

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

<p>INTERNATIONAL CHIROPRACTORS ASSOCIATION,</p> <p>Appellant,</p> <p>v.</p> <p>NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS ,</p> <p>Appellee.</p>	<p>No. 31,690</p> <p>COURT OF APPEALS OF NEW MEXICO FILED DEC 21 2011 <i>Wendy F. Jones</i></p>
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MEMORANDUM IN SUPPORT OF MOTION FOR STAY

Appellant International Chiropractors Association (“ICA”) submits this memorandum in support of its motion to stay Appellee New Mexico Board of Chiropractic Examiners (“Chiropractic Board”) from: 1) implementing its new rule establishing an advanced practice chiropractic formulary to include dangerous drugs and drugs to be administered by injection under 16.4.15.11 NMAC, and 2) implementing its new rule establishing a certain course of training to certify advanced practice chiropractic physicians to administer and prescribe dangerous drugs and drugs to be administered by injection under 16.4.15.12 NMAC.

I. Factual Background

1. ICA is the world's oldest international chiropractic professional organization made up of nearly 8,000 chiropractors and other individuals, with members in New Mexico. ICA seeks to maintain and promote the practice of chiropractic as a non-therapeutic, drugless, and surgical-free health science. ICA also seeks to encourage the highest professional, technical, and ethical standards for chiropractors and for safeguarding the professional welfare of its members.
2. The Chiropractic Board may develop and approve an advanced practice chiropractic formulary that includes substances listed in NMSA 1978, Section 61-4-9.2(A) (2009). However, the Chiropractic Board must obtain approval from the Pharmacy Board and the Medical Board for any portion of its formulary that includes "dangerous drugs or controlled substances, drugs for administration by injection and substances not listed in Subsection A." § 61-4-9.2(B); 16.4.15.8 NMAC.
3. Chiropractic physicians may obtain "advanced practice registration," to prescribe and administer certain drugs to be administered by injection, after completing a ninety-hour clinical and didactic course, which must be approved by the Chiropractic Board and by the Medical Board. NMSA 1978, § 61-4-9.1 (2008); 16.4.15.8 NMAC.
4. Effective September 11, 2009, the Chiropractic Board adopted a rule establishing an advanced practice chiropractic formulary.
5. On September 9, 2009, the Pharmacy Board appealed the 2009 formulary

- rule in this Court (No. 29,809).
6. On September 24, 2009, the Pharmacy Board withdrew its appeal after a series of meetings of a joint committee composed of representatives of the Pharmacy Board and the Chiropractic Board, with participation by the Medical Board. The Chiropractic Board repealed and replaced the 2009 formulary with a new formulary of substances approved by the Pharmacy Board, to be effective July 23, 2010.
 7. On June 14, 2010, the Chiropractic Board once again voted to include in the formulary certain drugs to be administered by injection that the Pharmacy Board had not approved. Exhibit A (Minutes of June 14, 2010 Regular Meeting of the Chiropractic Board).
 8. On November 10, 2010, the Chiropractic Board sent a letter to ICA stating that the Chiropractic Board had voted to reinstate some drugs to be administered by injection at the request of several practitioners on the ground that those practitioners had “placed detrimental reliance on the Board’s prior action.” Exhibit B (November 10, 2010 letter from the Chiropractic Board to ICA).
 9. On August 12, 2011, in a letter to the Chiropractic Board, the Medical Board reaffirmed its position that it has not approved the new formulary containing dangerous drugs and allowing for the administration of certain identified drugs by injection. The Medical Board also stated that the training outlined in amended 16.4.15.12 NMAC appears inadequate, and that the Medical Board would not approve the formulary until adequate

- training is proposed and the Medical Board approves the training. Exhibit C (August 12, 2011 letter from Medical Board to the Chiropractic Board).
10. On August 30, 2011, at the rulemaking hearing and meeting, the Chiropractic Board adopted 16.4.15.11 NMAC to include in the chiropractic formulary certain dangerous drugs and drugs to be administered by injection that had not been approved by either the Pharmacy Board or Medical Board. The Chiropractic Board also adopted 16.4.15.12 NMAC to amend the training requirements for advanced practice chiropractic physicians. Exhibit D (16.4.15.11 and 16.4.15.12 NMAC filed with the State Records Center).
 11. On December 13, 2011, at its meeting, the Chiropractic Board denied all requests for stay of the regulations pending appeal. Exhibit H, counter 28:12-29:00, 34:40-36:15 (using Windows Media Player).
 12. The prescription and administration of pharmaceuticals by even the medical profession – the profession trained and most able to provide these services – produces an error rate resulting in more than 1.3 to 1.5 million pharmacy errors annually, with nearly 100,000 resulting fatalities. *PREVENTING MEDICATION ERRORS*, Committee on Identifying and Preventing Medication Errors, Board on Health Care Services, Philip Aspden, Julie A. Wolcott, J. Lyle Bootman, Linda R. Cronenwett, *Editors*, INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES, THE NATIONAL ACADEMIES PRESS, Washington,

DC, 2007.

