15, 1991.

# Biofeedback

New York State Law contains neither express authorization for nor prohibition of use of biofeedback instrumentation and procedures by a chiropractor.

Since biofeedback employs the use of electrical devices, section 6551(3) of Education Law is applicable. So long as the electrical device is appropriate to the practice of chiropractic as defined in section 6551(1), and the device has not been disapproved by the federal Food and Drug Administration (see Part 73.3 of the Commissioner's Relations), a chiropractor may use biofeedback in his or her practice.

Note [that] Parts 29.1 and 29.2 of the Regents Rules on Unprofessional conduct, which require practitioners to have competence in any professional practice they provide, and to avoid excessive tests or treatments not warranted by the patient's condition.<sup>7</sup>

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<sup>7</sup> Letter from Norman G. Cohen, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to John G. Rupolo, DC, Floral Park, NY, August 25, 1992.

# Chiropractic Assistants

“[The NYSCA has been] advised on previous occasions that it would be without legal authority for the Regents to enact a rule permitting unlicensed persons to do what they may already do. The crux of the issue may be summarized as follows:

“If unlicensed persons perform duties that are not statutorily restricted or reserved to professional licensees (such as chiropractors, nurses, physical therapists, etc.) or others regulated by the State (such as radiologic technologists), then why the need to define, limit, regulate or enable such persons?

“If, however, a profession seeks to enable unlicensed persons to perform functions that are restricted or reserved to persons regulated by the State, then what is the proper vehicle to achieve that end?

“It has been [the State Education Department's] view that enabling or delimiting professional, albeit ancillary, functions must be done by legislation as was the case with Physical Therapy Assistants or Occupational Therapy Assistants. If, on the other hand, the profession simply seeks assurance that helpers are permitted to perform tasks not reserved for someone authorized by the State, then that assurance already exists; no Regents rule is necessary. This Department is charged by law to interpret the scope of practice for the licensed professions and provide clarification of just what a person may or may not do. (Emphasis added.)

“Although the Association's proposal does not use the term 'chiropractic assistants,' that is the commonly used term for unlicensed helpers in chiropractic offices.

Chiropractic colleges train such persons. It is not surprising that the profession would like to have some specific recognition or protection for these individuals. However, an assistant's activities may not fall within the scope of practice of a licensed profession. No Regents rule could authorize that.”<sup>8</sup>

The law defining chiropractic restricts the use of electrical devices to the licensee or chiropractor. Unlicensed persons may not perform any activity within the scope of chiropractic without being licensed to perform these activities themselves.

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<sup>8</sup> Letter from Henry A. Fernandez, Esq, Deputy Commissioner for the Professions, Office of the Professions, New York State Education Department to: New York State Assemblyman Edward Griffith, September 13, 1989.

# Chiropractic Services to School Children

Regarding a school district physician's refusal to accept the services of chiropractors provided to school children.

“Education Law, section 902 restricts local Board of Education to appointing licensed physicians as Medical Inspectors for local school districts. The law goes on to list a number of health professions that may be used to provide service to school children under the authority granted the Medical Inspector. Chiropractic is not listed in that section of Education Law. However, while that list does not require or otherwise allow for the use of any profession, named or unnamed, it does not prohibit or exclude the use of any profession by a Medical Inspector.

“Any physician who is the appointed Medical Inspector in a particular school district is not violating Education Law by refusing to use chiropractic services in discharging the duties of the Medical Inspector. Use of chiropractors or any other health care profession is at the discretion of the Medical Inspector.

“...the most effective approach in gaining the understanding and acceptance of chiropractic by any physician appointed as a Medical Inspector for a school district is one of education, effective treatment results and respectful diplomacy in promoting team health care for school children.”<sup>9</sup>

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<sup>9</sup> Letter from Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Bradley Elliot, DC, Clifton Park, New York, April 18, 1991.

# Chronaxie Rheobase Nerve Conduction Studies

“Education Law, Section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provide that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the federal Food and Drug Administration or its successors, or by the department.'

“[Medex has not] been disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The Department has] sought the advice of the State Board for Chiropractic and [the Department] has concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above testing devices or adjunctive treatment modalities before utilizing them in his or her professional practice. Special certification in the use of any of the above devices is not required prior to their utilization in a professional practice, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes the 'ordering of excessive tests, treatments, or use of treatment facilities not warranted by the condition of the patient.’”<sup>10</sup>

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<sup>10</sup> Letter from: Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Katherine LeVien, RN, MPA, Dir. of Med. Services, Health Data Services, Islip, New York, May 23, 1991

# Clinical Laboratory Tests

Chiropractors may draw patient specimens (blood, urine, sputum, etc.) but may not analyze specimens in their offices. Diagnostic analysis of specimens must be performed by clinical laboratories.

“Education Law, Section 6551(3) prohibits a chiropractor from using in his or her practice 'diagnostic or therapeutic methods involving chemical or biological means except diagnostic services performed by clinical laboratories...”

Chiropractic offices don't qualify as clinical laboratories.

“Public Health Law §571(1) defines a clinical laboratory as a facility for the examination of materials derived from the human body for the purpose of obtaining information for the diagnosis, prevention or treatment of disease or the assessment of health condition(s). PHL §574 prohibits the unlicensed operation of a clinical laboratory. PHL §579 states that Title Five is not applicable to laboratories operated by a licensed physician, osteopath, dentist or podiatrist who performs laboratory tests or procedures, personally or through his employees, solely as an adjunct to the treatment of his own patients. Chiropractors are not entitled to perform unlicensed procedures in their offices pursuant to this exception. [Therefore,] performance of clinical laboratory tests by a chiropractor would constitute the unlicensed operation of a clinical laboratory and would violate Public Health Law §574.<sup>11</sup>

“Public Health Law, section 574 requires a permit for any person to 'own or operate a clinical laboratory or blood bank, solicit or accept a specimen for laboratory examination or collect, process or store human blood or blood derivatives...”<sup>12</sup>

“No person shall... solicit or accept a specimen for laboratory examination or collect... human blood or blood derivatives... unless a valid laboratory permit therefore has been issued...” As a result of this provision, a laboratory permit is necessary to collect any specimen for laboratory analysis, be it urine, blood or other body component.

“To receive a permit, an individual must hold a 'certificate of qualification' (Public Health Law §575(2)). This certificate is issued by the Public Health Council to any person who meets the minimum qualifications established by the Council in 'microbiology, serology, chemistry, hematology, biophysics, cytology or pathology' (§573(2)). Thus, the statute

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<sup>11</sup> Memorandum from Peter J. Millock, Esq, General Counsel, New York State Department of Health to Felix Heilpern, Division of Laboratories and Research, New York State Department of Health, January 24, 1985.

<sup>12</sup> Advisory to all chiropractors , licensed and registered in New York State from Henry A. Fernandez, Esq, Deputy Commissioner for the Professions, New York State Education Department, December 6, 1989.

generally does not contemplate the collection of specimens for laboratory analysis by any facility other than one fully qualified to operate as a clinical laboratory or blood bank.”<sup>13</sup>

As noted above, the sole exception to the foregoing general rules is provided by:

Public Health Law, section 579 which provides that only four (4) licensed professional categories are exempt from the requirements of Public Health Law, Section 574 regarding the ownership and/or operation of clinical laboratories, specifically, “licensed physicians (MD), osteopaths, dentists, and podiatrists 'who perform laboratory tests or procedures... solely as adjunct to the treatment of [their] own patients.' Because chiropractors are not specifically included among these exempted health professionals, they do not benefit from the exception provided by Section 579.”<sup>14</sup>

Any consideration to amend New York law to permit broader activity by chiropractors in relation to the collection or examination of human specimens should take into account the October 31, 1988, amendment of 42 United States Code §263a, which sets forth federal rules for the certification of laboratories. This amendment, among other things, eliminated the rule that federal standards would apply only to the solicitation, acceptance or analysis of specimens 'in interstate commerce.' As a result, the amendment has expanded greatly the scope of activities in this area that will be subject to federal regulation.<sup>15</sup>

In addition, the US Department of Labor, Occupational Health and Safety Administration (OSHA) has issued rules effective 1992, concerning bloodborne pathogens and other bodily fluids, and regulations for handling and disposing of potentially contaminated and infectious waste material. The NYSCA has supplied members with a synopsis (“Chiropractic Office Bloodborne Pathogens Exposure Control Plan”) of the important aspects of the federal law, rules and regulations as they affect chiropractic practice. To obtain additional copies of the NYSCA Exposure Control Plan contact the NYSCA office.

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<sup>13</sup> Memorandum from: Charles B. Stockdale, Esq, Rice & Justice, NYSCA general counsel to : Gil C. Allen, DC, PhD, NYSCA Vice President, April 14, 1989.

<sup>14</sup> Ibid.

<sup>15</sup> Memorandum from: Charles B. Stockdale, Esq, Rice & Justice, NYSCA general counsel to: Lewis J. Bazakos, MS, DC, President, New York State Chiropractic Association, September 21, 1989.

# Computer-assisted Isometric Muscle Testing (CIMT) [aka: Metrocom]

“New York State Education Law permits chiropractors to use electrical devices ‘...approved by the board as being appropriate to the practice of chiropractic,’ [Education Law, section 6551(3)]. That statutory authority is further implemented in a provision of the Commissioner's Regulations, 8NYCRR 73.3 which reads as follows:

“Pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the federal Food and Drug Administration or its successors (21 CFR Part 895, Code of Federal Regulations, 1984 edition, Superintendent of Documents, US Government Printing Office, Washington, DC, 20402: 1984 — available at New York State Board of Chiropractic, Room 3041, Cultural Education Center, Albany, New York 12230), or by the department.

“A review of the pertinent provisions of the Code of Federal Regulations does not find that the federal Food and Drug Administration has, at this time, disapproved the use of instruments which are used in isometric muscle testing, or the related devices, for use by chiropractors. Therefore, it would appear that at this time chiropractors may appropriately use computer-assisted isometric muscle testing, if the use of such techniques and equipment is ‘essential to their practice,’...”<sup>16</sup>

“Education Law, Section 6551(3), provides that ‘a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.’ Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provide that ‘pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the federal Food and Drug Administration or its successors, or by the department.’

“[Metrocom muscle testing has not] been disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The Department has] sought the advice of the State Board for Chiropractic and [the Department] has concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

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<sup>16</sup> Letter from Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to Richard Brunken, Casualty Claims Manager, Allstate Insurance Company, Holbrook, NY 11741, April 18, 1991.

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please noted that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above testing devices or adjunctive treatment modalities before utilizing them in his or her professional practice. Special certification in the use of any of the above devices is not required prior to their utilization in a professional practice, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes the 'ordering of excessive tests, treatments, or use of treatment facilities not warranted by the condition of the patient.’”<sup>17</sup>

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<sup>17</sup> Letter from: Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Katherine LeVien, RN, MPA, Dir. of Med. Services, Health Data Services, Islip, New York, May 23, 1991.

