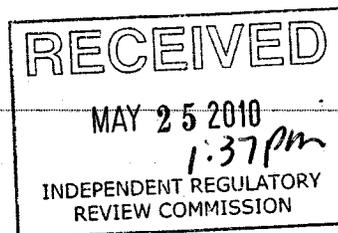


2832

Blackburn, Thomas

From: ST, CHIROPRACTIC
Sent: Thursday, May 20, 2010 4:05 PM
To: Dade, Steven; Blackburn, Thomas
Subject: FW: Comments on 16A-4316 (assistance by unlicensed supportive personnel) by State Farm

-----Original Message-----

From: Charles Vogel [mailto:charles.vogel.aw35@statefarm.com]
Sent: Thursday, May 20, 2010 3:59 PM
To: ST, CHIROPRACTIC
Cc: David Tideman; matt@greenleepartners.com
Subject: Comments on 16A-4316 (assistance by unlicensed supportive personnel) by State Farm

State Farm Mutual Automobile Insurance Company opposes proposed chiropractic regulations 16A-4316 (assistance by unlicensed supportive personnel), which will allow unlicensed personnel to perform virtually all functions currently limited to licensed chiropractors. The proposed regulations are far outside the statutory authority of the Chiropractic Practice Act and the statutory scheme for regulating health care professions, and will create a danger to the general public. If the proposed regulations are adopted, the only functions requiring a licensed chiropractor would be chiropractic manipulations, placement of electrodes, treatment orders and discharges from treatment orders.

These comments will first review the nature of chiropractic procedures that would be opened up to unlicensed personnel and the danger to the patients that they present, then explain why permitting unlicensed supportive personnel to perform these procedures is also contrary to statute.

The Procedures and the Dangers to Chiropractic Patients

Adjunctive Procedures: "Applying hot packs and cryotherapy ..." could be delegated to unlicensed supportive personnel under proposed section 5.54 (c) (2) (i). This procedure requires expertise in surface anatomy, and there is a great risk that an untrained individual without such expertise could burn or damage the tissue of a patient.

Performance of electrical stimulation therapy, as well as ultrasound therapy could be delegated to unlicensed supportive personnel under proposed sections 5.54 (c) (2) (iii) and (iv). These processes require detailed training/knowledge of anatomy and physiology. Modifications to the placement of electrodes, the transducer head, and setup of the equipment are integral parts of the "constant attendance" requirement of the therapy. This decision making process should only be performed by the doctor or by licensed persons (within their scope of practice). Misuse of this equipment may cause pain, burns and scarring to the patients skin if done improperly.

Mechanical traction therapy, laser therapy and other adjunctive procedures could be delegated to unlicensed supportive personnel under proposed sections 5.54 (c) (2) (v), (vi) and (vii). These services require detailed training/knowledge of anatomy and physiology. Modifications to the placement of strapping and setup of traction force require "at the moment" decision making. These decisions should be made only by a doctor or other licensed persons (within their scope of practice). Untrained use of this equipment may cause pain and strain injuries, as well as burns or scarring to the patient.

Non-Adjunctive Procedures: Obtaining vital signs (proposed Sec.5.54 (c) (1) (iv)), requires some training/knowledge of anatomy and physiology. Typically, these services are performed by nurses who are well trained and licensed. Development of X-Rays (proposed Sec.5.54 (c) (1) (v)) requires a working knowledge of Roentgenology and/or photography darkroom processes. Poor processing of films could lead to missed findings, or re-taking, causing additional radiation exposure of the patient.

Instruction and monitoring of therapeutic exercises in the office (proposed Sec.5.54 (c) (1) (vi)) requires detailed training/knowledge of anatomy and physiology. Range of motion testing (proposed Sec.5.54 (c) (1) (xii)) requires expertise in surface anatomy and training in the testing goals so that the findings are an accurate result of a single motion, not confused with other planes of motion. Muscle testing, extremity measurements and postural screening (proposed Secs. 5.54 (c) (1) (xiii), (xxi), (xxii)) all require expertise in surface anatomy. Use of rehabilitation equipment (proposed Sec.5.54 (c) (1) (xviii)) requires training and understanding of muscle physiology.

Performance of therapeutic exercises (proposed Sec. 5.54 (c) (1) (xxiv)) requires detailed training/knowledge of anatomy and physiology and “at the moment” decision making. Modifications to the exercises are an integral part of the “one-on-one contact” or “constant attendance” requirement of the therapy. This decision making process should only be performed by the doctor or by licensed persons (within their scope of practice).