13. The average cost per patient to correct medication errors in U.S. hospitals is \$2,000 to \$4,000. According to Jury Verdict Research Group, in 2000, the average jury verdict in cases involving medication errors was \$636,844. According to a 2001 report in the Journal of American Pharmaceutical Association, more than \$177 billion in excess costs in the healthcare supply chain can be attributed to medication errors. More than eighty percent of life-threatening medication incidents are the result of physician error. Gurwitz, J.H., Field, T.S., Harrold, L.S., et al, "Incidence and preventability of adverse drug events among elderly persons in the ambulatory setting, (JAMA) 2003; 289(9) 1107-1116.
14. Approximately 400,000 preventable drug-related injuries occur each year in hospitals. Another 800,000 occur in long-term care settings, and roughly 530,000 occur just among Medicare recipients in outpatient clinics. None of these figures take into account lost wages and productivity or other costs. Arch Intern Med. 2002 Sep 9;162(16):1897-903. Medication errors observed in 36 health care facilities. Barker KN, Flynn EA, Pepper GA, Bates DW, Mikeal RL. Center for Research on Pharmacy Operations and Designs, School of Pharmacy, Auburn University, 128 Miller Hall, Auburn, AL 36849-5506, USA.

II. Standards for Granting a Stay

To obtain a stay, an applicant must show: (1) a likelihood that applicant will

prevail on the merits of the appeal; 2) irreparable harm unless the stay is granted; 3) evidence that no substantial harm will result to other interested persons; and 4) that no harm will ensue to the public interest. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 105 N.M. 708, 710 736 P.2d 986, 988 (Ct.App. 1986).

III. ICA Is Likely to Succeed on the Merits

ICA has a substantial likelihood of success on the merits, as ICA can show that the Chiropractic Board adopted the two rules at issue without adhering to statutory requirements. First, without the requisite approval by the Medical Board and Pharmacy Board, the Chiropractic Board has adopted 16.4.15.11 NMAC to provide for the prescription and administration of dangerous drugs and drugs to be administered by injection by New Mexico chiropractic physicians. Second, without the requisite approval by the Medical Board, the Chiropractic Board has adopted 16.4.15.12 NMAC to establish a training program to certify advanced practice chiropractic physicians.

A. The Chiropractic Board's Adoption of the Rules Exceeds Its Statutory Authority

1. The Plain Language of the Statute Requires Medical Board and Pharmacy Board Approval for Dangerous Drugs and Drugs to Be Administered by Injection

Section 61-4-9.2(B) expressly provides that dangerous drugs or controlled substances, drugs for administration by injection and substances not listed in

Subsection A “*shall be submitted to the board of pharmacy and the New Mexico medical board for approval.*” [emphasis added.] Additionally, the Chiropractic Board’s own regulations require that “[a]ll amendments to the formulary shall be made *following consensus of the NM board of medicine, NM pharmacy board and the NM board of chiropractic examiners.*” 16.4.15.8(H) NMAC [emphasis added]. Furthermore, “chiropractic formulary” is defined as, “those substances that have been approved for use by the chiropractor registered in advanced practice by the chiropractic board *and as by statute with consensus between the New Mexico medical board and New Mexico board of pharmacy.*” 16.4.15.7 NMAC [emphasis added].

The guiding principle in interpreting statutes is to determine and give effect to legislative intent, looking first to the plain language of the statute, giving the words their ordinary meaning unless the Legislature indicates a different one was intended. *Attorney General v. New Mexico Public Regulation Commission*, 2011-NMSC-034, ¶ 10, 150 N.M. 174, 258 P.3d 453. An administrative agency is bound by and limited to its existing rules and regulations. *General Telephone Co. of the SW v. Corporation Commission*, 98 N.M. 749, 755, 652 P.2d 1200, 1206 (1982). The language of Section 61-4-9.2(B) is clear in requiring Medical Board and Pharmacy Board approval of a chiropractic formulary containing “drugs for administration by injection”. That approval has not been provided. Indeed, the

Medical Board expressly informed the Chiropractic Board, in a letter dated August 12, 2011, that the Medical Board has voted unanimously not to approve the changes to the formulary in § 16.4.15.11. Exhibit C.

2. The Plain Language of the Statute Requires Medical Board Approval for Training Programs to Certify Advanced Practice Chiropractic Physicians

Chiropractic physicians may obtain “advanced practice registration” after completing a ninety-hour clinical and didactic course, which must be approved by the Chiropractic Board and the Medical Board. § 61-4-9.1(D). When new substances are added to a formulary, appropriate education may be approved and required by the Chiropractic Board for advanced practice chiropractic physicians. 16.4.15.8(H) NMAC. “All amendments to the formulary must be made by consensus of the Medical Board, Pharmacy Board, and the Chiropractic Board.” *Id.*

Without obtaining the statutorily mandated approval from the Medical Board, the Chiropractic Board adopted 16.4.15.12 NMAC to authorize a certified advanced practice chiropractic physician “to administer dextrose, phenol, autologous blood, and platelet rich plasma via injection only upon proof of completion of a board approved program in prolotherapy or its equivalent of not less than 50 hours.” Notably, in its letter of August 12, 2011, the Medical Board expressly informed the Chiropractic Board that the training outlined in 16.4.15.12 NMAC appears inadequate, and that the Medical Board will continue to

disapprove all injectables until adequate training is proposed and agreed to by the Medical Board. Exhibit C.

B. The Chiropractic Board Knowingly Violated the Law

The Chiropractic Board adopted 16.4.15.11 and 16.4.15.12 NMAC knowing that its action is contrary to law. The Chiropractic Board advised ICA, in a letter dated November 10, 2010, that the Chiropractic Board was relying on the concept of detrimental reliance as a basis for adopting the rules at issue. Exhibit B. Such an argument in essence is an attempt to apply estoppel to prevent the application of the clear statutory requirements. However, “detrimental reliance” is not sufficient by itself to invoke estoppel. It must be accompanied by lack of knowledge of the truth. *State v. Brothers*, 2002-NMCA-110, ¶ 32, 133 N.M. 36, 59 P.3d 1268 (Ct.App. 2002), *cert. quashed*, 134 N.M. 123, 73 P.3d 826 (2003). “Estoppel is rarely applied against the State and then only in exceptional circumstances where there is a shocking degree of aggravated and overreaching conduct or where right and justice demand it.” *Id* at ¶ 31. In this case the statute requiring approval by the Medical Board and the Pharmacy Board of a chiropractic formulary containing “drugs to be administered by injection” provides sufficient notice to chiropractors. Those who chose to act prior to the requisite approvals being obtained did so at their own risk. There are no exceptional circumstances justifying estopping application of the statute.