## Contrast Baths

“Section 6551 of Education Law defines the practice of chiropractic as 'detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.'

“...Section 6505 of Education Law, states [that] 'no definition of the practice of a profession shall be construed to retrain or restrict the performance of similar acts authorized in the definition of other professions.'

“...contrast baths appear[s] to fall within an area of practice common to a number of professions. So long as [that] practice [is] within the statutory description of chiropractic and [is] not used to treat conditions prohibited in Article 132, section 6551(3), then [it] may be preformed by chiropractors licensed in this state.

“Also, please note that the Board of Regents Rules on Unprofessional conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training prior to provision of any professional practice. Special certification in the use of any professional practice is not required prior to utilization, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes as a defined violation the 'ordering or excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.’”<sup>18</sup>

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<sup>18</sup> Letter from: Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Lewis J. Bazakos, MS, DC, Past President, New York State Chiropractic Association, April 1, 1994.

## Cryotherapy/Cold Packs

“Education Law, section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provides that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the Federal Food and Drug Administration or its successors, or by the department.'

“[Cryotherapy or cold packs have not been] disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The State Education Department has] sought the advice of the State Board for Chiropractic and [the Department has] concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above adjunctive treatment modalities before utilizing them in his or her professional practice.”<sup>19</sup>

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<sup>19</sup> Letter from Henry A. Fernandez, Esq, Deputy Commission for the Professions, Office of the Professions, New York State Education Department to: Lewis J. Bazakos, MS, DC, President, New York State Chiropractic Association, February 6, 1991.

## Cybex Devices

“Section 6551 of Education Law defines the practice of chiropractic as 'detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.'

“...Section 6505 of Education Law, states [that] 'no definition of the practice of a profession shall be construed to retrain or restrict the performance of similar acts authorized in the definition of other professions.'

“...Cybex exercises appear[s] to fall within an area of practice common to a number of professions. So long as [this] practice [is] within the statutory description of chiropractic and [is] not used to treat conditions prohibited in Article 132, section 6551(3), then [it] may be preformed by chiropractors licensed in this state.

“Also, please note that the Board of Regents Rules on Unprofessional conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training prior to provision of any professional practice. Special certification in the use of any professional practice is not required prior to utilization, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes as a defined violation the 'ordering or excessive tests, treatment, or sue of treatment facilities not warranted by the condition of the patient.'”<sup>20</sup>

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<sup>20</sup> Letter from: Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Lewis J. Bazakos, MS, DC, Past President, New York State Chiropractic Association, April 1, 1994.

# Diathermy

“Education Law, section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provides that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the Federal Food and Drug Administration or its successors, or by the department.'

“[Diathermy has not been] disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The State Education Department has] sought the advice of the State Board for Chiropractic and [the Department has] concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above adjunctive treatment modalities before utilizing them in his or her professional practice.<sup>21</sup>

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<sup>21</sup> Letter from Henry A. Fernandez, Esq, Deputy Commission for the Professions, Office of the Professions, New York State Education Department to: Lewis J. Bazakos, MS, DC, President, New York State Chiropractic Association, February 6, 1991.

## **Disability Benefits — Workers' Compensation Article 9, §217 - Workers' Compensation Law**

§217. Notice and proof of claim. 1. Written notice and proof of disability shall be furnished to the employer by or on behalf of the employee claiming benefits or, in the case of a claimant under section two hundred seven, to the chairman, within thirty days after commencement of the period of disability. Additional proof shall be furnished thereafter from time to time as the employer or carrier or chairman may require but not more often than once each week. Such proof shall include a statement of disability by the employee's attending physician or attending podiatrists or attending chiropractor, or attending dentist, or attending certified nurse midwife, or in the case of an employee who adheres to the faith or teachings of any church or denomination, and who in accordance with its creed, tenets or principles depends for healing upon prayer through spiritual means alone in the practice of religion, by an accredited practitioner, containing facts and opinions as to such disability in compliance with regulations of the chairman. Failure to furnish notice or proof within the time and in the manner above provided shall not invalidate the claim but no benefits shall be required to be paid for any period more than two weeks prior to the date on which the required proof is furnished unless it shall be shown to the satisfaction of the chairman not to have been reasonably possible to furnish such notice or proof and that such notice or proof was furnished as soon as possible; provided, however, that no benefits shall be paid unless the required proof of disability is furnished within twenty-six weeks after commencement of the period of disability.

“1. Written notice and proof of disability shall be furnished to the employer by or on behalf of the employee claiming benefits or, in the case of a claimant under section two hundred seven, to the chair, within thirty days after commencement of the period of disability. Additional proof shall be furnished thereafter from time to time as the employer or carrier or chair may require but not more often than once each week. Such proof shall include a statement of disability by the employee's attending physician or attending podiatrist or attending chiropractor or attending dentist or attending psychologist or attending certified nurse midwife, or in the case of an employee who adheres to the faith or teachings of any church or denomination, and who in accordance with its creed, tenets or principles depends for healing upon prayer through spiritual means alone in the practice of religion, by an accredited practitioner, containing facts and opinions as to such disability in compliance with regulations of the chair. Failure to furnish notice or proof within the time and in the manner above provided shall not invalidate the claim but no

benefits shall be required to be paid for any period more than two weeks prior to the date on which the required proof is furnished unless it shall be shown to the satisfaction of the chair not to have been reasonably possible to furnish such notice or proof and that such notice or proof was furnished as soon as possible; provided, however, that no benefits shall be paid unless the required proof of disability is furnished within twenty-six weeks after commencement of the period of disability.

“2. An employee claiming benefits shall, as requested by the employer or carrier, submit himself at intervals, but not more than once a week, for examination by a physician or podiatrist or chiropractor or dentist or certified nurse midwife designated by the employer or carrier. All such examinations shall be without cost to the employee and shall be held at a reasonable time and place.

“3. The chair may direct the claimant to submit to examination by a physician or podiatrist or chiropractor or dentist or psychologist designated by him or her in any case in which the claim to disability benefits is contested and in claims arising under section two hundred seven, and in other cases as the chair or board may require.

“4. Refusal to the claimant without good cause to submit to any such examination shall disqualify him from all benefit hereunder for the period of such refusal, except as to benefits already paid.

“5. If benefits required to be paid by this article have been paid to an employee, further payments for the same disability shall not be barred solely because of failure to give notice or to file proof of disability for the period or periods for which such benefits have been paid.

“6. In the event that a claim for benefits is rejected, the carrier or employer shall mail written notice of rejection to the claimant within forty-five days of receipt of proof of disability. Failure to mail such written notice of rejection within the time provided, shall bar the employer or carrier from contesting entitlement to benefits for any period of disability prior to such notice but such failure may be excused by the chairman if it can be shown to the satisfaction of the chairman not to have been reasonably possible to mail such notice and that such notice was mailed as soon as possible. Such notice shall include a statement, in a form prescribed by the chairman, to the effect that the claimant may, for the purpose of review by the board, file with the chairman notice that his or her claim has not been paid.”<sup>22</sup>

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<sup>22</sup> New York State Workers' Compensation Law regarding disability certificates, proof of disability and statements of disability, 1991.

# Documenting Disability by Chiropractors

(for the purposes of the New York State Education Departments' Office of Vocational and Educational Services to Individuals with Disabilities [VESID].

Can a chiropractor be used to document disability?

Documentation is acceptable that is within the scope of chiropractic responsibility. Chiropractors are licensed professionals who have the legal sanction to diagnose and treat individuals.”<sup>23</sup>

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<sup>23</sup> Memorandum from: George Cortright, Manager, District Office Administration, VESID, New York State Education Department, to: Norman G. Cohen, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department, January 14, 1994.

## Electrical Devices

“...in response to [an] inquiry to the State Board for Chiropractic regarding use of electrical devices by chiropractors licensed in New York State. [E]ight categories of devices or brand names of specific devices [were listed], all of which are dependent upon electrical power for use as a diagnostic or adjunctive treatment device. The items... listed were: 1) surface electromyography (SEMG), 2) needle or 'invasive' EMG, 3) Metrocom muscle testing, 4) Venous doppler studies, 5) Goniometric testing, 6) Plethysmography (T.O.S.), 7) Medex, and 8) Chronaxie Rheobase (Nerve Conduction Studies).

“Education Law, Section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provide that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the federal Food and Drug Administration or its successors, or by the department.'

“[The Department has been] informed that none of the electrical devices in the above categories have been disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The Department has] sought the advice of the State Board for Chiropractic and [the Department] has concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above testing devices or adjunctive treatment modalities before utilizing them in his or her professional practice. Special certification in the use of any of the above devices is not required prior to their utilization in a professional practice, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes the 'ordering of excessive tests, treatments, or use of treatment facilities not warranted by the condition of the patient.’”<sup>24</sup>

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<sup>24</sup> Letter from: Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Katherine LeVien, RN, MPA, Director of Medical Services, Health Data Services, Islip, New York, May 23, 1991.

# Electrical Stimulation

“Education Law, section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provides that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the Federal Food and Drug Administration or its successors, or by the department.'

“[Electrical Stimulation has not been] disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The State Education Department has] sought the advice of the State Board for Chiropractic and [the Department has] concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above adjunctive treatment modalities before utilizing them in his or her professional practice.”<sup>25</sup>

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<sup>25</sup> Letter from Henry A. Fernandez, Esq, Deputy Commission for the Professions, Office of the Professions, New York State Education Department to: Lewis J. Bazakos, MS, DC, President, New York State Chiropractic Association, February 6, 1991.

## Functional Activities

“Section 6551 of Education Law defines the practice of chiropractic as 'detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.'

“...Section 6505 of Education Law, states [that] 'no definition of the practice of a profession shall be construed to retrain or restrict the performance of similar acts authorized in the definition of other professions.'

“...functional activities appear[s] to fall within an area of practice common to a number of professions. So long as [that] practice [is] within the statutory description of chiropractic and [is] not used to treat conditions prohibited in Article 132, section 6551(3), then [it] may be performed by chiropractors licensed in this state.

“Also, please note that the Board of Regents Rules on Unprofessional conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training prior to provision of any professional practice. Special certification in the use of any professional practice is not required prior to utilization, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes as a defined violation the 'ordering or excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.’”<sup>26</sup>

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<sup>26</sup> Letter from: Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Lewis J. Bazakos, MS, DC, Past President, New York State Chiropractic Association, April 1, 1994.

# Gait Training

“Section 6551 of Education Law defines the practice of chiropractic as 'detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.'

“...Section 6505 of Education Law, states [that] 'no definition of the practice of a profession shall be construed to retrain or restrict the performance of similar acts authorized in the definition of other professions.'

“...gait training appear[s] to fall within an area of practice common to a number of professions. So long as [that] practice [is] within the statutory description of chiropractic and [is] not used to treat conditions prohibited in Article 132, section 6551(3), then [it] may be preformed by chiropractors licensed in this state.

