

IDAHO BOARD OF CHIROPRACTIC PHYSICIANS
Bureau of Occupational Licenses
700 West State Street, P.O. Box 83720
Boise, ID 83720-0063

Board Meeting Minutes of 10/25/2013

BOARD MEMBERS PRESENT: James E. Hollingsworth, D.C. - Chair
Michael Troy Henze, D.C.
Charles H. Coiner – by phone
Mary Jo White, D.C.
Kathleen Joann McKay, D.C.

BUREAU STAFF: Tana Cory, Bureau Chief
Dawn Hall, Administrative Support Manager
Lori Peel, Investigative Unit Manager
Jean Uranga, Board Prosecutor
Maurie Ellsworth, Legal Counsel
Marilyn London, Technical Records Specialist

OTHERS PRESENT: Dr. Jason West
Dr. Shannon Gaertner-Ewing
Dr. Patrick Mayo
Ryan Fitzgerald, IACP
Roger Brown, Governor's Office
Molly Steckel, IMA
Nancy Kerr, Board of Medicine

The meeting was called to order at 9:00 AM MDT by James E. Hollingsworth, D.C.

APPROVAL OF MINUTES

Dr. Henze made a motion to approve the minutes of July 26, 2013. It was seconded by Dr. White. Motion carried.

PEER REVIEW

Dr. Mayo reviewed his role as the Peer Review Chair and discussed with the Board clarifications to the process for peer review cases. Dr. Hollingsworth, Peer Review Liaison asked to be replaced because of a conflict. Dr. McKay moved that the Board appoint Dr. Henze as the Peer Review Liaison and herself as the

backup in cases where Dr. Henze is recused. It was seconded by Dr. White. Motion carried. Dr. Hollingsworth requested that Dr. Mayo work on a flow chart diagram of the peer review process and update the peer review manual.

LEGISLATIVE REPORT

Ms. Cory said that the deadline for any statute changes is August 1st and for any rule changes is August 15th.

FINANCIAL REPORT

Ms. Cory gave the financial report, which indicated that the Board has a cash balance of \$135,418.65 as of September 30, 2013.

DISCIPLINE

Ms. Uranga presented a memorandum regarding case numbers CHI-2014-3, CHI-2014-2, CHI-2014-1, CHI-2014-5, and CHI-2014-4. Dr. Henze recused himself from discussion on cases CHI-2014-2 and CHI-2014-1. After discussion, the Board gave recommendations for appropriate discipline.

Ms. Uranga presented a Stipulation and Consent Order in case CHI-2013-6. Dr. White made a motion to approve the Stipulation and Consent Order and allow the Board Chair to sign on behalf of the Board. It was seconded by Dr. McKay. Motion carried.

INVESTIGATIVE REPORT

Ms. Peel gave the investigative report, which is linked above.

FOR BOARD DETERMINATION

Dr. White made a motion to approve the Bureau's recommendation and authorize closure in case I-CHI-2014-4. It was seconded by Dr. McKay. Motion carried.

Dr. White made a motion to approve the Bureau's recommendation and authorize closure in case I-CHI-2014-5. It was seconded by Dr. McKay. Motion carried.

DISCIPLINE

Ms. Peel presented a Continuing Education Settlement Order for case CHI-2014-7. Dr. Henze made a motion to approve the Continuing Education Settlement Order for case CHI-2014-7. It was seconded by Dr. White. Motion carried.

OLD BUSINESS

The Board reviewed the “To Do” list of Board items.

NEW BUSINESS

SUB-COMMITTEE REPORT

Dr. Henze read a report from the sub-committee made up of himself, Dr. Nelson and Dr. West. The committee used the information from the September 26, 2006 Opinion Letter from Attorney G. Lance Nalder. The report included information on the history of the extent and limits of the scope of practice of chiropractic in relation to the administration of injectable vitamins and nutrients in the State of Idaho and the past rulings and/or interpretations of the Idaho State Board of Chiropractic Physicians. These documents are attached below as Attachments A-D.

Mr. Coiner disagreed with part of the report that addressed Idaho Code 54-704 and Rule 020. He stated that rules cannot expand upon the law. Idaho Code 54-704(b)(i) states, and Idaho Code 54-704(b)(ii) states, “Caution: Federal Law Prohibits Dispensing Without Prescription” ; “Caution: Federal Law Restricts This Drug To Use By or On The Order Of A Licensed Veterinarian”.

Dr. West read a report on the Idaho Chiropractic Practice Act Timeline from 1895 through 2013 and referenced copies of letters regarding chiropractic.

Ms. Cory informed the Board that if the law needs to be clarified that, as part of the executive branch, the Board should discuss a proposed law change with other state agencies, such as the Board of Medicine and the Board of Pharmacy, since this is one of the expectations of the Governor’s Office prior to submission. She also noted that scope of practice issues are generally carried to the Legislature by the association, not the Board.

Dr. Gaertner-Ewing, past Board Chair, addressed the Board on the history of the adoption of Rule 020 by the Legislature. There were meetings with the Medical and Pharmacy Boards, Associations and Legislators. The proposed revisions to the law were given to the Chiropractic Association to pursue law changes, but the law was never changed.

Mr. Coiner moved that the Board request that the Chiropractic Association pursue statutory changes that clarify whether current practices are allowed. There was no second. Motion died.

Dr. Henze moved that the Board accept Rule 020 as written and answer future questions seeking clarification by stating that currently Chiropractic Physicians licensed in the state of Idaho may certainly administer vitamins, minerals, herbal,

etc. in all their forms, including but not limited to intramuscular and intravenous injections. Dr. White seconded the motion. There was discussion from Mr. Coiner, who disagreed. Mr. Ellsworth advised the Board that, contrary to Dr. West's opinion, Idaho Code 54-705(k)(4) does not apply to chiropractors or grant them any authority. He informed the Board that following the adoption of Rule 020, the Board formally took the position that chiropractors are not allowed to use prescription or legend drugs. He advised the Board that Idaho Code 704(2)(6) is clear in its prohibition of chiropractors' use of the substances mentioned in the statute even though the language may be antiquated, and that the Board cannot adopt an ambiguous rule to clarify a statute whose intent is already clear even though its language referring to prescription drug labels is out of date. The vote was: Dr. White, aye; Dr. McKay, aye; Dr. Henze, aye; Dr. Hollingsworth, aye; and Mr. Coiner, nay. Motion carried.