Furthermore, at the rule hearing on August 30, 2011, General Counsel for Regulations and Licensing, James McKay, advised the Chiropractic Board that its proposed action was premature because there is currently no Medical Board Approval, so the Chiropractic Board would be acting beyond the authority of the statute. Exhibit E. General Counsel McKay correctly articulated the applicable law.

In 2009, the Pharmacy Board had appealed the Chiropractic Board's adoption of a rule establishing a chiropractic formulary that had included some of the dangerous drugs and substances that are included in the newly adopted formulary at issue in this appeal. The Pharmacy Board withdrew its appeal only after the Chiropractic Board and Pharmacy Board reached an agreement, with the Chiropractic Board repealing the 2009 formulary rule and replacing it with a new formulary of substances approved by the Pharmacy Board. Then, on June 14, 2010, the Chiropractic Board voted once again to include in the formulary certain drugs and substances that neither the Pharmacy Board nor Medical Board had approved. Exhibits A, B. The Chiropractic Board's continued attempts to flout the law should be brought to a halt.

IV. ICA Will Suffer Irreparable Injury

First, the Chiropractic Board's actions present a serious threat to both public safety and the credibility and integrity of the regulatory process in the State of New

Mexico. It is long established that injunctive relief may issue to protect public health, safety, and welfare from irreparable injury. *See State ex rel. Marron v. Compere*, 44 N.M. 414, 103 P.2d 273 (1940). In *Marron*, the New Mexico Supreme Court held that, if a defendant is not qualified to practice medicine, he should be enjoined from doing so because he would otherwise be a threat to public health and safety. The Court explained that, “if carried on from day to day among the people generally by one unskilled in and ignorant of its fundamentals, who prescribes drugs, dangerous as well as harmless, and directs treatment for all manner of ills, physical or mental, which the flesh is heir to, it requires little imagination to foresee the most serious consequence to the public thus served. The health and lives of the people of a whole community become jeopardized.” *Marron*, 103 P.2d at 277.

Similarly, in the present case, the general public will be irreparably harmed if chiropractors are to be allowed to prescribe and administer dangerous drugs and drugs to be administered by injection without first obtaining approval from the Medical Board and the Pharmacy Board. The prescription and administration of pharmaceuticals is dangerous and complicated, as evidenced by numerous documented accidents and fatalities that occur due to prescription and administration error. The injections process is one that requires extensive training not only on the safe administration of the procedure, but also on the proper

maintenance, security, and accountability for the materials and paraphernalia used in the process. Exhibit F. Chiropractic physicians do not receive such training as a part of their professional instruction and qualification processes. Furthermore, the skills, judgment, and experience necessary to safely and effectively administer such procedures cannot be acquired from the proposed weekend post-graduate seminars. Exhibit F. Such qualifications may only be obtained through licensure as nurse, physician's assistant, or doctor of medicine.

Second, Respondent's actions pose a threat to the integrity of the chiropractic profession by placing chiropractic physicians at risk of practicing outside the legally permissible scope. On a related note, Respondent's actions will blur the distinction between the chiropractic and medical professions. The chiropractic profession is based on non-pharmaceutical approaches to health. Exhibit F. In contrast, the medical profession places heavy reliance on drugs and surgery. Although the New Mexico Legislature in 2008 included in the definition of chiropractic "the administering of a drug by injection by a certified advanced chiropractic physician," all major chiropractic associations worldwide define chiropractic as a healing science, art, and philosophy that excludes drugs and surgery. In 2003, the Assembly of the World Federation of Chiropractic, composed of eighty-five national chiropractic associations, passed a resolution voicing its policy that "the practice of chiropractic does not include the use of

prescription drugs, and chiropractic patients who may benefit from prescription drugs should be referred, where appropriate, to a medical doctor or other suitably qualified health care practitioner.” Exhibit G. Although the Legislature has allowed the use of drugs by certain chiropractors under certain conditions, those conditions have not been met in this case.

V. Other Interested Persons Will Not Be Harmed

A stay will pose little, if any, harm to the Chiropractic Board since a stay would merely maintain the status quo until this case is resolved, and the Chiropractic Board knew that its adopting of the two rules at issue was contrary to law. Furthermore, only a month and a half has passed since the two rules at issue took effect on November 13, 2011. To date, ICA is unaware of any chiropractic physicians who have been certified pursuant to 16.4.15.12 NMAC to prescribe and administer dangerous drugs and drugs to be administered by injection under 16.4.15.11 NMAC. The concept of “detrimental reliance” is inapplicable in this case. *See above* at 9.

On the other hand, if a stay is not granted, patient safety and welfare will be jeopardized, as explained above. In addition, the integrity of the chiropractic profession will be compromised.

VI. A Stay Will Serve the Public Interest


The requested stay will serve the public interest because it will ensure that

individuals will receive drugs administered by injection only from the most highly qualified professionals, instead of professionals who receive merely a cursory training. A stay will also preserve the integrity of the chiropractic profession. The public is entitled to clear definitions of the various health professions and to the full protection of the regulatory process to ensure that any health professional holding themselves out as qualified to perform a particular service is licensed and qualified under the highest standard. Further, a stay is necessary to enforce the clear mandates of Sections 61-4-9.1 and 61-4-9.2.