“Also, please note that the Board of Regents Rules on Unprofessional conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training prior to provision of any professional practice. Special certification in the use of any professional practice is not required prior to utilization, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes as a defined violation the 'ordering or excessive tests, treatment, or sue of treatment facilities not warranted by the condition of the patient.'”<sup>27</sup>

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<sup>27</sup> Letter from: Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Lewis J. Bazakos, MS, DC, Past President, New York State Chiropractic Association, April 1, 1994.

# Goniometric Testing

“Education Law, Section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provide that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the federal Food and Drug Administration or its successors, or by the department.'

“[Goniometric testing has not] been disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The Department has] sought the advice of the State Board for Chiropractic and [the Department] has concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above testing devices or adjunctive treatment modalities before utilizing them in his or her professional practice. Special certification in the use of any of the above devices is not required prior to their utilization in a professional practice, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes the 'ordering of excessive tests, treatments, or use of treatment facilities not warranted by the condition of the patient.’”<sup>28</sup>

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<sup>28</sup> Letter from: Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Katherine LeVien, RN, MPA, Dir. of Med. Services, Health Data Services, Islip, New York, May 23, 1991.

## Good Samaritan Law

“New York Public Health Law §3000-a, entitled 'Emergency Medical Treatment,' provides as follows:

“‘[A]ny person who voluntarily and without expectation of monetary compensation renders first aid or emergency treatment at the scene of an accident or other emergency outside a hospital, doctor's office or any other place having proper and necessary medical equipment, to a person who is unconscious, ill, or injured, shall not be liable for damages for injuries alleged to have been sustained by such person or for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such emergency treatment unless it is established that such injuries were or such death was caused by gross negligence on the part of such person.’

“Obviously, the broad language utilized in the Good Samaritan statute encompasses the chiropractic profession by virtue of its reference to emergency services provided by 'any person.' Certain other healthcare providers, however, are also covered under other statutes contained in the New York Education Law (Educ. Law §6527 [physicians]; Educ. Law §661 [dentists]; Educ. Law §6909 [nurses]; Educ. Law §6737 [physical therapists]; Educ. Law §6547 [physician's assistants]).<sup>29</sup>

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<sup>29</sup> Opinion of Jack C. Rice, Esq, former NYSCA general counsel to the New York State Chiropractic Association, March 16, 1992.

## Hubbard Tank

“Section 6551 of Education Law defines the practice of chiropractic as 'detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.'

“...Section 6505 of Education Law, states [that] 'no definition of the practice of a profession shall be construed to retrain or restrict the performance of similar acts authorized in the definition of other professions.'

“...Hubbard tank therapy appear[s] to fall within an area of practice common to a number of professions. So long as [this] practice [is] within the statutory description of chiropractic and [is] not used to treat conditions prohibited in Article 132, section 6551(3), then [it] may be preformed by chiropractors licensed in this state.

“Also, please note that the Board of Regents Rules on Unprofessional conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training prior to provision of any professional practice. Special certification in the use of any professional practice is not required prior to utilization, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes as a defined violation the 'ordering or excessive tests, treatment, or sue of treatment facilities not warranted by the condition of the patient.'”<sup>30</sup>

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<sup>30</sup> Letter from: Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Lewis J. Bazakos, MS, DC, Past President, New York State Chiropractic Association, April 1, 1994.

## Hydrocollators/Heat therapy

“Education Law, section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provides that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the Federal Food and Drug Administration or its successors, or by the department.'

“[Hydrocollators, hot packs or heat therapy have not been] disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The State Education Department has] sought the advice of the State Board for Chiropractic and [the Department has] concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above adjunctive treatment modalities before utilizing them in his or her professional practice.”<sup>31</sup>

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<sup>31</sup> Letter from Henry A. Fernandez, Esq, Deputy Commission for the Professions, Office of the Professions, New York State Education Department to: Lewis J. Bazakos, MS, DC, President, New York State Chiropractic Association, February 6, 1991

# Invasive Electromyography

[A] procedure is characterized as invasive when the device is equipped with needle sensors, where are inserted beneath the skin surface closer to the actual site of motor neurons being monitored. Subdermal readings provide data at a scientific research level of reliability and accuracy, while surface readings are considered less accurate.

The State Board for chiropractic and the State Education Department believe the use of invasive electromyography [by chiropractors] is permitted.

Electromyography (EMG) is a diagnostic procedure utilizing an electrical device that monitors neuromuscular activity in the human body. Chiropractors employ EMG to detect structural imbalance, distortion or subluxation of or in the vertebral column.<sup>32</sup>

Electromyography is a diagnostic tool which is useful for the purpose of detecting structural imbalance, distortion or subluxations in the human body and related conditions. The use of electromyography is currently approved by the State Board for Chiropractic pursuant to section 73.3 of the Regulations of the Commissioner, since it has not been disapproved by the federal Food and Drug Administration (FDA). Consequently, electromyography may be used in the practice of chiropractic in this state, for the purpose of the diagnosis of “nerve interference and the effects thereof” resulting from “distortion, misalignment or subluxation of or in the vertebral column.”<sup>33</sup>

When used to detect distortions, misalignments or subluxations in or of the vertebral column, a chiropractor may use EMG as an appropriate diagnostic device pursuant to Education Law, section 6551 and the Regulations of the Commissioner of Education, part 73.3.<sup>34</sup>

“Education Law, Section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provide that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the federal Food and Drug Administration or its successors, or by the department.'

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<sup>32</sup> Letter from GERAL LEISMAN, MD, PhD, Director of Research, New York Chiropractic College to Henry A. Fernandez, Esq, Deputy Commissioner for the Professions, New York State Education Department, restating a letter written to Leisman by Vincent J. Wallace, Executive Secretary, New York State Board for Chiropractic (June 1989), February 4, 1990.

<sup>33</sup> Letter from Henry A. Fernandez, Esq, Deputy Commissioner for the Professions, Office of the Professions, New York State Education Department, to GERAL LEISMAN, MD, PhD, Director of Research, New York Chiropractic College, May 9, 1990.

<sup>34</sup> Letter from Norman G. Cohen, MSW, New York State Board for Chiropractic, to Harlan Pyes, Dale Surgical Professional Supply Company, Inc., April 5, 1990.

“[Needle or 'invasive' electromyography has not] been disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The Department has] sought the advice of the State Board for Chiropractic and [the Department] has concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please noted that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above testing devices or adjunctive treatment modalities before utilizing them in his or her professional practice. Special certification in the use of any of the above devices is not required prior to their utilization in professional practice but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes the 'ordering of excessive tests, treatments, or use of treatment facilities not warranted by the condition of the patient.’”<sup>35</sup>

Note: the US Department of Labor, Occupational Health and Safety Administration (OSHA) has issued rules effective 1992, concerning bloodborne pathogens and other bodily fluids, and regulations for handling and disposing of potentially contaminated and infectious waste material. The NYSCA has supplied members with a synopsis (“Chiropractic Office Bloodborne Pathogens Exposure Control Plan”) of the important aspects of the federal law, rules and regulations as they affect chiropractic practice. To obtain additional copies of the NYSCA Exposure Control Plan contact the NYSCA office.

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<sup>35</sup> Letter from: Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Katherine LeVien, RN, MPA, Dir. of Med. Services, Health Data Services, Islip, New York, May 23, 1991.

## Isokinetic or Isometric Exercises

“Section 6551 of Education Law defines the practice of chiropractic as 'detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.'

“...Section 6505 of Education Law, states [that] 'no definition of the practice of a profession shall be construed to retrain or restrict the performance of similar acts authorized in the definition of other professions.'

“...isokinetic or isometric exercises, e.g., Cybex, Hubbard tank, pool therapy appear[s] to fall within an area of practice common to a number of professions. So long as these practices are within the statutory description of chiropractic and are not used to treat conditions prohibited in Article 132, section 6551(3), then they may be preformed by chiropractors licensed in this state.

“Also, please note that the Board of Regents Rules on Unprofessional conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training prior to provision of any professional practice. Special certification in the use of any professional practice is not required prior to utilization, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes as a defined violation the 'ordering or excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.’”<sup>36</sup>

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<sup>36</sup> Letter from: Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Lewis J. Bazakos, MS, DC, Past President, New York State Chiropractic Association, April 1, 1994.

# McKenzie Methods

McKenzie approach to joint structure pain management and rehabilitation.

The New York State Board for Chiropractic recommended the McKenzie protocol be considered acceptable for use by chiropractors licensed in New York State, so long as:

- A licensed chiropractor does not engage in acts or treat conditions in his or her professional practice that are either expressly prohibited in law or that require a license in another profession, and
- engages in those practice either generally or specifically defined in Article 132 of Education Law, which authorizes the practice of chiropractic in [New York] state.<sup>37</sup>

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<sup>37</sup> Letter from Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to A.W. Lucas, DC, Elmire Heights, New York, August 17, 1994.

## Magnetic Resonance Imaging (MRI)

“The New York State Education Department has determined that Doctors of Chiropractic are not prohibited from ordering MRIs. In addition, training in the use of MRI is contained in the curriculum of professional chiropractic education. Therefore, a chiropractor licensed in New York State may order MRIs as long as the individual licensee knows he or she has the competence to perform that professional service and does so within the scope of practice of chiropractic, which is defined in section 6551(1) as:

“...detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.”<sup>38</sup>

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<sup>38</sup> Letter from Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Therese Winicki, CMA, South Shore Radiologists, West Islip, New York, April 17, 1991.

# Magnetic Resonance Imaging (MRI) Scans, Installation and Performance of...

“There is nothing inappropriate with a chiropractor [installing a Magnetic Resonance Imaging (MRI) unit in his (or her) office and to perform MRI scans] as long as the chiropractor practices competently and does not exceed the scope of practice of chiropractic defined in Section 6551 of the New York State Education Law.

“Some confusion about the use of MRI by chiropractors may have arisen due to the wording of Section 6551(2)(a) of the Education Law which provides as follows: 'A license to practice as a chiropractor shall not permit the holder thereof to use radio-therapy, fluoroscopy, or any form of ionizing radiation except X-ray which shall be used for the detection of structural imbalance, distortion, or subluxations in the human body.' Some people have misunderstood the phrase 'ionizing radiation' to encompass MRI. However, MRI testing does not involve ionizing radiation. Ionizing radiation is a scientifically specific term that includes all radiation which affects the body's subatomic electrons by causing them to take on a particular electrical charge. MRI testing does not affect electrons and produces no change in the electrical charge of any of the body's subatomic particles.

“MRI testing clearly does not involve the use of any ionizing radiation. Consequently, there is nothing in existing law that would prevent a chiropractor from making use of MRI testing.