Dr. White moved that the Board appoint Dr. Gaertner-Ewing, Dr. West and Dr. Henze to propose a formulary process that includes education and involves nutrients as addressed in Rule 020 and to invite other Boards and interested parties to participate in the process. Dr. McKay seconded the motion. Motion carried.

CONTINUING EDUCATION COURSES

The Board reviewed the continuing education trainings. Dr. Henze moved to approve the following trainings. It was seconded by Dr. White. Motion carried.

IACP – Eliminate Chiropractic Billings, Coding, Documentation, Collections & Compliance Confusion – 6 hours

IACP – District 3 Meetings for 3 courses - 1.5 hours each

Kinesiology Taping Fundamentals and Intermediate Course – 16 hours

How to Manage the Psychological and Clinical Aspects of Patient Care – 15 hours

International Chiropractic Association/California – 12 hours

CORRESPONDENCE

The Board reviewed a letter from a chiropractor asking if dry needling certification courses and trigger point procedure fall under the chiropractor scope of practice. Dr. Henze moved to send a letter stating that dry needling and trigger point is not part of the chiropractor scope of practice. It was seconded by Dr. White. Motion carried.

NATIONAL BOARDS OF CHIROPRACTOR EXAMINERS ETHICS EXAM

Dr. White gave a report on the NBCE Ethics and Boundaries Examination that the Board may use for continuing education in disciplinary cases. This is an essay test that covers Boundary Violations, Fraud, Doctor's Duties and Office Protocols and Unprofessional Conduct. The Board can customize each examination for the specific licensee to be tested. Dr. White will follow up with NBCE regarding the cost for the exam and possible training.

CONTINUING EDUCATION AUDITS

The Board reviewed continuing education audits.

NEXT MEETING was scheduled for January 10, 2014 at 9:00 A.M. MST.

ADJOURNMENT

Dr. White made a motion to adjourn the meeting at 12:40 P.M. MDT. It was seconded by Dr. Henze. Motion carried.

James E. Hollingsworth, D.C., Chair

Michael Troy Henze, D.C.

Charles H. Coiner

Mary Jo White, D.C.

Kathleen Joann McKay, D.C.

Tana Cory, Bureau Chief

Attachment A:

10/19/2013 Subcommittee report



**Henze Chiropractic
& Wellness**
Get Well. Stay Well. Age Well.

9211 W Overland Road
Boise, Idaho 83709

T 208.377.8777
F 208.377.0796
michael.henze.dc@gmail.com

October 19, 2013

Idaho State Board of Chiropractic Physicians
700 West State Street
Boise, ID 83702

Re: Subcommittee Report on History of the extent and limits of the scope of practice of Chiropractic in relation to the administration of injectable vitamins and nutrients in the State of Idaho and the past rulings and/or interpretations of the Idaho State Board of Chiropractic Physicians (ISBCP) regarding the same.

Dear Board,

Thank you for the opportunity to review the above and offer this summary and recommendation to the current Idaho State Board of Chiropractic Physicians (ISBCP) as noted below.

Summary of proceedings, interpretations and rule changes regarding whether Chiropractic Physicians may administer injectable nutrient therapy under Idaho law:

On September 26, 2006, the Idaho Association of Chiropractic Physicians (IACP) secured the services of Attorney G. Lance Naider, to provide an Opinion Letter on this very issue.

In his 6 page letter he reviews the following:

- what constitutes a "legend drug" or "prescription drug",
- who has the authority to define a "legend drug",
- what constitutes a "nonprescription drug",
- what constitutes a "scheduled drug",
- what constitutes a "practitioner" under Idaho State Law,
- who has the authority to define the scope of Chiropractic practice in the State of Idaho,
- whether the Idaho Medical Board (IMB) specifically has the authority to control or regulate Chiropractic Physicians,
- who has the authority (and what by what law) to determine whether or not a Chiropractic Physician may prescribe or administer a "legend drug", a subset thereof, or any injectable vitamin,
- whether or not Chiropractic Physicians have the ability by Idaho State Law to administer, direct, dispense or suggest to the patient that the patient use any substance which is a "legend drug",
- and what exactly "administer", "dispense" and "deliver" mean legally in this circumstance,
- whether clarification of the then current Idaho State Chiropractic Act was warranted pursuant to this issue, 10/19/2013
- whether the ISBCP may establish rules for the administration of "legend drug",
- what exactly constitutes a "rule" in Idaho State Law,
- what is a "temporary rule", and when and how is it to be utilized,
- then his conclusion.

In summary, injectable vitamins, minerals, herbs, etc. are considered "legend drugs", because they have been determined by the Idaho State Board of Pharmacy (ISBP), the state agency with the authority to define or determine if a "drug" is a "legend drug", that "legend drugs" must be dispensed by prescription only.

Second, under Idaho State Law, Chiropractic Physicians are "practitioners" within the purview of the Idaho Pharmacy Act, and the State Statute and the regulatory agency ISBCP.

Further, the IMB has no authority pursuant to I.C. 54-1806, to promulgate rules or regulations to control or regulate Chiropractic Physicians. The Act I.C. 54-1806 and the rules established under it, do not pertain to nor govern Chiropractic Physicians, which is made abundantly clear in I.C. 54-704, which states:

"Chiropractic Practice, as herein defined is hereby declared not to be the practice of medicine...physicians licensed pursuant to this chapter shall not be subject to the provisions of chapter 18, title 54, Idaho Code, nor liable to any prosecution thereunder, when acting within the scope of practice as defined in this chapter."