VII. Conclusion

For the foregoing reasons, ICA respectfully requests that the Court issue an order staying the Chiropractic Board from implementing 16.4.15.11 and 16.4.15.12 NMAC pending appeal.

Respectfully submitted this 21st day of December, 2011,



Patrick Ortiz
Cuddy & McCarthy LLP
P.O. Box 4160
Santa Fe, NM 87502
(505) 988-4476; FAX (505) 954-7373

Attorney for Appellant

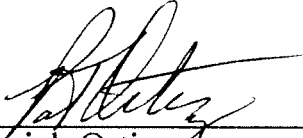
CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR STAY was served via hand delivery, on the 21st day of December, 2011, upon Counsel for Appellee at the following address:

Zachary Shandler
Assistant Attorney General
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504-1508

and by electronic mail to:

zshandler@nmag.org



Patrick Ortiz
Attorney for Appellant

Exhibit A



New Mexico Regulation and Licensing Department
BOARDS AND COMMISSIONS DIVISION

Board of Chiropractic Examiners
Toney Anaya Building • 2550 Cerrillos Road • Santa Fe, New Mexico 87505
(505) 476-4698 • Fax (505) 476-4645 • www.rld.state.nm.us/chiropractic

Regular Meeting
June 14, 2010

MINUTES

I. CALL TO ORDER

The Regular Meeting of the New Mexico Board of Chiropractic was called to order at 11:50 a.m. by Dr. Schmidt, Board Chair. Pauline Varela took roll call and the Chair established that a quorum was present.

II. ROLL CALL

Board Members Present:

Leslie Schmidt, D.C., Chair
William Doggett, D.C., Vice Chair
Brian Hesser, D.C., Professional Member
Kathleen Carter, Public Member

Others Present:

Pauline Varela, Board Administrator
Deloisa Trujillo, Compliance Officer
Amanda Storie, Team Leader
Zach Shandler, Asst. Attorney General

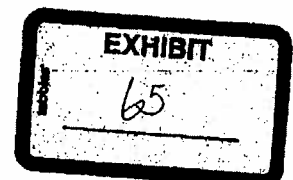
Absent: Guruchander Singh Khalsa, D.C., Professional Member

III. APPROVAL OF AGENDA

A MOTION was made by Dr. Doggett to approve the agenda as written. SECONDED by Dr. Hesser. MOTION PASSED UNANIMOUSLY.

IV. APPROVAL OF MINUTES

Revision date 10/09



Board of Chiropractic Examiners
Form Name

A MOTION was made by Dr. Doggett to approve the minutes of March 1, 2010 Regular Board Meeting as written. SECONDED by Dr. Hesser. MOTION PASSED UNANIMOUSLY.

V. OLD BUSINESS

VI. NEW BUSINESS

- Adoption of Rules

16.4.1.13 - A MOTION was made by Bill Doggett to approve the substitute chiropractic formulary as amended. SECONDED by Dr. Hesser. MOTION PASSED UNANIMOUSLY.

- A. Hormones for topical, sublingual, oral use
 - (1) estradiol
 - (2) progesterone
 - (3) testosterone
 - (4) desiccated thyroid
- B. Muscle relaxers; cyclobenzaprine
- C. NSAIDs – prescription strength
 - (1) ibuprofen
 - (2) naproxen
- D. Prescription medications for topical use
 - (1) NMDC Ca² destromethorphan
 - (2) NSAIDs
 - (a) ketoprofen
 - (b) piroxicam
 - (c) naproxen
 - (d) ibuprofen
 - (e) disolofenac
 - (3) Muscle relaxers; cyclobenzaprine
 - (4) Sodium channel antagonist; lidocaine
- E. Homeopathics requiring prescription
- F. Other substances by injection
 - (1) sterile water
 - (2) sterile saline
 - (3) sarapin or its generic
 - (4) caffeine
 - (5) procaine HCL
 - (6) epinephrine
 - (7) homeopathic for injection
- G. Glutathione for inhalation

16.4.15 - A MOTION was made by Kathleen to not change fees. SECONDED by Dr. Hesser. MOTION PASSED UNANIMOUSLY.

**Board of Chiropractic Examiners
Form Name**

A **MOTION** was made by Dr. Hesser to ratify Dr. Schmidt's decision to sign the Open Meeting Resolution. **SECONDED** by Ms. Carter. **MOTION PASSED UNANIMOUSLY.**

National University of Health Sciences – In rule, the Chiropractor includes the Doctor of Chiropractic Medicine.

Continuing Education – The board office is seeing some renewal applications coming in with either all courses taken as on-line courses, courses not pre-approved by the board or courses taken in prior years. The board office will keep a list of all pre-approved courses and keep better track CEU's that are entered during the renewal period.

Entities that are pre-approved by the board have asked if they have to pay for their seminars. There are certain reservations even for those entities that are pre-approved. The New Mexico State Association is the only exception. All other entities or individuals who would like to get a course approved for CE's must submit fee and course description to the board office 45 days in advance. Some courses such as practice building seminars or courses offered for more than 8 on-line hours will not be approved.

The board staff will be adding social security numbers to all applications in an effort to comply with the Parental Responsibility Act. The word "examiners" will be removed from all applications.