“Naturally, a chiropractor is not entitled to practice medicine. A chiropractor's use of MRI testing may not be for the sole purpose of providing medical diagnoses, though it is often necessary for a chiropractor to recognize from such testing when a patient's condition is one that is beyond the chiropractor's ability to treat. Thus, while a radiologist may review the chiropractor's MRI test, the purpose for which the chiropractor makes the MRI scan must always be limited to the purposes expressed in the scope of practice of chiropractic, such as detection of structural imbalance, distortion, or subluxations in the human body. If the MRI test reveals a medical problem that is outside the scope of practice of chiropractic, then the chiropractor has an obligation to advise the patient to see a physician for an appropriate medical diagnosis and treatment.”<sup>39</sup>

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<sup>39</sup> Letter from Frank Munoz, Esq, Executive Coordinator, State Boards for the Professions, New York State Education Department to: New York State Assemblyman Cecile D. Singer, February 19, 1993.

# Manipulation Under Anesthesia

“Nothing in the... law would prohibit a chiropractor from performing chiropractic manipulations on patients who are under anesthesia. However, the chiropractor is not authorized to order or administer anesthesia. Neither is a chiropractors authorized to make medical neurological or orthopedic determinations. The chiropractor is enabled only to perform chiropractic manipulations on the patient.”<sup>40</sup>

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<sup>40</sup> Letter from Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department, February 22, 1996.

## Massage Therapy

“Chiropractors may perform and advertise 'massage' as one of their professional services;

“Chiropractors may not identify themselves as 'massage therapists,' 'masseurs,' or 'masseuses' unless licensed as such pursuant to Article 155 of Education Law;

“Chiropractors may bill insurance companies for chiropractic 'massage,' although Education Law does not address insurance reimbursement policies;

“Chiropractors may employ licensed massage therapists on a salary basis or on a wage-per-hour basis, but may not base such employment on a fee per patient payment as that would violate Regents Rule 29.1(b)(4) regarding fee-splitting;

“No fee for the referral of a patient by or from a chiropractor and a massage therapist may be offered or received by either party or a third party as prohibited by Regents Rule 29.1(b)(3).

“The chiropractor must know that he or she is competent to provide such service by virtue of education and training; and

“The provision of massage must not constitute excessive treatment and must be warranted by the condition of the patient.”<sup>41</sup>

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<sup>41</sup> Letter from Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Jeffrey E. Weber, MS, DC, Brooklyn, New York, October 21, 1991.

# Medex

“Education Law, Section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provide that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the federal Food and Drug Administration or its successors, or by the department.'

“[Medex has not] been disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The Department has] sought the advice of the State Board for Chiropractic and [the Department] has concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above testing devices or adjunctive treatment modalities before utilizing them in his or her professional practice. Special certification in the use of any of the above devices is not required prior to their utilization in a professional practice, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes the 'ordering of excessive tests, treatments, or use of treatment facilities not warranted by the condition of the patient.’”<sup>42</sup>

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<sup>42</sup> Letter from: Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Katherine LeVien, RN, MPA, Dir. of Med. Services, Health Data Services, Islip, New York, May 23, 1991

# Naturopathy

“Naturopathy is not recognized as an acceptable specialization within the practice of chiropractic in [New York State].”<sup>43</sup>

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<sup>43</sup> Letter from Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Gerald A. Gordineer, Esq, Rochester, MI, April 15, 1991.

## Neuromuscular Re-education

“Section 6551 of Education Law defines the practice of chiropractic as 'detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.'

“...Section 6505 of Education Law, states [that] 'no definition of the practice of a profession shall be construed to retrain or restrict the performance of similar acts authorized in the definition of other professions.'

“...neuromuscular re-education appear[s] to fall within an area of practice common to a number of professions. So long as [that] practices [is] within the statutory description of chiropractic and [is] not used to treat conditions prohibited in Article 132, section 6551(3), then [it] may be preformed by chiropractors licensed in this state.

“Also, please note that the Board of Regents Rules on Unprofessional conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training prior to provision of any professional practice. Special certification in the use of any professional practice is not required prior to utilization, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes as a defined violation the 'ordering or excessive tests, treatment, or sue of treatment facilities not warranted by the condition of the patient.'”<sup>44</sup>

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<sup>44</sup> Letter from: Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Lewis J. Bazakos, MS, DC, Past President, New York State Chiropractic Association, April 1, 1994.

# Nutrition Counseling within the Practice of Chiropractic

Chapter 683 of the Laws of 1991 was enacted, effective January 1, 1992, to authorize qualified chiropractors licensed in [New York] state to provide nutritional counseling and sell nutritional products as part of their professional practice of chiropractic.

The law restricts the provision of nutritional services as part of the practice of chiropractic to those licensed chiropractors who have “...courses of study in nutrition satisfactory to the department...”

Department staff have sampled the curricular requirements of chiropractic colleges in the country. They also have studied the legislative history of Chapter 683. With the advice of the New York State Board for Chiropractic and following discussions with the professional chiropractic societies in New York and interested others, we have established a minimum educational standard for chiropractors offering nutritional counseling. The minimum standard is 100 hours of in-class work and 200 hours of related out-of-classroom assignments in nutrition. The total of 300 hours represented by this standard should ensure the provision of reliable nutritional advice to consumers of chiropractic services.<sup>45</sup>

The required hours of study in nutrition may be complete in the following venues:

1. Course work in the Doctor of Chiropractic program that qualified the practitioner for licensure in New York;
2. Continuing education course work offered by a college of chiropractic whose graduates have met the educational requirements for licensure in New York;
3. Transcript quality course work in a collegiate program registered by the Department or offered by a college which is accredited by an accrediting agency recognized by the US Department of Education (or the equivalent recognition in another nation);
4. Course work approved by the International Association for Continuing Education and Training;
5. Course work approved by the American Chiropractic Association for credit toward attainment of the Diplomate in Chiropractic Nutrition (DACBN); or

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<sup>45</sup> For transcript quality collegiate study, two hours of out-of-classroom work are typically expected for every hour in class; hence, the standard of 100 hours of in-class work and 200 hours of out-of-class work. For purposes of Chapter 683 a “richer” ratio of in-class to out-of-class study also would be acceptable—for example, 200 hours of in-class work and 100 hours of out-of-class work. Using the “Carnegie Unit” each semester hour of college credit includes 15 hours of in-class work and 30 hours of out-of-class work.

6. Course work approved by appropriate state regulatory agencies for credit toward completion of mandatory continuing education requirements for maintenance of licensure in another state.

Part 29.19b)(9) of the Regents Rules on Unprofessional Conduct defines as a violation “...accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform...” [The New York State Education Department] expect that each chiropractor who offers nutritional counseling as a professional service will determine whether he/she has sufficient training (as outlined above) and will maintain documentation to that effect.<sup>46</sup>

“Article 157 of the Education Law does not restrict the practice of dietetics and nutrition. The statute... restricts the use of the titles 'certified dietitian,' certified dietician,' and 'certified nutritionist' to individuals who have been appropriately certified by the New York State Education Department.”<sup>47</sup>

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<sup>46</sup> Announcement to all chiropractors licensed and registered in New York State from Daniel W. Szetela, Assistant Commissioner for Professional Credentialing, New York State Education Department, September 25, 1992.

<sup>47</sup> Letter from Thomas J. Monahan, Acting Executive Secretary, Office of the State Board for Dietetics and Nutrition, New York State Education Department, to: Winna C. Henry, International and American Association of Clinical Nutritionists, Dallas, TX, December 13, 1995.

# Pharmaceuticals

## Prescription, dispensing or using...

“New York State Education Law, section 6551(3), states

“A license to practice chiropractic shall not permit the holder thereof to... dispense or use in his practice drugs or medicines; or to use diagnostic or therapeutic methods involving chemical or biological means except diagnostic services performed by clinical laboratories which services shall be approved by the board as appropriate to the practice of chiropractic; or to utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.

“Chiropractors in [New York State] may not 'dispense or use' any pharmaceutical, including anabolic steroids, in their practices.”<sup>48</sup>

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<sup>48</sup> Letter from Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Gerald A. Gordineer, Esq, Rochester, MI, April 15, 1991.

## Plethysmography (T.O.S.)

“Education Law, Section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provide that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the federal Food and Drug Administration or its successors, or by the department.'

“[Plethysmography (T.O.S.) has not] been disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The Department has] sought the advice of the State Board for Chiropractic and [the Department] has concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above testing devices or adjunctive treatment modalities before utilizing them in his or her professional practice. Special certification in the use of any of the above devices is not required prior to their utilization in a professional practice, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes the 'ordering of excessive tests, treatments, or use of treatment facilities not warranted by the condition of the patient.’”<sup>49</sup>

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<sup>49</sup> Letter from: Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Katherine LeVien, RN, MPA, Dir. of Med. Services, Health Data Services, Islip, New York, May 23, 1991.

## Pool Therapy

“Section 6551 of Education Law defines the practice of chiropractic as 'detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.'

“...Section 6505 of Education Law, states [that] 'no definition of the practice of a profession shall be construed to retrain or restrict the performance of similar acts authorized in the definition of other professions.'

“...Pool therapy appear[s] to fall within an area of practice common to a number of professions. So long as [this] practice [is] within the statutory description of chiropractic and [is] not used to treat conditions prohibited in Article 132, section 6551(3), then [it] may be preformed by chiropractors licensed in this state.

“Also, please note that the Board of Regents Rules on Unprofessional conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training prior to provision of any professional practice. Special certification in the use of any professional practice is not required prior to utilization, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes as a defined violation the 'ordering or excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.’”

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<sup>50</sup> Letter from: Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Lewis J. Bazakos, MS, DC, Past President, New York State Chiropractic Association, April 1, 1994.

## Psychologists, referral to

“Articles 132 and 153 of New York State Education Law, establish the licensed professions of chiropractic and psychology each as independent profession in that neither are linked to any other profession for referral, supervision, provider status for insurance reimbursement, or any other form of oversight.

“A licensee practicing within the lawful scope of his or her practice in either the chiropractic or psychology profession may recommend (suggest) to a patient that the services of any other independent profession be sought on the basis of observed symptoms that indicate referral to that professional. Such a recommendation constitutes a referral and carries no obligation on the part of the patient, the referring professional, or the professional to who the patient was referred. It is merely a suggestion that services outside the scope or beyond the competence of the treating professional may be warranted.

“...it is[,however,] a violation of Part 29.1(b)(3) to offer or receive any fee for the referral of a patient to or from a licensed professional.”<sup>51</sup>

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<sup>51</sup> Letter from Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Jeffrey E. Weber, MS, DC, Brooklyn, New York, September 25, 1991

## Rehabilitation, Use of the term

“Therapeutic exercise' is specifically a part of the practice of physical therapy, as defined in section 6731(a) of Education Law. However, it has been determined that such exercises, when used to assist in correcting vertebral subluxation or its effects, may be used by a chiropractor as part of his or her practice. This interpretation is consistent with section 6505 of Education Law, which states 'no definition of the practice of a profession shall be construed to restrain or restrict the performance of similar acts authorized in the definition of other professions.'