Next, Mr. Nalder states that although in I.C. 54-704, there is clear prohibition of Chiropractic Physicians from directing or suggesting to the patient that the patient use any substance which is a "legend drug", there is no explicit prohibition in I.C. 54-704 preventing Chiropractic Physicians from administering "legend drugs" in their offices, nor is there any affirmative authorization to do so. Therefore, clarification was warranted and necessary.

Mr. Nalder further states that pursuant to Idaho State Law, the ISBCP has the authority as a State Agency to make a temporary rule to address the above matter of the administration of injectable vitamins by Chiropractic Physicians that warranted clarification back in 2006. Then this temporary rule would need to be ratified and/or replaced by a final rule by the State Legislature or tried in the State Courts, as provided in I.C. 67-5226.

Mr. Nalder then summarizes that the ISBCP has the authority and responsibility to administer the I.C. 54-704 (State Chiropractic Practice Act) and promulgate rules to more clearly address the issue of the administration of injectable vitamins Chiropractic Physicians, plus there has been a history of the ISBCP reasonably allowing the use of injectable nutrient therapy and "clinical nutritional methods" since at least 2001, and the State Legislature has not seen fit to overrule this interpretation as of September 2006. Also he states the ISBCP has expertise in this area, and deference should be given to its knowledge of chiropractic practices.

On July 24, 2013, Mr. Nalder produced a Supplemental Opinion Letter at the request of the IACP. In that letter, he noted that in 2008, consistent with his prior legal opinion, the ISBCP clarified the Scope of Practice language set forth in paragraph 20. The administrative rule now reads:

SCOPE OF PRACTICE (RULE 20).

Clinical nutritional methods as referenced in Section 54-704, Idaho Code, include but are not limited to the clinical use, administration, recommendation, compounding, prescribing, selling, and distributing vitamins, minerals, botanical medicine, herbals, homeopathic, phytonutrients, antioxidants, enzymes, and glandular extracts, durable and non-durable medical goods and devises in all their forms. (4-2-08)

Mr. Nalder points out that the words "include but are not limited to", "administration", and "in all their forms", were specifically added to clarify the "clinical nutritional methods" referenced in I.C. 54-704, and includes intramuscular and intravenous injections. This rule change was presented to, adopted and ratified by the Idaho Legislature without objection, and adopted unanimously, with no qualifier placed on it.

He further reiterates that the Idaho Pharmacy Act does not prohibit Chiropractic Physicians from prescribing "legend drugs", and that the IMB has no authority to promulgate rules and/or regulations so as to control or regulate Chiropractic Physicians.

The opinion of this sub-committee:

It is the opinion of this sub-committee that the ISBCP should make no further action on this rule or its interpretation, as it seems that it has been fully addressed by the ISBCP back in 2008. What seems strange to us is that our current legal counsel was not aware of this issue being fully addressed and strongly advised us against clearly answering those inquiring on the matter. It seems just as strange to us that the past legal counsel to the ISBCP (and apparent current legal counsel to the Idaho Medical Association) was of the same position and lack of complete awareness on this sensitive issue.

It is the opinion of this sub-committee that the ISBCP should answer all formal inquiries to the ISBCP into this matter clearly stating that currently Chiropractic Physicians licensed in the State of Idaho may certainly administer vitamins minerals, herbal, etc. in all their forms, including but not limited to intramuscular and intravenous injections.

Thank you for the opportunity to review this matter and present this opinion to the ISBCP.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Henze", followed by "D.C." written in a smaller, less legible script.

Michael Henze, D.C.
Sub-Committee Chair

Idaho Chiropractic Practice Act Timeline

1895 – Chiropractic discovered by DD Palmer

1898 – Bayer Pharmaceuticals market heroine through medical doctors.

1906 – Pure Food & Drugs Act (forerunner of Food & Drug Administration)

Prohibited interstate commerce in adulterated and misbranded foods and drugs.

Would adding sugar to winemaking increase alcohol content and constitute “adulteration?” Conclusion legitimate. 1906 FDA act court ruling contrary- cider using sugar was adulterated¹.

PFDA – sues Coca-Cola for adding ‘unnatural’ addition of caffeine to formula (Coke wins court case).

1916 – Dr AA West graduates from National College in Chicago

1917 – Idaho Chiropractic Practice Act introduced into the Idaho Legislature.

Bill tabled in subcommittee.

1918 – Idaho Chiropractic Practice Act introduced into the Idaho Legislature.

Bill tabled in Senate subcommittee.

1919 – Idaho Chiropractic Practice act for “drugless” practice

Drugs available at that time - morphine, aspirin, colchicine, marijuana heroine, laudanum, codeine²

1937 – methadone discovered

1937 – Congress passes Marihuana Tax Act criminalizing marijuana in US.

1955 – Tylenol discovered

1958 – Hypertension drugs utilized (hydrochlorothiazide)

1984 – Oxycontin

1999- Percocet

1927 – Antibiotics discovered

1938 – Antibiotics prescribed to patients

¹ <http://www.fda.gov/AboutFDA/WhatWeDo/History/Overviews/ucm056044.htm>

² <http://www.drugfreeworld.org/drugfacts/painkillers/a-short-history.html>

1946 – Idaho Medical Association director HJ Dodge provides medical association position that DC's right to sign death certificates will be unquestioned.

1959 – Idaho Title 37 Food, Drugs and Oil passed

Any articles designed to affect structure and function of a drug that is not a food

1958 – Idaho Attorney General Graydon Smith provides AG opinion that Idaho Chiropractors are physicians

1967 – Idaho AG letter to State Superintendent provides the proper designation for chiropractors is "Chiropractic Physician." Provides clarifying language the chiropractors as member of the healing arts and recognized as a physician.

1972- Chiropractors recognized as physicians in the providing of Medicare services

1974 – Occupational Licensure Memo

Chiropractors use diagnostic (x-ray) and clinical laboratory procedures to diagnose

The following minutes were compiled by Henry G West Jr DC Past Idaho Board of Chiropractic Physicians member (two separate terms):

Idaho Board of Chiropractic Meeting Minutes

1949 – AD West

Pharmacy act does not change provide any regulation towards chiropractic profession as the use of painkillers and surgery is not the scope of practice.