A **MOTION** was made by Dr. Hesser to elect Dr. Doggett as Chair. **SECONDED** by Ms. Carter. **MOTION PASSED UNANIMOUSLY.** Other officers will be elected at next regular board meeting.

MOTION was made by Dr. Doggett to ratify all submitted applications for general licensure and advanced practice licensure. **SECONDED** by Dr. Hesser. **MOTION PASSED UNANIMOUSLY.**

VII. PUBLIC COMMENT

Subsection B of 16.24.1.8 NMAC states that "the board, at its sole discretion, may provide a reasonable opportunity for persons attending an open meeting to address the board on an agenda item. The request to speak shall be timely made and shall not delay or disrupt the board's meeting. No person shall be permitted to address the board on any pending or concluded application, complaint, investigation, adjudicatory proceeding, or matter in litigation, except to confer for the purpose of settlement or simplification of the issues. Any public comment to the board shall be brief, concise, and relevant to the agenda item. The board may limit the total time allotted for comments and the time allotted to any person.

VI. EXECUTIVE SESSION

Board of Chiropractic Examiners
Form Name

Dr. Doggett made a **MOTION** that the meeting of the New Mexico Board of Chiropractic be closed while the Board enter into Executive Session to discuss licensing matters with the authority for closing being § 10-15-1 H.(1). **SECONDED** by Dr. Hesser. **MOTION PASSED UNANIMOUSLY.**

Roll Call Vote:

Dr. Schmidt (Chair)	Aye
Dr. Doggett, (Vice Chair)	Aye
Dr. Hesser	Aye
Dr. Khalsa	Absent
Ms. Kathleen Carter	Aye

A **MOTION** was made by Dr. Doggett to come out of executive session pursuant to Sections 10-15-1-H (1) of the Open Meetings Act. The matters discussed in the closed session were limited to the items listed on the agenda. **SECONDED** by Ms. Carter. **MOTION PASSED UNANIMOUSLY.**

Back to Open Session

BOARD ACTION ON MATTERS DISCUSSED IN CLOSED SESSION

A **MOTION** was made by Dr. Doggett to dismiss C-COM-09-06 due to no violation of act or rules. **SECONDED** by Dr. Hesser. **MOTION PASSED UNANIMOUSLY.**

A **MOTION** was made by Dr. Doggett to table C-COM-09-16 and refer case to complaint committee as determined by incoming chair. **SECONDED** by Dr. Hesser. **MOTION PASSED UNANIMOUSLY.**

A **MOTION** was made by Dr. Doggett to dismiss C-COM-10-01-01 due to no violation of act or rules. **SECONDED** by Dr. Hesser. **MOTION PASSED UNANIMOUSLY.**

A **MOTION** was made by Dr. Doggett to issue an NCA on C-COM-10-02-02 based on violations of 61-4-10.16 (j), 16.4.1.16a2. **SECONDED** by Dr. Hesser. **MOTION PASSED UNANIMOUSLY.**

A **MOTION** was made by Dr. Doggett to dismiss C-COM-10-03-04 due to no violation of act or rules. However, the board will send a letter to respondent regarding his or her method of supply transcripts. **SECONDED** by Dr. Hesser. **MOTION PASSED UNANIMOUSLY.**

A **MOTION** was made by Dr. Hesser to table C-COM-10-03-03. The board will obtain further information of records. **SECONDED** by Ms. Carter. **MOTION PASSED UNANIMOUSLY.**

Board of Chiropractic Examiners
Form Name

VII. SET NEXT MEETING

A Regular Board Meeting will be held on September 20th, 2010 at 1:00 p.m. in Albuquerque at the RLD office.

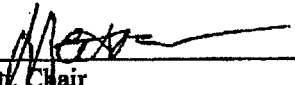
X. ADJOURNMENT

MOTION was made by Ms. Carter to adjourn. **SECONDED** by Dr. Doggett. **MOTION PASSED UNANIMOUSLY.**

These Minutes were approved at the September 20, 2010 Board Meeting.

Submitted by: 
Pauline Varela, Board Administrator

9-20-10
Date

Approved by: 
Bill Doggett, Chair

9-20-10
Date

Exhibit B



Bill Richardson
GOVERNOR

Kelly O'Donnell, Ph.D.
SUPERINTENDENT

Linda Trujillo
DIRECTOR

Alcohol and Gaming Division
(505) 476-4875

Boards and Commissions Division
(505) 476-4600

Construction Industries Division
(505) 476-4700

Financial Institutions Division
(505) 476-4885

Manufactured Housing Division
(505) 476-4770

Securities Division
(505) 476-4580

Administrative Services Division
(505) 476-4800

New Mexico Regulation and Licensing Department BOARDS AND COMMISSIONS DIVISION

Toney Anaya Building • 2550 Cerrillos Road • Santa Fe, New Mexico 87505
(505) 476-4600 • Fax (505) 476-4615 • www.rld.state.nm.us

November 10, 2010

Gary L. Walsemann, DC, FICA
International Chiropractors Association
6400 Arlington Blvd., Ste. 800
Falls Church, VA 22042

Dear Dr. Walsemann:

The New Mexico Board of Chiropractic is in receipt of several letters from the International Chiropractors Association regarding three issues involving NMSA 1978, Section 61-4-9.2 and the Chiropractic Formulary 16.4.15.11 NMAC. We have been unable to respond because these areas of law have been subject to litigation in New Mexico Board of Pharmacy v. New Mexico Board of Chiropractic, No. 29, 809 (N.M. Ct. App. 2010). Based on this litigation and on continuing input from the New Mexico Medical Board and New Mexico Pharmacy Board, the New Mexico Board of Chiropractic revised its 2009 Formulary Rule and adopted a revised version at its 2010 summer quarterly meeting. This formulary became effective on July 23, 2010.