“Since any chiropractic care is 'rehabilitative,' and since that term is not protected, it may be used by chiropractors to describe service provided within their lawful scope of practice.”<sup>52</sup>

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<sup>52</sup> Letter from Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Robert J. Melillo, DC, East Islip, New York, March 6. 1992.

# Surface Electromyography (SEMG)

“Education Law, Section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provide that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the federal Food and Drug Administration or its successors, or by the department.'

“[Surface electromyography has not] been disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The Department has] sought the advice of the State Board for Chiropractic and [the Department] has concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above testing devices or adjunctive treatment modalities before utilizing them in his or her professional practice. Special certification in the use of any of the above devices is not required prior to their utilization in a professional practice, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes the 'ordering of excessive tests, treatments, or use of treatment facilities not warranted by the condition of the patient.’”<sup>53</sup>

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<sup>53</sup> Letter from: Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Katherine LeVien, RN, MPA, Dir. of Med. Services, Health Data Services, Islip, New York, May 23, 1991.

## Therapeutic Exercise

“Section 6551 of Education Law defines the practice of chiropractic as 'detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.'

“'Therapeutic exercise' is specifically a part of the practice of physical therapy as defined in section 6731(a) of Education Law. However, it has been determined that such exercises, when used to assist in correcting vertebral subluxation or its effects, may be used by a chiropractors as part of his or her practice. This interpretation is consistent with section 6505 of Education Law, which states 'no definition of the practice of a profession shall be construed to retrain or restrict the performance of similar acts authorized in the definition of other professions.'

“Also, please note that the Board of Regents Rules on Unprofessional conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training prior to provision of any professional practice. Special certification in the use of any professional practice is not required prior to utilization, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes as a defined violation the 'ordering or excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.'”<sup>54</sup>

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<sup>54</sup> Letter from: Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Lewis J. Bazakos, MS, DC, Past President, New York State Chiropractic Association, April 1, 1994.

# Thermography

“New York State Education Law permits chiropractors to use electrical devices ‘...approved by the board as being appropriate to the practice of chiropractic,’ (Education Law §6551, subdivision 3). That statutory authority is further implemented in a provision of the Commissioner's Regulations, 8 NYCRR §73.3 which reads as follows:

“Pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the Federal Food and Drug Administration or its successors (21 CFR Part 895, code of Federal Regulations, 1984 edition, Superintendent of Documents, US Government Printing Office, Washington, DC, 20404.) or by the department.

“[A review of] the pertinent provisions of the Code of Federal Regulations [does not reveal] that the Federal Food and Drug Administration has, at this time, disapproved the use of thermography or the use of the instruments where are used in thermography. Furthermore,... from research and consultation with the State Board for Chiropractic, it does not appear that the department has taken action to disapprove thermography, or the related devices for use by chiropractors. Therefore, it would appear that at this time, chiropractors may appropriately use thermography.”<sup>55</sup>

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<sup>55</sup> Letter from Frederick W. Burgess, Esq, Office of the Counsel, New York State Education Department to Arnold J. Kahn, Associate Examiner, New York State Insurance Department, March 13. 1991.

## Traction

“Education Law, section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provides that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the Federal Food and Drug Administration or its successors, or by the department.'

“[Traction has not been] disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The State Education Department has] sought the advice of the State Board for Chiropractic and [the Department has] concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above adjunctive treatment modalities before utilizing them in his or her professional practice.”<sup>56</sup>

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<sup>56</sup> Letter from Henry A. Fernandez, Esq, Deputy Commission for the Professions, Office of the Professions, New York State Education Department to: Lewis J. Bazakos, MS, DC, President, New York State Chiropractic Association, February 6, 1991.

# Transcutaneous Electrical Nerve Stimulation (TENS)

Chiropractors may order Transcutaneous Electrical Nerve Stimulation (TENS) units to be self-administered by patients so long as the following conditions are met:

- The use of TENS is warranted by the condition of the patient;
- The licensee is competent in the use of TENS;
- The licensee provides adequate training and monitoring of patient self-administration of TENS treatment;
- The specific TENS unit has not been disapproved by the federal Food and Drug Administration (FDA); and
- The practitioner complies with any label requirements on the specific TENS unit.<sup>57</sup>

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<sup>57</sup> Letter from Norman G. Cohen, MSW, Executive Secretary, New York State Board for Chiropractic to Ross P. Lanzafame, Esq, Harter, Secrest & Emery, representing the New York State Chiropractic Association, January 11, 1996.

# Ultrasound

“Education Law, section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provides that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the Federal Food and Drug Administration or its successors, or by the department.'

“[Ultrasound has not been] disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The State Education Department has] sought the advice of the State Board for Chiropractic and [the Department has] concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above adjunctive treatment modalities before utilizing them in his or her professional practice.”<sup>58</sup>

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<sup>58</sup> Letter from Henry A. Fernandez, Esq, Deputy Commission for the Professions, Office of the Professions, New York State Education Department to: Lewis J. Bazakos, MS, DC, President, New York State Chiropractic Association, February 6, 1991.

# Use of Titles

## Chiropractic Orthopedist, Chiropractic Roentgenologist

In 1983, the Office of the Counsel to the New York State Education Department issued an opinion on the use of the terms, “chiropractic orthopedist” and “chiropractic roentgenologist,” which advised:

“Both orthopedics and roentgenology are terms which according to the definitions in Webster's New Collegiate Dictionary, copyrighted 1980, are applicable to the practice of chiropractic as well as to the practice of medicine. Their use by a chiropractor, modified by the adjective 'chiropractic,' would not amount to an offer to practice beyond the scope permitted by Education Law, section 6551.

“Use of the terms 'chiropractic orthopedist' and 'chiropractic roentgenologist' would not be inherently misleading. Since diplomates in chiropractic orthopedics and chiropractic roentgenology exist within the profession, use of such terms would constitute a claim of special profession attainments, and should be restricted to those chiropractors who have attained diplomate status.”<sup>59</sup>

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<sup>59</sup> Letter from Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Jay B. Silverman, Esq, Medical Society of the State of New York, Lake Success, New York, April 12, 1991.

## Vascular Analyzer

Chiropractors may utilize any electrical device which is not disapproved by the federal Food and Drug Administration (FDA).

The [State] Board [for Chiropractic] views the vascular analyzer as an electrical device useful in differentiating vascular disease from neurological impairment and thereby useful to properly trained practitioners in the process of determining appropriateness of chiropractic treatment.<sup>60</sup>

Note: the US Department of Labor, Occupational Health and Safety Administration (OSHA) has issued rules effective 1992, concerning bloodborne pathogens and other bodily fluids, and regulations for handling and disposing of potentially contaminated and infectious waste material. The NYSCA has supplied members with a synopsis (“Chiropractic Office Bloodborne Pathogens Exposure Control Plan”) of the important aspects of the federal law, rules and regulations as they affect chiropractic practice. To obtain additional copies of the NYSCA Exposure Control Plan contact the NYSCA office.

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<sup>60</sup> Letter from Philip R. Johnston, Executive Secretary, New York State Board for Chiropractic to Carl Valvo, DC, Yonkers, New York, November 12, 1980.

# Vascular Diagnostic Testing and Referral to Physicians for Testing

- Chiropractors may do non-invasive vascular screening for the purpose of determining whether chiropractic treatment is contraindicated but since chiropractors cannot treat patients for cardio-vascular-renal disease, a chiropractor may not conduct or order testing for vascular disease as part of the service authorized under Educational Law, Section 6551, outside of the circumstances cited above.
- Chiropractors received training in the detection of vascular disease systems. As a result, it is not improper for a chiropractor to refer a patient to an appropriate practitioner, such as a physician, for comprehensive diagnostic testing for and treatment of vascular diseases.
- Chiropractors, like all other licensed health professionals, are subject to the Board of Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which prohibits excessive testing not warranted by the condition of the patient. If a chiropractor were to engage in diagnostic testing of a patient for a condition outside the lawful scope of chiropractic treatment, then that licensee may be in violation of Regents Rules.<sup>61</sup>

Note: the US Department of Labor, Occupational Health and Safety Administration (OSHA) has issued rules effective 1992, concerning bloodborne pathogens and other bodily fluids, and regulations for handling and disposing of potentially contaminated and infectious waste material. The NYSCA has supplied members with a synopsis (“Chiropractic Office Bloodborne Pathogens Exposure Control Plan”) of the important aspects of the federal law, rules and regulations as they affect chiropractic practice. To obtain additional copies of the NYSCA Exposure Control Plan contact the NYSCA office.

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<sup>61</sup> Letter from Frederick W. Burgess, Esq, Office of the Counsel, New York State Education Department to Skip Short, Esq, Short & Billy, November 20, 1995.

# Venipuncture and the Drawing of Specimens

- Chiropractors who have been trained to draw venous blood may lawfully do so for the purpose of obtaining samples for laboratory analysis.<sup>62</sup>
- Chiropractors may perform venipuncture in order to obtain appropriate samples for submission to laboratories.<sup>63</sup>

Note: the US Department of Labor, Occupational Health and Safety Administration (OSHA) has issued rules effective 1992, concerning bloodborne pathogens and other bodily fluids, and regulations for handling and disposing of potentially contaminated and infectious waste material. The NYSCA has supplied members with a synopsis (“Chiropractic Office Bloodborne Pathogens Exposure Control Plan”) of the important aspects of the federal law, rules and regulations as they affect chiropractic practice. To obtain additional copies of the NYSCA Exposure Control Plan contact the NYSCA office.

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<sup>62</sup> Memo from Robert D. Stone, Esq, New York State Education Department to Thomas E. Sheldon, Commissioner of Education, New York State Education Department, February 15, 1985.

<sup>63</sup> Letter from Philip R. Johnston, Executive Secretary, New York State Board for Chiropractic to Michael E. Keenan, DC, Plainview, NY, March 14, 1985.

# Venous Doppler Studies

“Education Law, Section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provide that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the federal Food and Drug Administration or its successors, or by the department.'

“[Venous Doppler studies have not] been disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The Department has] sought the advice of the State Board for Chiropractic and [the Department] has concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above testing devices or adjunctive treatment modalities before utilizing them in his or her professional practice. Special certification in the use of any of the above devices is not required prior to their utilization in a professional practice, but certainly would provide evidence of competency in any event.

“Utilization of any test or treatment modality is addressed in Regents Rules on Unprofessional Conduct, Part 29.2(a)(7), which includes the 'ordering of excessive tests, treatments, or use of treatment facilities not warranted by the condition of the patient.’”<sup>64</sup>

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<sup>64</sup> Letter from: Norman G. Cohen, MSW, Acting Executive Secretary, New York State Board for Chiropractic, New York State Education Department to: Katherine LeVien, RN, MPA, Dir. of Med. Services, Health Data Services, Islip, New York, May 23, 1991.