1972 – Chiropractic Board Meeting minutes

The use of vitamins/minerals, air, heat, light and water as taught in chiropractic and post-graduate curriculum is the practice of chiropractic.

1980 – Chiropractic Board Meeting Minutes

The use of vitamins, minerals, herbs and physiologic therapeutics has always been the practice of chiropractic including B12.

1994 – Chiropractic Board Meeting Minutes

Chiropractic physicians routinely prescribe vitamins, minerals and homeopathics in all their forms.

2001- Board Meeting Minutes

Chiropractic practice includes the use of vitamin and mineral IV/injection therapy. Chelation therapy is also part of the practice of chiropractic.

2006 – Continuing education program

2006 – Board of Medicine tells Dr West to cease and desist injectable IV/IM therapy. Dr West states medical board has no jurisdiction for chiropractic practice.

Board informs Dr West to obtain “personal” legal opinion of statute.

IACP hires Lance Nalder to write opinion letter of statute and rules.

Recognizes confusion of terminology – ‘drug’, prescribe, prescription, controlled substances are all acknowledged.

Recommends to Idaho Board of Chiropractic to provide clarification via policy and rule

Rule 020 Idaho Chiropractic Practice Act:

Clinical nutritional methods as referenced in Section 54-704, Idaho Code, include, but are not limited to the clinical use, administration, recommendation, compounding, prescribing, selling, and distributing vitamins, minerals, botanical medicine, herbals, homeopathic, phytonutrients, antioxidants, enzymes, and glandular extracts, durable and non-durable medical goods and devices in all their forms. (4-2-08)

2007-8 – Discussions with Idaho Board of Medicine and Idaho Pharmacy Board leads to rule promulgation of Rule 20, Idaho Chiropractic Practice Act.

Unopposed in Health & Welfare committee meetings

AG review finds no objections to Rule 20

Governor signs into law

2009-2013 continual discussions on use of vitamin/mineral/injection therapy in board meetings.

2013 IACP hires Lance Nalder for legal opinion for Idaho Board of Chiropractic Physicians consideration on vitamin/mineral therapy (see subcommittee report).

Respectfully submitted,

Jason D. West DC

24 October 2013



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE

November 21, 1967

ALLAN G. SHEPARD
ATTORNEY GENERAL

RECEIVED
NOV 22 1967
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

Mr. D. F. Engelking
State Superintendent of Public Instruction
Department of Education
B U I L D I N G

Dear Mr. Engelking:

Reference is made to your letter of October 3, 1967 wherein you request an opinion from this office on the meaning of "licensed physician", as found in Idaho Code 33-204; and specifically, whether chiropractors and osteopaths would be included in the definition of "licensed physician".

Title 54, Chapter 18 of the Idaho Code regulates the admission to and the practice of medicine and surgery by physicians and surgeons. In two cases interpreting Idaho Code 54-1802, the Supreme Court of Idaho stated that the practice of chiropractic is not the practice of medicine and surgery, State v. Fite, 29 Ida. 463, 159 Pac. 1138; and a holder of a license to practice osteopathy is not authorized to practice medicine or surgery, State v. Sawyer, 36 Ida. 814, 214 Pac. 222. In the Fite case, supra, the court stated that because little if anything was known of the practice of either chiropractic or osteopathy at the time of the enactment of the statute in 1899 regulating the practice of medicine in surgery, the definitions of physician and surgeon must be given the meanings "as those words were used and commonly understood by the people of Idaho at the time the law was enacted."

Since 1899 and since the Fite case was decided in 1916, the legislature has enacted statutes governing and regulating the practice of chiropractic, Title 54, Chapter 7, and osteopathy, Title 54, Chapter 16. Chapter 13 of Title 54 establishes the educational and license requirements for healers in general. Idaho Code 54-714 provides that one of the designations for the practice of chiropractic is "chiropractic physician." Idaho

Mr. D. F. Engelking

- 2 -

November 21, 1967

Code 54-1603 permits one who practices osteopathy to hold himself out to the public as an "osteopathic physician." It would, therefore, follow that the meaning of physician has expanded to include those who practice forms of the healing arts not contemplated by the legislature in 1899 or the Supreme Court in 1916.

Idaho Code 33-204 requires a statement in writing by a licensed physician or psychiatrist as to a student's physical, mental or emotional condition before the student may be exempt from attending school. Because of the foregoing analysis, it would appear that "licensed physician" would include a chiropractic or osteopathic physician. Since a psychiatrist must be a medical doctor and engage in the practice of medicine, it would be redundant to limit the term physician in Section 33-204 to the same meaning as the definition of psychiatrist. Inasmuch as the legislature in other sections of the code has designated those engaged in the healing arts of chiropractic and osteopathy as "physician," then that term as found in 33-204 would include chiropractic and osteopathic physicians as well as physicians engaged in the practice of medicine.

To limit the term "licensed physician" to only those engaged in the practice of medicine would conceivably raise a question of constitutionality. Such an interpretation would unquestionably limit the freedom of choice in selecting a method of treatment for physical, mental or emotional disorders. In order to avoid this constitutional question, the necessary conclusion is that a licensed chiropractic physician and a licensed osteopathic physician are within the meaning of "licensed physician" as found in Idaho Code 33-204.

Very truly yours,

FOR THE ATTORNEY GENERAL


JAMES R. HARGIS
Assistant Attorney General

JRH:bg

CECIL D. ANDRUS
GOVERNOR



JOHN BENDER
COMMISSIONER

ADMINISTRATIVE SERVICES

DRIVER SERVICES

LIQUOR LAW ENFORCEMENT

STATE OF IDAHO

DEPARTMENT OF LAW ENFORCEMENT

OCCUPATIONAL LICENSE BUREAU

2404 Bank Drive • Room 312
Boise, Idaho 83705

POLICE SERVICES

PROFESSIONAL LICENSING BOARDS

VEHICLE SERVICES

January 23, 1974

Aetna Life & Casualty
405 South Main Street
Salt Lake City, Utah 84111

Attention: B. Smith
Claim Analyst

Re: Orval Olsen
School District # 5

Gentlemen:

Dr. Henry West Jr. has forwarded to the Idaho State Board of Chiropractic Examiners a copy of your letter of January 2, 1974 to Mr. Orval Olsen of Pocatello along with a copy of the laboratory reports an Electrocardiographic Analysis and a copy of his billing for services rendered. You state that your denial for payments of benefits is based on information in your files which indicates that these services are not within the scope of chiropractic.