Beyond Statutory Authority

A. Contrary to the Chiropractic Practice Act

Adjunctive Procedures: There is no statutory authorization for supportive personnel to do adjunctive procedures at the direction of a chiropractor. The Chiropractic Practice Act recognizes that adjunctive procedures require chiropractic training and education. (See 63 P.S. 625.304 (a), qualifications for a chiropractor to do adjunctive procedures, which include State Board of Chiropractic examination or approved 100 hours of study.)

Although statute requires that a licensed chiropractor have permission of the Board to perform adjunctive procedures, the proposed regulations allow unlicensed supportive personnel without a State Board of Chiropractic examination or approved 100 hours of study to do virtually every adjunctive procedure possible except placing needle electrodes (proposed Sec. 5.54 (c) (2), (d) (2)).

Non-Adjunctive Procedures: Pennsylvania statutes at 63 P.S. 625.601 state: “Nothing in this act shall prohibit a licensed chiropractor from utilizing the assistance of unlicensed supportive personnel performing under the direct on-premises supervision of a licensed chiropractor, provided that a chiropractor may not delegate any activity or duty to such unlicensed individuals which requires formal education or training in the practice of chiropractic or the knowledge and skill of a licensed chiropractor.” (emphasis added).

For non-adjunctive procedures, the proposed regulations allow supportive personnel to do activities that do require either the professional education, training, knowledge and skill of a chiropractor, or advanced education and training and examination by the State Board of Chiropractic.

Totally absent from the proposed regulations is a licensing process, examination process or any other independent process to verify the training and education of the unlicensed supportive person and that person’s ability to actually do the procedures correctly. Under the proposed regulations, a chiropractor could hire an unskilled and uneducated person (without even a GED), have that person follow him

around for a week, and consider the person to be fully "trained". Once a chiropractor considers an unlicensed supportive person to be fully trained, the proposed regulations allow that person to perform all diagnostic testing and examination and virtually all treatments other than placement of electrodes and chiropractic spinal manipulations. The chiropractor would not even have to see the patient. The chiropractor could give treatment orders (and even the discharge order) based on the reports and test results of the unlicensed supportive person.

In addition, the chiropractor would not even have to tell the patient that the person physically handling him or her is unlicensed. Statute, which was designed to protect the public, cannot be construed as allowing unlicensed supportive personnel to perform adjunctive and non-adjunctive procedures.

B. Contrary to the Statutory Licensing Scheme for Health Care Professionals

Other Pennsylvania statutes regulating professions akin to chiropractors, namely physical therapist, osteopathic physician, and medical doctors (physicians and surgeons) require licensing for personnel as a physical therapist assistant or physician's assistant if they do the types of activities that the proposed regulation would allow unlicensed supportive personnel to do for chiropractors. The language in the chiropractic supportive personnel statute is virtually identical to the Pennsylvania statute regarding supportive personnel working with a physical therapist.

What the proposed chiropractic regulations do, in effect, is establish the profession of "chiropractor assistant" without statutory authorization, without the requirements for education, professional examination, licensing, or disclosure of unlicensed status.

By way of comparison, the Physical Therapy Practice Act states: "Nothing in this act the act of October 10, 1975 (P.L.383, No. 110), known as the "Physical Therapy Practice Act," shall prohibit a licensed physical therapist from assigning or delegating various activities to other persons who may, from time to time, aid and assist a licensed physical therapist in the provision of physical therapy services; provided that such activities are performed under the direct on-premises supervision of a licensed physical therapist and the level of such activities do not require formal education or training in the practice of physical therapy, the skill and knowledge of a licensed physical therapist and the skill and knowledge of a properly registered physical therapist assistant. 63 P.S. 1309.2 (emphasis added). What chiropractic supportive personnel can do in the proposed regulations includes those types of activities that for physical therapists, the supportive personnel would be barred from doing. These barred activities are the activities that a physical therapist assistant can do. In order to do those activities, statute requires that the physical therapist assistant must meet education and training requirements, pass an examination and be licensed. 63 P.S. 1309.1.

For osteopathic physician and for medical doctor (physicians and surgeons) professions, statute requires a license as a physician or a physician assistant to do the types of activities that the proposed regulation would allow unlicensed supportive personnel to do for chiropractors. 63 P.S. 271.3, 422.13. Statute also requires that the physician assistant must meet education and training requirements, and pass an examination in order to obtain a license. 63 P.S. 271.10, 422.36. Additionally, for physician assistants working for medical doctors (physicians and surgeons), a medical doctor can supervise no more than two physician assistants. 63 P.S. 422.13 (e).

Thank you for this opportunity to comment on these proposed regulations. If you have any questions, please contact me.

Charles Vogel, Counsel

State Farm Mutual Automobile Insurance Company