# Vibratory Therapy

“Education Law, section 6551(3), provides that 'a license to practice chiropractic shall not permit the holder thereof to... utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic.' Furthermore, Part 73.3 of the Regulations of the Commissioner of Education provides that 'pursuant to section 6551(3) of the Education Law, licensees may use any electrical devices essential to their practice provided such devices have not been disapproved by the Federal Food and Drug Administration or its successors, or by the department.'

“[Vibratory therapy has not been] disapproved by the federal Food and Drug Administration, nor has the Department deemed these devices to be inappropriate to the practice of chiropractic. [The State Education Department has] sought the advice of the State Board for Chiropractic and [the Department has] concluded that these devices may be used in the professional practice of any chiropractor licensed in New York State so long as they are used within the limitations of the scope of practice in Education Law, section 6551(1):

“The practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

“...please note that the Board of Regents Rules on Unprofessional Conduct holds that a practitioner may be in violation of Part 29.1(b)(9) if he or she is 'performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.' It is clearly the responsibility of the licensee to acquire appropriate education and training in the use of any of the above adjunctive treatment modalities before utilizing them in his or her professional practice.”<sup>65</sup>

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<sup>65</sup> Letter from Henry A. Fernandez, Esq, Deputy Commission for the Professions, Office of the Professions, New York State Education Department to: Lewis J. Bazakos, MS, DC, President, New York State Chiropractic Association, February 6, 1991.

## Certain Types of Advertising

Increasingly the New York State Board for Chiropractic has been receiving questions and concerns about certain types of advertising. The information provided in this brief article may help clarify some of the responsibilities we have as practitioners when we advertise. Beyond those rules and regulations we have that are specific to our profession in New York, we must also comply with the general Rules of the Board of Regents which are applicable to all licensed professionals in the state of New York. If you do not have a copy of these regulations you can view them online at [www.op.nysed.gov](http://www.op.nysed.gov) or call the New York State Board for Chiropractic at 1-518-474-3817 ext. 190. The specifics of advertising are discussed in Part 29 "Unprofessional Conduct". As described in Part 29 "Advertising or soliciting not in the public interest shall include, but not be limited to, advertising or soliciting that:

1. "is false, fraudulent, deceptive or misleading"
2. "guarantees any service"
3. "makes any claim relating to professional services or products or the cost or price therefore which cannot be substantiated by the licensee, who shall have the burden of proof"
4. "makes claims of professional superiority which cannot be substantiated by the licensee, who shall have the burden of proof"
5. "offers bonuses or inducements in any form other than a discount or reduction in an established fee or price for a professional service or product".

This list is for the most part pretty self explanatory. However, item number three may deserve a little more attention. If in the course of your advertising you state that your technique is effective a certain percentage of the time, it is up to you to be able to prove it. If some of the information in your advertising program is being provided to you from an outside source, then please verify that it is true and accurate because you, the practitioner, are ultimately held accountable for the accuracy of your advertising. If you have any questions on these rules and regulations or any other questions you may have, please contact the New York State Board for Chiropractic office at:

Boards' website at <http://www.op.nysed.gov/prof/chiro>

or

NY State Education Department  
Office of the Professions, State Board for Chiropractic  
89 Washington Ave., Albany, NY 12234-1000  
1-518-474-3817 ext.190

## Spinal Decompression

The New York State Board for Chiropractic frequently receives requests for information regarding spinal decompression from practicing doctors and from the general public. These treatments can become expensive and often are not covered by insurance. Coding for these services can also be confusing. There were a series of articles recently authored by James Edwards, D.C and Cynthia Vaughn, D.C., F.I.C.C. which were published in Dynamic Chiropractic from the middle of 2008 through March of 2009. These articles would be of interest for anyone considering decompression in their practice. These should not be considered a complete guide but rather a starting point.

Remember when completing your New York State continuing education requirements you need 36 hours every registration cycle and 12 of these hours must be in "patient communications, record keeping, and/or matters of law and/or ethics which contribute to professional practice in chiropractic and the health and safety, and/or welfare of the public". Random audits are conducted so please make sure your hours are complete. In 2005 the American Association of Medical Colleges approved mandatory background checks on all incoming students. Presently, chiropractic colleges rely on students to self report their criminal background. As the pressure increases on all health care providers for increased accountability, so will the standards of entrance requirements for those students entering into the health care fields. As a result, discussion is beginning on considering mandatory criminal background checks for chiropractic college applicants.

As Always, If you have any questions or concerns, please feel free to contact the New York State Board for Chiropractic at:

Boards' website at <http://www.op.nysed.gov/prof/chiro>

or

NY State Education Department  
Office of the Professions  
State Board for Chiropractic  
89 Washington Ave.  
Albany, NY 12234-1000  
1-518-474-3817 ext.190

## **Spinal Rehabilitation**

The most recent meeting of The New York State Board for Chiropractic was October 2009 in NYC. One of the Boards functions is to help chiropractors in New York State with the many questions they may have about licensing, scope of practice, advertising and other practice issues. At this meeting the Board discussed the challenges encountered when trying to endorse a licensee from another state (if the license was granted prior to part IV of the National Board Exam) and how the Federation of Chiropractic Licensing Boards may help facilitate this process. Spinal rehabilitation was also discussed. It was the opinion of the Board that spinal rehabilitation was within the scope of chiropractic in New York State and a majority of the board members felt that it could be used as a "stand alone" encounter with a patient. Meaning, that a spinal adjustment would not necessarily have to be performed on that visit.

As Always, If you have any questions or concerns, please feel free to contact the New York State Board for Chiropractic at:

Boards' website at <http://www.op.nysed.gov/prof/chiro>

or

NY State Education Department  
Office of the Professions  
State Board for Chiropractic  
89 Washington Ave.  
Albany, NY 12234-1000  
1-518-474-3817 ext.190

# Advertising or Soliciting for Patients

**Disclaimer:** Law, rules and regulations, not Alerts, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Alert may be interpreted as professional misconduct **only if** the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Alert.

In a competitive practice environment, violations in advertising or soliciting for patients are an increasing concern. While it is common practice for chiropractors to inform the public about the benefits of chiropractic care through media advertising and various promotional activities, you should be well informed about the appropriate use of promotional activities and materials in a professional practice. Generally, licensees must consider the manner in which information is presented to ensure it is not false, fraudulent, deceptive or misleading.

Keep in mind the following when advertising or soliciting patients:

- a. Repeated attempts to solicit a person who expresses hesitancy or reluctance to schedule an appointment may be perceived as harassment or intimidation, rather than well-meaning persistence.
- b. Refrain from using scare tactics or threats when attempting to solicit new patients or schedule continued care with current patients. Instead, offer your recommendations on evidence-based knowledge or clinical findings.
- c. You have the responsibility for substantiating any claims you make relating to professional services or products; the burden of this proof is with you, not your patient.
- d. Avoid claiming professional superiority in any area of practice. You may inform the public of any practice specialization credential(s) you have earned that are generally accepted by the profession.
- e. Written authorization and consent from a patient should be obtained prior to using his/her portrayal in a testimonial or demonstration of professional practice. You should include clear disclaimers pertaining to any statement or outcome of care.
- f. Maintain all advertising copy, transcripts, audio or videotapes for a period of at least one year after their last appearance, and make them available to the State Education Department, if requested.

You are responsible for the content of all advertisements placed in any medium. Remember that sales representatives from marketing, publishing or advertising agencies do not have the legal authority to regulate advertising by licensees; that authority is vested in the Board of

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Regents. Also, neither the State Board for Chiropractic nor the State Education Department can pre-approve advertisements; you should seek legal counsel from an attorney for such guidance.

Being overly aggressive in recruiting new patients or family members of patients, or in recommending the continuation of care for current patients, may constitute professional misconduct and be a basis for a professional disciplinary action against your license. Also, schemes such as contests, raffles, or discounts for new referrals may be in violation of Regents Rules on Unprofessional Conduct (as cited at the end of this Alert).

Penalties for advertising not in the public interest may range from being issued an Administrative Warning (AW) to revocation of your license. Failure to comply or repeated advertising violations may result in progressively severe disciplinary actions against your license.

Citations of Pertinent Law, Rules or Regulations:

- [Education Law](#), section 6509(9) - "*unprofessional conduct*"
  - [Regents Rules](#), part 29.1(b)(2) - "*exercising undue influence*"
  - [Regents Rules](#), part 29.1(b)(3) - "*referral fees*"
  - [Regents Rules](#), part 29.1(b)(11) - "*patient/client authorization of services*"
  - [Regents Rules](#), part 29.1(b)(12) - "*advertising not in the public interest*"
  - [Regents Rules](#), part 29.2(a)(2) - "*harassing, abusing, intimidating patients*"
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## Use of Internet Coupons

**Disclaimer:** Law, rules and regulations, not Alerts, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Alert may be interpreted as professional misconduct **only if** the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Alert.

In the case of coupons, including Internet coupons, licensed professionals who advertise these discounts should be cautious. Generally speaking, discounts cannot be limited to one segment of your practice without offering the same discount to the rest of your practice. Additionally, the fee you pay for these advertising services may constitute fee splitting. The offering of improper discounts and/or the improper sharing of professional fees may subject a licensee to charges of professional misconduct.

There are several definitions of unprofessional conduct in Part 29 of the Rules of the Board of Regents which may be implicated by the use of coupons, including paragraphs 29.1(b)(2), (3), (4), and (12).

Citations of Pertinent Law, Rules or Regulations:

- [Regents Rules](#), part 29.1(b)(2) - "*exercising undue influence*"
  - [Regents Rules](#), part 29.1(b)(3) - "*directly or indirectly soliciting*"
  - [Regents Rules](#), part 29.1(b)(4) - "*permitting any person to share in the fees*"
  - [Regents Rules](#), part 29.1(b)(12) - "*advertising or soliciting for patronage*"
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# Sexual Misconduct

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Sexual misconduct can be the basis of a charge of professional misconduct. Increasingly across many health professions, including chiropractic, patients are filing complaints alleging that licensees have engaged in some form of sexual misconduct. Since the primary techniques of chiropractic care are "hands-on" requiring the practitioner to be in close proximity to the patient's body, you should be aware of and anticipate situations that could be perceived as sexual misconduct, and take measures to prevent them.

Patient complaints of sexual misconduct may range from allegations of predatory behavior by licensees, inappropriate romantic relationships, or unexpected physical contact during provision of clinical procedures. Be aware that even if you have taken steps to prevent erroneous allegations, if a complaint is filed, these measures do not provide you with immunity from prosecution.

Good communication can prevent misunderstandings between people, especially health care professionals and their patients. Also, clear, concise documentation of all procedures provided and the reasons for them can form a record that may make the difference between credible and defensible actions and questionable, indefensible practice.

As you prepare to provide care to a patient, consider using every reasonable means available to you to provide the patient with the following information:

- what will be done
- how it will be done
- why it will be done, and
- request him or her to signal when ready.