We disagree with your interpretation. We realize that you may not have the information that we have concerning the scope of chiropractic practice in Idaho and wish to provide you with the enclosed information.

- (1) A copy of the latest booklet containing Chiropractic Laws and Regulations for Idaho.
- (2) A copy of a Memorandum of Scope of Chiropractic.

In 1971 the Idaho State Board of Chiropractic Examiners drafted a Memorandum and forwarded it to the Attorney General's office for a legal opinion. The purpose of the memorandum was to clarify some questions concerning chiropractic scope of practice. On January 18, 1972 this Attorney General's Opinion was received and placed on file in the office of the Occupational License Bureau in Boise. May we call to your attention to "Idaho Code Section 54-710 and Regulation IX which provide for diagnosis prior to treatment. It is the interpretation of the Idaho State Board of Chiropractic Examiners that all clinical laboratory and X-ray procedures leading to improved diagnosis that are commonly taught in accepted colleges of chiropractic are within the scope and usage of the chiropractic physician in Idaho."

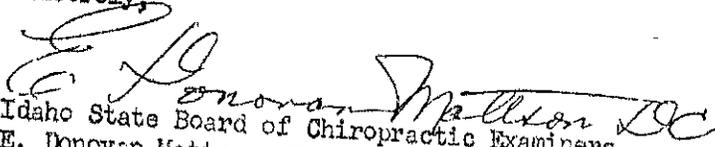
Handwritten:
Henry
Sorry to be so late
We have been short handed -
Don
Hope this is ok -

The usage of clinical and laboratory procedures, electrocardiographs, and other diagnostic tests and equipment has been taught in those colleges recognized by the Idaho State Board of Chiropractic Examiners for many years. The Workmen's Compensation Board and the sureties providing Industrial Accident coverage do accept claims for Clinical laboratory procedures and Clinical diagnostic examinations. Many other insurance companies also recognize and pay for these services by chiropractic physicians in Idaho.

(3) We would be happy to forward catalogs detailing the material covered under both Clinical and Laboratory Diagnosis from chiropractic colleges approved by the Idaho State Board of Chiropractic Examiners.

We are pleased to present this information and cordially invite your study of it so that you may have an increased knowledge of the scope of practice of the chiropractic physician in Idaho. If you have any question, or there is any way that we can be of assistance, please feel free to write or phone us.

Sincerely,


Idaho State Board of Chiropractic Examiners
E. Donovan Mattson, D. C., Secretary

EDM:az

cc: Henry G. West, Jr., D. C.
Mark L. Woodland, D. C.
George T. Mouchet, D. C.

Enc

LEGISLATIVE PERSONNEL
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JACK HALLIWELL, POCATELLO
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Idaho State Pharmaceutical Association, Inc.

LEGISLATIVE COMMITTEE

E. B. KNOPP, CHAIRMAN

ST. MARIES, IDAHO

Idaho State Chiropractor's Association

Dr. A. D. West, Secretary

Coek Building
Pocatello, Idaho

My dear Dr. West:

The House Bill 147, known as the Pharmacy Bill, passed the legislature today. There was no intention whatever in the drafting of this bill to place chiropractors nor osteopaths under any regulation or requirement in the practice of their respective professions. When the bill was drafted exemption was made for practitioners of medicine, dentistry, and veterinary medicine and other persons legally authorized to prescribe drugs and medical supplies. I want to assure you that the failure to include specifically in this exemption, chiropractors and osteopaths, was entirely an oversight.

On behalf of the Idaho State Pharmaceutical Association, and as head of its legislative committee at this time, I want

LEGISLATIVE PERSONNEL
COMMITTEE

VIC WILSON, COLEUR D'ALENE, CHAIRMAN
DR. J. E. HOLMES, ST. ANTHONY
JACK HALLIWELL, POCATELLO
GORDON ASHLEY, MONTPELLIER
LLOYD HARRIS, LEWISTON
DR. P. G. JONES, CLARK'S FORK

Idaho State Pharmaceutical Association, Inc.

LEGISLATIVE COMMITTEE

E. B. KNOPP, CHAIRMAN

ST. MARIES, IDAHO

-2-

to assure you that I shall favor and recommend to the state association that at the next session of the legislature the chiropractic and osteopathic professions be exempted from any requirements of the act insofar as they shall dispense, prescribe, distribute or sell drugs or medical supplies in the course of the practice of their respective professions, and that I shall cooperate toward clarifying the situation and toward having the amendment made, if such professions desire that such amendment be made.

Yours very respectfully,



GRAYDON W. SMITH
ATTORNEY GENERAL

December 31, 1958

Dr. Dwayne R. Moulton
814 North 8th. St.
Boise, Idaho

Dear Doctor Moulton:

The question has arisen whether or not the term "physician" when used in statutes of the State of Idaho and other authoritative references includes the category of chiropractic physicians.

It goes without saying that the practice of chiropractic healing in this state is recognized as a valid healing art or science under the terms of Section 54-701, et. seq., Idaho Code, and the general healing act, Section 54-1301., Idaho Code, et seq.

It is our opinion that the term physician, where used singularly and without reference to any other generic terms which would tend to limit or more closely define the term, includes the practice of chiropractics in its broadest sense. The term physician includes anyone exerting a remedial or salutary influence. U.S. vs. 22 Devices, More or Less, Halox Therapeutic Generator, 98 F. Supp. 914, and anyone engaged in the practice of any of the fields in the healing art, being duly licensed, stands for all practical purposes in a position of a physician, Williams V. Capitol Life and Health Insurance Co., 209 S.C. 512. While such term is used most frequently to mean a doctor of medicine, it also connotes in ordinary usage disciples of other schools authorized to treat diseases, Commonwealth V. Cohen, 15 Atlantic (2nd) 730.