The first issue in your letters questions the propriety of the Board's actions in this matter. The Board took this action after a public hearing and after a compromise position was reached on many aspects of the formulary with the New Mexico Pharmacy Board and New Mexico Medical Board. The revised Chiropractic Formulary includes specific details including a listing of: (1) hormones for topical, sublingual, oral use; (2) other substances by injection and (3) prescription medications for topical use. The three boards have agreed to continue to study the law and meet on those aspects where there was not a consensus position.

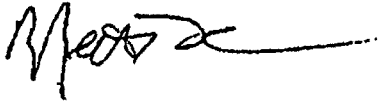
At the end of the hearing, several practitioners asked whether a few items could be kept from the 2009 formulary because they had placed detrimental reliance on the Board's prior action. The legal concept of detrimental reliance occurs when one party suffers a loss because it has relied on the promise or position taken by a regulatory agency. These practitioners stated they had financially transformed their business practice and now faced significant hardship under the new formulary. The Board voted to re-instate these narrow items. The New Mexico Medical Board representatives were present during this entire discussion. Interestingly, the Medical Board has not filed a legal challenge to the revised formulary. The Pharmacy Board actually dropped its above-stated lawsuit after the Board adopted the revised formulary.

The second issue in your letters questions the New Mexico Medical Board's approval of higher educational institutions necessary for training in these areas. We have

enclosed our October 20, 2010 letter to Dr. Steven Weiner, Medical Board Chairperson, on this item for your review. (Enclosure)

The third issue in your letters questions the role of ACPCC in the role. The ACPCC evaluation was performed verbally through discussions with the principles of the ACPCC. The organization has been credentialing chiropractic physicians for a number of years and those credentials are recognized nationally.

Respectfully,



William H. Doggett, DC FACO FICC
Chair, NMBCE

enc: October 20, 2010 letter to Dr. Weiner

cc: Kelly O'Donnell, Superintendent
New Mexico Regulation and Licensing Department
Tony Anaya Building
2550 Cerrillos Road
Santa Fe, NM 87505

Governor Bill Richardson
Office of the Governor
490 Old Santa Fe Trail
Room 400
Santa Fe, NM 87501

Attorney General Gary K. King
408 Galisteo Street
Villagra Building
Santa Fe, NM 87501



**New Mexico Regulation and Licensing Department
BOARDS AND COMMISSIONS DIVISION**

Toney Anaya Building • 2550 Cerrillos Road • Santa Fe, New Mexico 87505
(505) 476-4600 • Fax (505) 476-4615 • www.rld.state.nm.us

Bill Richardson
GOVERNOR

Kelly O'Donnell, Ph.D.
SUPERINTENDENT

Linda Trujillo
DIRECTOR

October 20, 2010

Dr. Steven Weiner
NM Medical Board
2055 S. Pacheco St #400
Santa Fe, NM 87505

Re: Chiropractic Request (ICA)

Dear Dr. Weiner,

Thank you for your inquiry regarding the request that the NMMB received from Dr. Walesmann. You are correct that Dr. Simmons and I gave a presentation to the NMMB in May of 2008 following the passage of the Chiropractic Advanced Practice bill by the legislature. That bill charged the NMMB with approval of the educational institutions responsible for developing the curriculum and testing for the certification of DC, APC's in New Mexico. Following the NMMB's approval of the educational institutions the schools involved, Texas Chiropractic College and National University of Health Sciences developed a 120 hour curriculum that has been used successfully during the past two (2) years to train licensed chiropractic physicians in the state in the injection techniques authorized by the statute. The NMMB continues to participate in evaluating the substances used in the procedures but has fulfilled its obligations so far as the institutions providing the training are concerned so there are no additional meetings or approvals necessary.

I believe that the ICA and its president are under the mis-impression that the advanced practice legislation is more recent than it is and are making an attempt to derail the certification. This stems from some long standing interprofessional philosophic differences between the members of that organization and the majority of chiropractors in New Mexico.

We would be happy to author a letter explaining the completion of the NMMB's role in the advanced practice institutional approval if you would like or to respond to any additional requests that you get from this or other organizations related to the chiropractic profession, if that is your desire.

Sincerely,

William H. Doggett, DC FACO FICC
Chair, NMBC

Alcohol and Gaming Division
(505) 476-4875

Boards and Commissions Division
(505) 476-4600

Construction Industries Division
(505) 476-4700

Financial Institutions Division
(505) 476-4885

Manufactured Housing Division
(505) 476-4770

Securities Division
(505) 476-4580

Administrative Services Division
(505) 476-4800

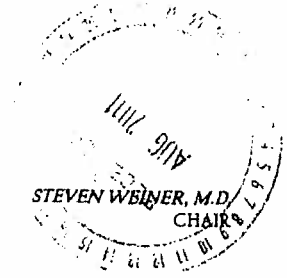
Exhibit C



SUSANA MARTINEZ
GOVERNOR

NEW MEXICO MEDICAL BOARD

2055 South Pacheco Street
Building 400
Santa Fe, New Mexico 87505
505-476-7220 505-476-7237 fax



August 12, 2011

William Doggett, D.C., F.A.C.O.
Chair, Board of Chiropractic Examiners
Toney Anaya Building
2550 Cerrillos Road
Santa Fe, New Mexico 87505

Re: Proposed Changes to Rule NMAC 16.4.15

Dear Dr. Doggett,

I am writing this letter to convey to you the decision reached by the New Mexico Medical Board concerning the proposed changes to the Board of Chiropractic Examiners' Rule NMAC 16.4.15, scheduled to be heard at the August 30, 2011 meeting & Rule Hearing.