Prepared text, posters, photographs, videos, computer programs and other tools may be effective in providing pertinent consumer information in addition to direct interaction with your patients. Proper communication not only prepares a patient for the procedure; it provides opportunity for the patient to share expectations, anxieties and personal histories that may have a direct bearing on necessary care, thus enabling you to provide that care with more sensitivity, responsiveness, and efficacy. Therefore, it is considered good practice to be

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sensitive to words and actions that may be offensive to some patients, and to modify those words and actions to ensure that patients receive the care they need.

To avoid any exploitation or coercion of a patient and to minimize the likelihood of a complaint alleging a boundary violation, you should avoid engaging any patient in a romantic relationship. If you do seek such a relationship with a particular patient, you should refer that patient to another licensee and document the reason for the referral.

Citations of Pertinent Law, Rules or Regulations:

- [Education Law](#), section 6509(9) - "unprofessional conduct"
- [Regents Rules](#), part 29.1(b)(2) - "exercising undue influence"
- [Regents Rules](#), part 29.1(b)(5) - "moral unfitness to practice"
- [Regents Rules](#), part 29.2(a)(2) - "patient/client harassment, abuse, intimidation"

# Record Keeping and Documentation

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Health care professionals must maintain proper documentation that accurately reflects the evaluation and treatment of the patient, consistent with the appropriate levels of care. Clinical notes serve several important purposes including:

- ensuring comprehensive and consistent patient care
- improving communication with other professionals
- facilitating reimbursement from insurance carriers
- helping to protect licensees against litigation
- standardizing clinical documentation in support of research.

As a competent and prudent practitioner, the initial entry in a patient record should ordinarily include a comprehensive case history documenting an examination of symptoms, past history, family history, past surgeries, traumas, and previous and current medication. You should maintain thorough and accurate records and notes that reflect your care, treatment and interaction with each patient.

Your patient records should include a consistent method for documenting results of care as well as patient outcomes. Forms such as the Oswestry, Neck Pain Index, Visual Analog Scales, or Pain Diagrams may assist in standardizing and objectifying your patients' subjective reports of conditions. These assessments also can be used to monitor the progress of your patients.

## Citations of Pertinent Law, Rules or Regulations:

- [Education Law](#), section 6509(9) - "unprofessional conduct"
  - [Public Health Law](#), section 18 - "access to records"
  - [Regents Rules](#), part 29.2(a)(3) - "failing to keep records"
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# Chiropractic Care and Animals

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New York State Education Law, section 6551(1) defines the practice of chiropractic as: detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column. [emphasis added]

Therefore, as a New York State licensed chiropractor, you are practicing beyond the lawful scope of chiropractic if you provide professional services, treat, or correct structural imbalance, distortion, or subluxations for the purpose of removing nerve interference in any living creature, other than a human being.

While there are postgraduate courses available to chiropractors for the study of animal anatomy and associated adjustive techniques, and there is a national organization dedicated to veterinary chiropractic, you should be aware that providing chiropractic care to animals is against the law. Also, even if a service is provided pro bono, i.e., without fee, you are accountable under the law. If someone requests you to help an animal, refer that person to a qualified veterinarian, some of whom are trained in adjustive techniques.

## Citations of Pertinent Law, Rules or Regulations:

- [Education Law](#), section 6509(9) - "unprofessional conduct"
  - [Education Law](#), section 6551(1) - "confines chiropractic care to the human body"
  - [Regents Rules](#), part 29.1(b)(9) - "practicing beyond the lawful scope"
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# Multidisciplinary Practices

**Disclaimer:** Law, rules and regulations, not Alerts, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Alert may be interpreted as professional misconduct **only if** the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Alert.

The health care professions constantly evolve. A variety of forces, sometimes in competition with one another, continue to shape and reshape the methods, procedures and the manner in which health care is provided to the public.

The practitioners who provide the care within that environment also must evolve in terms of knowledge, competencies and techniques. Change poses both opportunity and challenge in ensuring provision of care by competent, knowledgeable, and ethical professionals.

One change emerging in the contemporary practice environment is the increased collaboration of licensees from various professions practicing outside of organized facility settings (i.e., settings regulated by the State Department of Health). Most notably, licensees in the professions of medicine and chiropractic have begun to converge for the expressed purpose of delivering comprehensive services to patients whose conditions warrant a joint approach.

Collaborative arrangements between professionals have the potential for providing effective care in a convenient delivery system for patients. It is important, however, that all licensees participating in the collaboration uphold their respective professional responsibilities.

You should be aware of the following considerations when practicing or contemplating a practice with licensees from other professions:

## Scope of Practice

- Practice only within the scope of your license.
- Refuse any delegation of responsibilities by your employer that is outside the scope of your chiropractic license.
- Only delegate duties and responsibilities that require a license in chiropractic or any other profession to a person who is duly licensed.

## Professional Practice Entities and Employing Licensees

- Avoid employing licensees in medicine or being the controlling entity in a practice with licensees in medicine or any other profession authorized to perform procedures beyond
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the scope of your chiropractic license, which includes physical therapy or nursing. With the exception of medicine, dentistry and veterinary medicine, the law allows for licensees in health professions to form a Professional Limited Liability Company (PLLC) or Partnership (PLL) together as a multidisciplinary practice. It is advisable to seek legal counsel on the formation and operation of such entities to ensure compliance with the law.

- You may hire licensed massage therapists, certified nutritionists or certified dieticians to work in your practice as employees, since your license authorizes you to perform the services provided by these practitioners.
- Remember, you are responsible for the acts of all your employees and staff, licensed and unlicensed.
- If you own a professional practice, you are responsible for overseeing the patient care provided by all associates, other licensees, technicians, and everyone else employed in your practice. If you are an employee of another licensee, chiropractor or physician, it is the employer who bears ultimate responsibility for overseeing the patient care provided in that practice. Therefore, while you remain responsible for the direct care you provide to patients, "absentee owners" may be subject to professional misconduct violations, as well.

### **Referrals**

- Avoid making direct referrals to physical therapists since they are authorized to practice only on referrals from physicians, dentists, podiatrists or nurse practitioners. If you feel your patient may benefit from services provided by a physical therapist, inform your patient of the referral requirement. You may assist him or her to locate a licensed professional who can make a direct referral.

### **Collaborating with Physicians**

- If you are offered a position in a medical practice, remember that the owner/physician must have some level of professional competence in the services you will be providing. As the practice owner, the physician is responsible for appropriately identifying patients you may be able to help, how you can help them, what contraindications there may be to your services, and what outcomes to expect so your work may be monitored. Be sure the owner/physician of the practice is trained as an osteopath, physiatrist, or orthopedic specialist, or has had additional training in manual therapy before accepting an offer of employment in such practice.
  - You may not work for or with a physician as an independent professional sub-contractor
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or consultant (see "fee-splitting" cited at the end of this Alert). If you are employed by a physician, you cannot be authorized to "direct patient care" or be given "complete control" over patients in that medical practice beyond your scope as a Doctor of Chiropractic. However, you remain responsible for the chiropractic care you provide patients. If your physician employer directs you to do something contrary to your clinical judgment, you should exercise that judgment in resolving the directive with your employer.

- You may provide x-ray services for physician's patients upon their referral, as this service is within your scope of practice. However, you cannot operate as a free-standing x-ray facility, and therefore should avoid establishing a process where the physician refers patients to you on a continuous and systematic basis for x-ray services only, without any further chiropractic care provided.

**Citations of Pertinent Law, Rules or Regulations:**

- [Education Law](#), section 6509(2) - "Practicing fraudulently, incompetently or negligently"
  - [Education Law](#), section 6509(9) - "unprofessional conduct"
  - [Education Law](#), section 6509-a - "fee splitting"
  - [Regents Rules](#), part 29.1(b)(3) - "referral fees"
  - [Regents Rules](#), part 29.1(b)(4) - "fee splitting"
  - [Regents Rules](#), part 29.1(b)(9) - "practicing beyond the lawful scope or beyond one's competency"
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# Performing Independent Chiropractic Examinations (ICEs)

**Disclaimer:** Law, rules and regulations, not Alerts, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Alert may be interpreted as professional misconduct **only if** the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Alert.

There are a number of considerations of which you should be aware when performing independent chiropractic examinations (ICE):

You should be competent to provide such services. You may wish to complete an acceptable course of specialized training in the practice area known as "Insurance Consulting" or specifically, "Independent Chiropractic Examinations" before accepting such responsibilities.

When documenting an ICE, your narrative report should note the absence of any prior professional relationship with the patient you examine.

Your report should reflect only those procedures you performed during the examination and the results obtained.

The procedural content of an ICE should be sufficient to enable you to arrive at an appropriate physical assessment, and diagnosis/prognosis of the patient.

From a risk management perspective, the presence of an independent witness during the ICE is recommended to avoid allegations of inappropriate behavior or, to help resolve a situation where there are differing recollections of what took place during the examination.

When making a statement regarding the patient's disability/diagnosis/prognosis, it is advisable that your opinion be based upon the patient's history, objective findings on examination, the diagnostic testing results, and the documentation available for review.

Citations of Pertinent Law, Rules or Regulations:

- [Education Law](#), section 6509(2) - "Practicing fraudulently, incompetently or negligently"
  - [Education Law](#), section 6509(9) - "unprofessional conduct"
  - [Regents Rules](#), part 29.1(b)(6) - "filing a false report"
  - [Regents Rules](#), part 29.1(b)(9) - "practicing beyond one's competency"
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# Understanding Differences Between Professional Practice Entities and General Business Entities

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Generally, licensed professionals may not set up a general business corporation (GBC) to provide professional services. Except where specifically authorized by law, a general business corporation may not:

- provide professional services to the public;
- exercise any judgment over the delivery of professional services;
- have employees who offer professional services to the public;
- hold itself out as offering professional services; or
- share profits or split fees with licensed professionals.

## Fee splitting/profit sharing

Avoid business arrangements where profits and/or fees, generated by the provision of your professional services, are shared or split with non professional persons or business entities. Board of Regents Rule 29.1 (b) (4) states that unprofessional conduct shall include; permitting any person to share in the fees for professional services, other than: a partner, employee, associate in a professional firm or corporation, professional subcontractor or consultant authorized to practice the same profession, or a legally authorized trainee practicing under the supervision of a licensed practitioner. This prohibition shall include any arrangement or agreement whereby the amount received in payment for furnishing space, facilities, equipment or personnel services used by a professional licensee constitutes a percentage of, or is otherwise dependent upon, the income or receipts of the licensee from such practice, except as otherwise provided by law with respect to a facility licensed pursuant to Article 28 of the Public Health Law or Article 13 of the Mental Hygiene Law.

Chiropractors are cautioned to carefully review these prohibitions when considering any proposed business arrangements.