Very truly yours,



GRAYDON W. SMITH
Attorney General

GWS:pt

March 25, 1946

M. I. Higgins, D.C.
Coeur d'Alene, Idaho

Dear Sir:

Reference is made to a letter to you dated October 18, 1945, with regard to your right to sign death certificates.

We have recently received a copy of a letter written by Mr. L. J. Peterson, Administrative Director of the State Department of Public Health, dated March 21, 1946, to your attorney Mr. Frank Griffin. Mr. Peterson states that following your appeal the Attorney General's office has reversed its' original decision and stated that the law permits the signing of death certificates by chiropractors.

The purpose of this letter is to retract the statement made in my communication of October 18, 1945 and to inform you that your right to sign death certificates will be unquestioned from now on.

The local morticians will also be informed by letter that death certificates signed by you or your colleagues will be acceptable. A copy of this letter will be sent to Mr. Griffin.

Yours very truly,

H. I. DODGE, M.D.
Director

HJD:mg

7/24/2013 Letter from G. Lance Nalder

"The Historic Post Office"
591 PARK AVENUE, STE. 201
IDAHO FALLS, ID 83402

NALDER LAW OFFICE
A PROFESSIONAL CORPORATION

G. LANCE NALDER, ESQ.
LANE A. BLAKE, ESQ.
ATTORNEYS AT LAW

(208) 542-0525
FAX (208) 542-1002

July 24, 2013

IDAHO ASSOCIATION OF
CHIROPRACTIC PHYSICIANS
1276 WEST RIVER PLAZA STE 200
BOISE ID 83701

RE: Supplemental Opinion Letter

Dear Gentlemen:

On September 26, 2006 I was asked to provide a legal opinion as to whether chiropractic physicians may administer injectable nutrient therapy under Idaho Law. A copy of that opinion letter is attached. My opinion was that while the Chiropractic Board may not interpret or alter the definition of what constitutes a "legend drug," the Chiropractic Board is entitled to interpret the Idaho Chiropractic Practice Act to permit chiropractic physicians to administer nutrient therapy to patients. I advised that such an interpretation may be subject to review by the Idaho Legislature and by the Idaho State Courts, but not by the Idaho Board of Medicine.

In 2008, and consistent with my prior legal opinion, the Idaho Board of Chiropractic Examiners clarified the Scope of Practice language set forth in paragraph 20 addressing clinical nutritional methods. This administrative rule now reads:

020.SCOPE OF PRACTICE (RULE 20).

Clinical nutritional methods as referenced in Section 54-704, Idaho Code, include, but are not limited to the clinical use, administration, recommendation, compounding, prescribing, selling, and distributing vitamins, minerals, botanical medicine, herbals, homeopathic, phytonutrients, antioxidants, enzymes, and glandular extracts, durable and non-durable medical good and devises in all their forms. (4-2-08)

This rule clarified that the "clinical nutritional methods" referenced in Idaho Code § 54-704 include, but are not limited to, the use, **administration** and distribution of vitamins, minerals, botanical medicine, herbals, etc. "***in all their forms.***"

I understand that the Idaho Board of Medicine has suggested that chiropractors may administer vitamins (specifically vitamin B12 orally to patients, but may not to so intramuscularly or intravenously. Such an interpretation would, in my opinion, be directly contrary to Scope of

July 24, 2013

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Practice Rule 20 which specifically allows for "administration" of "vitamins.... in all their forms."

This specific point was addressed in my September 26, 2006 opinion letter, wherein I attempted to clarify that the Idaho Pharmacy Act does not prohibit chiropractic physicians from prescribing "legend" drugs and that the Idaho Board of Medicine has no authority pursuant to Idaho Code § 54-1806 to promulgate rules and regulations under the Medical Practice Act so as to control or regulate chiropractic physicians.

Whether or not a chiropractic physician can prescribe or administer a legend drug, a subset thereof, or an *injectable* vitamin, mineral, etc. must be determined by an interpretation of the Idaho Chiropractic Act. This opinion was based, in large part, upon the language of Idaho Code § 54-704(1)(b) which is the functional equivalent to the definition of "legend drug" as set forth in Idaho Code Idaho Code § 54-1705 (28). In 2006 when my initial opinion letter was written, I noted that there was no explicit prohibition in the Chiropractic Act preventing chiropractic physicians from administering legend drugs in their offices, nor was there any affirmative authorization for them to do so. I urged clarification.

In my opinion, Administrative Rule 20 defining the scope of practice for chiropractic physicians in delivery of clinical nutritional methods, as revised in 2008, makes clear that chiropractic physicians may "administer" vitamins, minerals, herbal, etc. "in all their forms," including through intramuscular and intravenous injections. This administrative rule change was presented to and adopted/ratified by the Idaho Legislature without objection, and was adopted unanimously. There was no qualifier placed upon the manner of administration of vitamins, minerals, etc., and as indicated in my 2006 opinion letter, there is no other law, regulation or rule suggesting that chiropractic physicians are prohibited from utilizing injectable therapies as a method of administration. It is my further opinion that the Chiropractic Board has spoken on the issue by its 2008 amendment to Rule 20.

Please contact me should you have further questions or concerns.

Very truly yours,



G. Lance Nalder

GLN/dct
5683-1\chiro physician003 ltr

Attachment D:

7/26/2006 Letter from G. Lance Nalder

NALDER LAW OFFICE
A PROFESSIONAL CORPORATION
G. LANCE NALDER, ESQ.
ATTORNEY AT LAW

(208) 542-0525
FAX (208) 542-1002

September 26, 2006

IDAHO ASSOCIATION OF
CHIROPRACTIC PHYSICIANS
1276 WEST RIVER PLAZA
SITE 200
BOISE ID 83701

RE: Opinion Letter

Dear Gentlemen:

You have asked me to provide a legal opinion as to whether chiropractic physicians may administer injectable nutrient therapy under Idaho law. **Based on the following analysis, it is my legal opinion that, while the Chiropractic Board may not interpret or alter the definition of what constitutes a "legend drug," the Board is entitled to interpret the Idaho Chiropractic Practice Act to permit chiropractic physicians to administer injectable nutrient therapy to patients.** Such an interpretation may be subject to review by the Idaho Legislature and by the Idaho State Courts, but not the Idaho Board of Medicine.