The New Mexico Medical Board voted unanimously on August 12, 2010 not to approve, as specified under NMSA 1978, 16.4.9.2.B,

16.4.9.2.B "...Dangerous drugs or controlled substances, drugs for administration by injection and substances not listed in Subsection A of this section shall be submitted to the board of pharmacy and the New Mexico medical board for approval."

the proposed formulary changes detailed in the Rule NMAC 16.4.15.11, for the following reasons:

1. New drugs have been added that have already been agreed to (see section 16.4.15.11.B, D);
2. New drugs have been added that have been disapproved by the Pharmacy Board (see section 16.4.15.11.B, D);
3. Drugs have been specified for injection (SC, IM or IV routes are not identified) (see section 16.4.15.11.F). Further, many of these have been disapproved by the Pharmacy Board, and several are not in the scope of practice of Chiropractic. Both the Pharmacy and Medical Boards are steadfastly opposed to the use of EDTA in any form, glucosamine has not been approved by the FDA for medical use in humans, and several are experimental and unproven (including use of blood products in joints);
4. The addition of Glutathione for inhalation has been disapproved by the Pharmacy Board; it is also unproven therapy for pulmonary diseases, and not in the normal scope of practice in Chiropractic;
5. No mention is made in 16.4.15.11.D of the restriction agreed to between the Chiropractic Examiners and Medical Boards that states, "The patient must first be screened, by appropriate medical and laboratory means, for existing problems and contra-indications (such as renal or other systemic



SUSANA MARTINEZ
GOVERNOR

NEW MEXICO MEDICAL BOARD

2055 South Pacheco Street
Building 400
Santa Fe, New Mexico 87505
505-476-7220 505-476-7237 fax

STEVEN WEINER, M.D.
CHAIR

Page 2

diseases). Appropriate coordination with the patient's allopathic or osteopathic physician is strongly recommended;" and,

6. The hours of training specified in 16.4.15.12 do not appear to the Medical Board to be sufficient, and sub-sections B, C, and D concern substances from 16.4.15.11.F that are not approved by the Medical or Pharmacy Boards. Therefore, the Medical Board will continue to disapprove all injectables until adequate training is proposed and agreed to by the NMMB. Thus, the NMMB has also not approved of the injectables for 61-4-9.2.B now appearing in the proposed changes in 16.4.15.11, nor any injectable forms of medicines listed in NMSA 1978, 16.4.9.2.A or 16.4.9.2.B.

The New Mexico Medical Board further requests that this letter be included as a part of the official record of the Rule Hearing of the Board of Chiropractic examiners to be held on August 30, 2011.

The Medical Board also respectfully requests the opportunity for Ms. Lynn Hart, Executive Director, New Mexico Medical Board, to appear before the Board of Chiropractic Examiners at its August 30, 2011 Hearing to deliver this decision directly, and to address any questions that the Board of Chiropractic Examiners may have.

Respectfully submitted,


Lynn S. Hart, Executive Director
New Mexico Medical Board

Encl. 16.4.15.11-Formulary-08-2011: annotated Rule 16.4.15.11 & 12
ChiroAdvFormulary-2010: Formulary previously agreed to

- c.c. Governor Susana Martinez
J. Dee Dennis, Jr., Supt., Regulation & Licensing Dept.
Members, Board of Chiropractic Examiners
Zachary Shandler, Assistant Attorney General
Amanda Roybal, Board Administrator
William Harvey, Board of Pharmacy

Advanced Practice Chiropractic Formulary
Proposed (for August 30, 2011)

16.4.15.11 CHIROPRACTIC FORMULARY:

A. Hormones for topical, sublingual, oral use

- (1) estradiol
- (2) progesterone
- (3) testosterone
- (4) desicated thyroid

B. Muscle relaxers; cyclobenzaprine

(a) cyclobenzaprine (previously agreed to)

(b) metaxalone (new—significant cautions: not approved by Pharmacy Board)

C. NSAID - prescription strength

- (1) ibuprofen
- (2) naproxen

D. Prescription medications for topical use

- (1) NMDC Ca2 dextromethorphan
- (2) NSAIDSs

- (
- a) ketoprofen
 - (b) piroxicam
 - (c) naproxen
 - (d) ibuprofen
 - (e) diclofenac
 - (f) indomethacin (new—significant cautions)

(3) muscle relaxers; cyclobenzaprine

(a) cyclobenzaprine

(b) baclofen (new—significant cautions: not approved by Pharmacy Board)

(4) sodium chanel antagonist; lidocaine

(5) GABA analogue: gabapentin (new—significant cautions: for use with ketoprofen?)