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Violation of this prohibition may result in professional misconduct charges being brought by the Office of Professional Discipline. For more information on the professional discipline process please consult the Professional Misconduct Enforcement web page: [Professional Misconduct Enforcement](#)

For more information please consult the Corporate Entities for Professional Practice web page: [Corporate Entities: Introduction](#)

**The following statutes, rules and regulations are applicable:**

- [Education](#): Education Law, Title 8, Article 130, Section 6507; Regulations of the Commissioner of Education, Part 59, Section 59.10; Board of Regents Rule 29.1
- [Other Laws](#): Business Corporation Law, Articles 4, 15 and 15-A; Limited Liability Company Law, Articles 12 and 13; and Partnership Law.

# Using the Term "Functional Medicine" in Advertising is Inappropriate

**Disclaimer:** Law, rules and regulations, not Alerts, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Alert may be interpreted as professional misconduct **only if** the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Alert.

There are various educational sources, both internet-based and non-internet-based, offering certificate and non-certificate programs in functional medicine for chiropractors. However, although segments of the functional medicine body of knowledge may be consistent with both a chiropractor's training and portions of the chiropractic scope of practice, its overall patient treatment approach, as well as the term "medicine" is not within the chiropractic scope of practice. Thus, chiropractors should refrain from using the term functional medicine in their advertising.

Use of the term functional medicine in chiropractic advertising could be misleading to the public and, therefore, considered advertising not in the public interest. Penalties for advertising not in the public interest may range from being issued an Administrative Warning (AW) to revocation of your license. Failure to comply or repeated advertising violations may result in progressively severe disciplinary actions against your license.

**The following statutes, rules and regulations are applicable:**

- [Regents Rules](#), part 29.1(b)(9) - "practicing beyond the lawful scope"

# Functional Medicine Courses are not acceptable for Continuing Education Purposes

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There are various educational sources, both internet-based and non-internet based, offering continuing education courses in functional medicine for chiropractors. However, although segments of the functional medicine body of knowledge may be consistent with both a chiropractor's training and portions of the chiropractic scope of practice, its overall patient treatment approach, as well as the term "medicine" is not within the chiropractic scope of practice. Thus, functional medicine courses are not acceptable for satisfying your triennial registration requirement of 36 hours of continuing education.

**The following statutes, rules and regulations are applicable:**

- [Regents Rules](#), part 29.1(b)(9) - "practicing beyond the lawful scope"
- [Regulations of the Commissioner](#), part 73.5(c)(i)(b) - "acceptable formal continuing education"

# Weight Loss Management Services

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Chiropractors licensed in New York State may provide nutritional advice within their chiropractic scope of practice as part of an overall treatment plan for a chiropractic patient. Under Education Law §6551(1), chiropractors licensed in New York State may detect and correct by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

Chiropractic and nutrition/dietetics are two distinct and separate professions whose respective practice is authorized in Title VIII of the New York State Education Law. Education Law §6551(3) states that chiropractors may provide nutritional services and products as part of the practice of chiropractic: “[n]othing herein shall be construed to prohibit a licensed chiropractor who has successfully completed a registered doctoral program in chiropractic, which contains courses of study in nutrition satisfactory to the department, from using nutritional counseling, including the dispensing of food concentrates, food extracts, vitamins, minerals, and other nutritional supplements approved by the board as being appropriate to, and as a part of, his or her practice of chiropractic.”

Therefore, chiropractors licensed in New York State, who meet the educational requirements in Education Law §6551(3), may only make determinations as to the necessity of nutritional services and products for a chiropractic patient within the lawful scope of practice as defined in Education Law §6551(1).

Thus, in New York State, when a chiropractor provides weight loss management independent of chiropractic care, even to his or her existing patients, he or she is not practicing within the chiropractic scope of practice.

Weight loss management services, as part of nutritional counseling, must conform to the definition of the chiropractic scope of practice as defined in Education Law §§6551(1) through (3). The laws, rules and regulations pertaining to the practice of chiropractors can be found at [Laws, Rules & Regulations for Chiropractic](#).

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## Practice Alert from the New York State Education Department

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The following statutes, rules and regulations are applicable:

- [Regents Rules](#), part 29.1(b)(9) - "practicing beyond the lawful scope"
- [Regents Rules](#), part 29.1(b)(12) - "advertising not in the public interest"

# Practice of Treating Peripheral Neuropathy

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Chiropractors licensed in New York must practice within their chiropractic scope of practice as part of an overall treatment plan for a chiropractic patient. Under Education Law §6551(1), the practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

According to the National Institutes of Health, peripheral neuropathy refers to the many conditions that involve damage to the peripheral nervous system, the vast communication network that sends signals between the central nervous system (the brain and spinal cord) and all other parts of the body (<https://www.ninds.nih.gov/Disorders/Patient-Caregiver-Education/Fact-Sheets/Peripheral-Neuropathy-Fact-Sheet>). The treatment of peripheral neuropathy does not fall within the scope of New York chiropractic practice. Comorbidities such as peripheral neuropathy do not necessarily exclude chiropractic treatment or treatment of concurrent conditions that fall within the profession's scope.

Thus, in New York, chiropractors who treat peripheral neuropathy unrelated to the spine are practicing beyond the chiropractic scope of practice. In this instance, the chiropractor may be subject to a charge of unprofessional conduct for practicing beyond their lawful scope (see Board of Regent Rules 29.1 (b) (9)).

## Citations of Pertinent Law, Rules or Regulations:

- Education Law §6509(2) – defines professional misconduct as “practicing the profession fraudulently, beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion or negligence or incompetence on more than one occasion.” [Part 29, Unprofessional Conduct](#)
  - Education Law §6509(9) - defines professional misconduct as “Committing unprofessional conduct, as defined by the board of regents in its rules or by the commissioner in regulations approved by the board of regents.” [Part 29, Unprofessional Conduct](#)
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## Practice Alert from the New York State Education Department

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- Board of Regents Rules Part 29.1(b)(9) – defines unprofessional conduct as "practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, or performing without adequate supervision professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger." [Part 29, Unprofessional Conduct](#)

# Practice of Treating Concussion

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Chiropractors licensed in New York must practice within their chiropractic scope of practice as part of an overall treatment plan for a chiropractic patient. Under Education Law §6551(1), the practice of the profession of chiropractic is defined as detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column.

According to the Centers for Disease Control and Prevention, a concussion is a type of traumatic brain injury (TBI) caused by a bump, blow, or jolt to the head or by a hit to the body that causes the head and brain to move rapidly back and forth ([https://www.cdc.gov/headsup/basics/concussion\\_what\\_is.html](https://www.cdc.gov/headsup/basics/concussion_what_is.html)). The treatment of concussion does not fall within the scope of New York chiropractic practice. Comorbidities such as concussion do not necessarily exclude chiropractic treatment or treatment of other concurrent conditions that fall within the profession's scope.

When the history, examination and assessment of a patient leads to the working diagnosis of a concussion, the chiropractor is required to refer the patient to an appropriate medical provider. Chiropractors may not manage the diagnosis and treatment of a concussion patient. A chiropractor may treat the associated spinal and soft tissue injuries sustained during a concussive event concurrent with a medical provider overseeing the concussion treatment. Therefore, a chiropractor cannot issue a return to play or work clearance.

## Citations of Pertinent Law, Rules or Regulations:

- Education Law §6509(2) – defines professional misconduct as practicing the profession fraudulently, beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion or negligence or incompetence on more than one occasion.” [Article 130 General Provisions Subarticle 3, Professional Misconduct](#)
  - Education Law § 6509(9) - defines professional misconduct as “Committing unprofessional conduct, as defined by the board of regents in its rules or by the commissioner in regulations approved by the board of regents.” [Rules of the Board of](#)
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[Regents](#)

- Board of Regents Rules Part 29.1(b)(9) – defines unprofessional conduct as "practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, or performing without adequate supervision professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger." [Part 29, Unprofessional Conduct](#)

# Use of Unlicensed Individuals

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Unlicensed individuals, who may also be referred to as unlicensed aides, may not perform tasks that are within the chiropractic scope of practice, which include tasks that require professional or clinical judgment."

Tasks that may be performed by unlicensed individuals include, but are not limited to, general office work, preparing equipment, assisting the chiropractor in providing treatment, and the collection and recording of patient data under the direct supervision of a chiropractor. However, the unlicensed individual may not initiate, adjust or perform treatment programs, assume responsibilities for planning patient care, or interpret referrals.

Pursuant to Education Law §6509(7), unprofessional conduct by a licensee, like a chiropractor, includes permitting, aiding or abetting an unlicensed individual to perform activities/tasks that require a license. Additionally, under 29.1(b)(10) of the Commissioner's regulations, unprofessional conduct by a licensee includes delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience or by licensure to perform them.

## Citations of Pertinent Law, Rules or Regulations:

- [Education Law §6509\(7\)](#) – "Permitting, aiding or abetting an unlicensed person
  - [Education Law §6509\(9\)](#) - "unprofessional conduct"
  - [Commissioner's Regulations §29.1\(b\)\(10\)](#) - "delegating professional responsibilities to a person..."
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# Acupuncture

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Only Chiropractors who are also licensed acupuncturists may provide acupuncture services to their patients.

Pursuant to Education Law §6551, the scope of practice for the profession of chiropractic does not authorize the use or practice of acupuncture to treat diseases, disorders, or dysfunctions of the body. However, chiropractors who also licensed under Article 160 of the Education Law as an acupuncturist may offer such services under that license, but not as a chiropractor.

# Use of Diagnostic Ultrasound by a Chiropractor

**Disclaimer:** Law, rules and regulations, not Alerts, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Alert may be interpreted as professional misconduct **only if** the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Alert.

Pursuant to Education Law §6551(3) and Part 73 of the Commissioner's Regulations, diagnostic ultrasounds may be used for the detection and diagnosis of conditions that are treatable by a licensed chiropractor. However, a licensed chiropractor must have appropriate training and competency prior to utilization of a diagnostic ultrasound in the course of their practice.

## Dry Needling

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The Cleveland Clinic describes dry needling as a treatment used for pain and movement issues associated with myofascial trigger points. With this technique, a provider inserts thin needles into or near trigger points. The needles stimulate muscles, which causes them to contract or twitch. This helps relieve pain and improve range of motion.

Currently, there is no official New York State definition of dry needling. However, pursuant to their scope of practice, licensed acupuncturists are authorized to provide dry needling services. In addition, licensed physicians and dentists may apply for a certification to use acupuncture pursuant to Commissioner's Regulation §60.9.

Education Law §8211 defines the practice of acupuncture in relevant part as "treating, by means of mechanical, thermal or electrical stimulation effected by the insertion of needles or by the application of heat, pressure or electrical stimulation ... "

Education Law §6551 defines the scope of practice for chiropractors as, "detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment, or subluxation of or in the vertebral column." Based on the foregoing, there is no authority for chiropractors to treat by the insertion of needles. Therefore, they are precluded from performing dry needling in New York State.