Whether chiropractic physicians may administer injectable nutrient therapy turns on related sub-issues; namely: (1) Who has the right or authority to define a "legend drug," and (2) Who has the right or authority to define the scope of chiropractic practice under the Idaho Chiropractic Practice Act.

The Idaho Food, Drug and Cosmetic Act, I.C. § 37-114(d) defines a "drug" as follows:

The term "drug" means:

- (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them, and
- (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and
- (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals, and
- (4) articles intended for use as a component of any article specified in clause (1), (2) or (3), but does not include devices or their components, parts or accessories

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This definition is repeated, with minor changes, in the Uniform Controlled Substances Act, I.C. § 37-2701(m) and the Idaho Pharmacy Act, I.C. § 54-1705. Injectable vitamins/nutrients are "articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man," or are "articles intended to affect the structure or any function of the body of man," and are, therefore, considered "drugs" under Idaho law. Such "drugs" may be further characterized as "prescription" or "non-prescription."

A "prescription drug" or "legend drug" means:

[A] drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements:

- (a) "Caution: Federal law prohibits dispensing without a prescription"; or
- (b) "Rx Only"; or
- (c) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or
- (d) a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

I.C. § 54-1705(28). "Nonprescription drugs" are "medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government." I.C. § 54-1705(19).

Certain drugs are "scheduled drugs." These drugs are found in I.C. § 37-2702 et seq. That a drug is a "scheduled drug" does not automatically make a drug a "prescription drug." Idaho Administrative Code 27.01.01 Rule 451 provides that:

A controlled substance listed in Schedule V, and a controlled substance listed in Schedule II, III, or IV which is not a prescription drug as determined under the Federal Food, Drug and Cosmetic Act, may be dispensed by a pharmacist or pharmacist-intern, without a prescription to a purchaser at retail. (7-1-93)

Therefore, not all prescription/legend drugs are scheduled drugs, and not all scheduled drugs are prescription drugs. Nonetheless, a prescription or legend drug is any "drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only." I.C. § 54-1705(28)(emphasis added).

The Board of Pharmacy has the responsibility for regulating the sale or dispensing of drugs. The Board of Pharmacy has the responsibility for:

The regulation of the sale at retail and the dispensing of medications, drugs, devices and other materials, including the method of dispensing in institutional facilities, and including the right to seize such drugs, devices and other materials found to be detrimental to the public health and welfare by the board after appropriate hearing as required under the Administrative Procedures Act.

I.C. § 54-1719(1). Pursuant to this statute, the Board of Pharmacy has the authority to determine whether a particular drug must be dispensed by prescription only, thus making such a drug a "legend" drug. This conclusion is supported by Idaho Code Section 54-1738, which states, in pertinent part:

PROOF THAT A DRUG IS A PRESCRIPTION DRUG OR LEGEND DRUG.
The following shall constitute prima facie evidence in any criminal or civil proceeding in this state that a drug is a prescription drug or legend drug:

....

(3) In the case of drug designated a prescription drug by action of the state board of pharmacy...

By way of example, this authority was exercised by the Board of Pharmacy in establishing Idaho Administrative Code 27.01.01 Rule 158, which designates certain drugs containing ephedrine as prescription drugs.

As indicated, determination of whether a particular drug is a "legend drug" depends upon a reading of applicable statute and regulation. If a federal statute or regulation requires a particular label or requires that a drug be dispensed on prescription only, it is a "legend drug." Likewise, if any state statute or regulation requires a drug to be dispensed on prescription only, it is a "legend drug." There is no room for interpretation of the controlling statutes by the Chiropractic Board.

Contrary to the assertions of the Pharmacy Board and/or the Medical Board, the Idaho Pharmacy Act does not prohibit chiropractic physicians from prescribing legend drugs. Chiropractic physicians are "practitioners" within the purview of the Act. A "practitioner," permitted to prescribe legend drugs, is defined as follows:

"Practitioner" shall mean a physician, dentist, veterinarian, scientific investigator or other person (other than a pharmacist) licensed in this state and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state.

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I.C. 54-1705(24)(emphasis added). Determining whether or not a person is a "practitioner" is not within the province of the pharmacy board, but is controlled by statute and the regulatory agency governing a particular profession. If a statute and/or regulatory interpretation permits a licensed professional to "dispense, conduct research with respect to or administer drugs" in the course of his/her practice, then such person is a "practitioner" under the Act. A prescription drug order, which in form meets the requirements of the Pharmacy Act, may be issued by "a practitioner acting in the usual course of his profession." I.C. § 54-1733.

The Medical Board has *no* authority pursuant to I.C. § 54-1806, to promulgate rules and regulations under the Medical Practice Act and thereby control or regulate chiropractic physicians. This Act (I.C. 54-1806), and the rules established under it, do not pertain to nor govern chiropractic physicians. This is made abundantly clear by I.C. § 54-704, which states:

Chiropractic practice, as herein defined is hereby declared not to be the practice of medicine within the meaning of the laws of the state of Idaho defining the same, and physicians licensed pursuant to this chapter shall not be subject to the provisions of chapter 18, title 54, Idaho Code, nor liable to any prosecution thereunder, when acting within the scope of practice as defined in this chapter.

I.C. § 54-704(3)(emphasis added). So long as a chiropractic physician is acting within the scope of practice as defined under the Chiropractic Act, then the Medical Board has no authority to either regulate, control, enforce or pursue prosecution of such chiropractic physician.

Whether or not a chiropractic physician may prescribe or administer a legend drug, a subset thereof, or any injectable vitamin, is determined by an interpretation of the Idaho Chiropractic Act. The State Board of Chiropractic Physicians, not the State Board of Medicine, is charged with administering the provisions of the Chiropractic Practice Act pursuant to I.C. § 54-706 et seq., subject to the provisions of the Idaho Administrative Procedures Act. I.C. §54-707(2).

The Idaho Chiropractic Act has specific prohibitions relating to a chiropractic physician's prescription of drugs. Section 54-704(1)(b) prohibits chiropractic physicians from directing or suggesting to the patient that the patient use any substance, which:

"under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements: (i) "Caution: Federal Law Prohibits Dispensing Without Prescription"; or (ii) "Caution: Federal Law Restricts This Drug To Use By or On The Order Of A Licensed Veterinarian"; or (iii) a product which is required by any applicable federal or state law regulation to be dispensed on prescription only or is restricted to use by practitioners only."

The term "dispense" means "the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug." I.C. § 54-1705(5). The term "deliver" means "the actual, constructive or attempted transfer of a drug or device from one (1) person to another, whether or not for a consideration." I.C. § 54-1705(3).

The language used in Section 54-704(1)(b) is the functional equivalent of the definition of "legend drug" as set forth in I.C. § 54-1705(28). Omitted is the "Rx Only" language. This statute, therefore, prohibits chiropractic physicians from directing or suggesting to the patient that the *patient* use such substances, but this section is unclear as to whether chiropractic physicians are prohibited from *administering* such substances to patients in their offices as part of treatment. The wording "restricted to use by practitioners only" suggests that practitioners can use or administer certain drugs even though that they may not direct the patient to use or self-administer such drugs.

There is no explicit prohibition in the Chiropractic Act preventing chiropractic physicians from administering legend drugs in their offices, nor is there any affirmative authorization to do so. Therefore, clarification is warranted and necessary.

The Board of Chiropractic Physicians may, within its authority granted under I.C. § 54-707(2), "establish, pursuant to the provisions of chapter 52, title 67, Idaho Code, rules for the administration of the provisions of this chapter." **The Board of Chiropractic Physicians may therefore make a determination in this matter.**

Under the Idaho Administrative Procedures Act, an "Agency" is "each state board, commission, department or officer authorized by law to make rules or to determine contested cases." I.C. § 67-5201(2). A "rule" means:

[T]he whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of this chapter and that implements, interprets, or prescribes:

- (a) law or policy; or
- (b) the procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include:
 - (i) statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or

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- (ii) declaratory rulings issued pursuant to section 67-5232, Idaho Code; or
- (iii) intra-agency memoranda; or
- (iv) any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule.

I.C. § 67-5201(19). A "rule", is therefore a statement promulgated by the agency in compliance with the provisions of the Idaho Administrative Procedures Act, and does not include any declaratory rulings or written statements interpreting the rules.

Idaho Code § 67-5226 allows an agency to establish temporary rules. A "temporary rule" means "a rule authorized by the governor to become effective before it has been submitted to the legislature for review and which expires by its own terms or by operation of law no later than the conclusion of the next succeeding regular legislative session unless extended or replaced by a final rule as provided in section 67-5226, Idaho Code." I.C. § 67-5201(23).

It is my legal opinion that the Chiropractic Board has the authority as an agency charged with administration of the Idaho Chiropractic Practice Act to establish a temporary rule to address the issue of the administration of injectable vitamins by chiropractic physicians.

A review of Idaho case law gives an indication of the scope of an agency's authority in interpreting statutory provisions. When reviewing agency decisions, the Idaho Courts apply a four-prong test. *Jr. Simplot Co., Inc. v. Idaho State. Tax Comm'n*, 120 Idaho 849, 820 P.2d 1206 (1991). It is:

1. Has the agency been entrusted with the responsibility to administer the statute at issue?
2. Is the agency's statutory construction reasonable?
3. Does the statutory language at issue expressly treat the precise question at issue?
4. Are any of the rationales underlying the rule of deference present?
 - a. The rule ensures repose when important interests have "grown up" in reliance on an interpretation in existence for a number of years.
 - b. An agency interpretation represents a "practical" interpretation.
 - c. The legislature is charged with knowledge of how its statutes are interpreted.
 - d. An agency construction is entitled to additional weight when it is formulated contemporaneously with the passage of the statute in question.

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- e. When an agency, "as a coordinate branch of government," construes a statute under its administrative area of responsibility courts should recognize and defer to the expertise developed by the agency.

Not all of the enumerated reasons need be present, but if any are lacking, the court must weigh the remaining rationale in determining whether to afford deference to the agency determination. *Id.*

Applying this analysis to the present circumstances would yield the following conclusions:

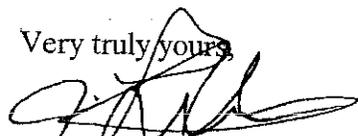
1. The Chiropractic Board has been entrusted with the responsibility to administer the Idaho Chiropractic Practice Act pursuant to I.C. §54-707(2).
2. The Board's/agency's construction is reasonable based upon the historical use of such vitamin supplements by chiropractic physicians in Idaho, its previous interpretation of "clinical nutritional methods" as permitted by § 54-704(1), curricula and certifications available to chiropractic physicians for the use of such methods, and interpretations in other states.
3. The Chiropractic Board has interpreted the Act to allow injectable nutrient therapy since at least 2001, and the legislature has not seen fit to act to overrule this interpretation.
4. The Board/agency has expertise in this area, and deference should be given to its knowledge of chiropractic practices.

Conclusion

While the Chiropractic Board may not interpret the definition of "legend drug," it is certainly within its authority to interpret the Idaho Chiropractic Practice Act to permit chiropractic physicians to administer injectable nutrient therapy to patients. The Chiropractic Board also has the right to promulgate rules to address the issue of the administration of injectable vitamins by chiropractic physicians. This Board's rule making and/or interpretation may subject to review by the Idaho Legislature and by the Idaho State Courts, but not by the Board of Medicine.

Please call if you have further questions.

Very truly yours,



G. Lance Nalder

GLN/cd

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