(6) minerals; magnesium (not approved by Pharmacy Board)

E. Homeopathics requiring prescription

F. Other substances by injection

- (1) sterile water
- (2) sterile saline
- (3) sarapin or its generic
- (4) caffeine
- (5) procaine HCL
- (6) epinephrine
- (7) homeopathic for injection
- (8) lidocaine (not approved by Pharmacy Board)
- (9) bupivacaine (new-significant cautions: (not approved by Pharmacy Board)
- (10) vitamins NO Injectable Vitamins: Pharmacy Board considers these prescription drugs
(classified as “dangerous drugs”)

(a) aqueous vitamin A (IM administration only)

(b) ascorbic acid (vitamin C) (SC or IM administration only)

(c) cyanocobalamin (vitamin B12) (SC or IM administration only)

(d) D3 (Oral administration only)

(e) dexapanthenol (vitamin B5) (Oral administration only)

(f) folic acid (SC or IM administration only)

(g) hydroxocobalamin (vitamin B12) (IM administration only)

- (11) EDTA (with additional board approved education) Only chelation of heavy metals in Heavy metal poisoning considered legitimate use by FDA; not approved by Pharmacy Board)
- (12) dextrose (with additional board approved education) (Purpose not specified?)
- (13) minerals (Purpose not specified?: not approved by Pharmacy Board)
- (14) phenol (with additional board approved education) (Use in spasticity??: not approved by Pharmacy Board)
- (15) autologous blood (Autologous conditioned plasma; intended use: promote healing tendons?)
- (16) collagenase (intended use: Dupuytren's? Peyronie's? (Urologic))
- (17) glucosamine not FDA approved for medical use in humans)
- (18) glycerin (intended use: trigeminal neuralgia?)
- (19) phenol (with additional board approved education) (duplicates (14) above)
- (20) platelet rich plasma (with additional board approved education) (prolotherapy is experimental & unproven)
- (21) sodium morrhuate (saponified cod liver oil; intended use: varicose veins?)
- (22) sodium hyaluronate (intended use: increase viscosity of synovial fluid? Skin filler?)

G. Glutathione for inhalation (Comment: unproven pulmonary therapy for cystic fibrosis, oxidative stress, COPD, air pollutant reaction; not approved by Pharmacy Board)
 [16.4.15.11 NMAC - N, 09/11/2009; A, 7/23/2010]

16.4.15.12 Chiropractic Formulary Additional Education Requirements

- A. A certified advanced practice chiropractic physician shall be required to furnish proof of board approved education upon request of the board for any item in the formulary that stipulates board approved education additional to the certified advanced practice chiropractic physician education requirements as listed in statute.
- B. A certified advanced practice chiropractic physician shall be authorized to administer vitamins and/or minerals by IV administration only upon proof of completion of a board approved program in IV therapy of not less than 10 hours.
- C. A certified advanced practice chiropractic physician shall be authorized to administer dextrose, phenol, autologous blood, and platelet rich plasma via injection only upon proof of completion of a board approved program in prolotherapy or its equivalent of not less than 25 hours.
- D. A certified advanced practice chiropractic physician shall be authorized to administer EDTA via injection only upon proof of completion of a board approved program in IV therapy of not less than 10 hours and only upon proof of completion and certification by examination of a board approved program in chelation therapy of not less than 15 hours.

16.4.15 NMAC 4 16.4.15

Advanced Practice Chiropractic Formulary

[Modified Formulary acceptable to the New Mexico Medical Board]

Physical Medicine Therapies SQ, IM and IA administration [all Injectables]

NONE

Hormones topical, sublingual, oral administration [all require Rx]

Hormones

Estradiol

Progesterone

Testosterone

Dessiccated thyroid

Estriol [Specifically excluded: Non-FDA approved]

Muscle relaxers

Cyclobenzaprine (Flexeril)

NSAIDs [Prescription Strength] *

Ibuprofen

Naproxen

Vitamins (for Oral use only)

Ascorbic Acid (C)

D3 (cholecalciferol)

Dexapanthenol (B5)

Folic Acid (B9)

Hydroxocobalamin (B12)

Methylcobalamin (B12)

Niacin (B3)

Pyridoxine HCl (B6)

Riboflavin (B2)

Prescription Medications for Topical Application for Pain *

NMDA Ca²⁺ channel antagonists

Dextromethorphan

NSAID's

Ketoprofen

Piroxicam

Naproxen

Ibuprofen

diclofenac

Muscle Relaxant

Cyclobenzaprine

NA channel antagonists

Lidocaine

Additional OTC drugs as needed in compounded formulations for topical applications for pain treatment.

-
1. * = The patient must first be screened, by appropriate medical and laboratory means, for existing problems and contra-indications (such as renal or other systemic diseases). Appropriate coordination with the patient's allopathic or osteopathic physician is strongly recommended.

Exhibit D

2011 OCT 14 PM 2:28

NMAC TRANSMITTAL FORM

1.24.10 NMAC

[Sequence # _____]

New Mexico Board of Chiropractic	420-448
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2550 Cerrillos Rd. Santa Fe, NM 87504
--

Name: Amanda Roybal	Phone #: (505) 476-4898	FAX: (505) 476-4665
E-mail: Amanda.roybal@state.nm.us		

New <input type="checkbox"/>	Amendment <input checked="" type="checkbox"/>	Resubmit <input type="checkbox"/>	Repeal <input type="checkbox"/>	Emergency <input type="checkbox"/>
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2	8/30/2011	11/13/2011
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Title	Chapter	Part
16	4	15

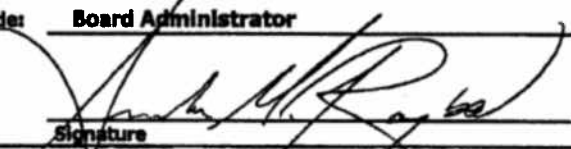
Title	Chapter	Part
Occupational and Professional Licensing	Chiropractic Practitioners	Chiropractic Advanced Practice Certification Registry

Amended one (2) sections	16.4.15 NMAC Section 11, 12
06 / 23 / 2010	

No	Yes	Reference / Internet site
<input checked="" type="checkbox"/>	<input type="checkbox"/>	1.
		2.
		3.

No <input type="checkbox"/>	Yes <input type="checkbox"/>	Public domain <input type="checkbox"/>
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Chiropractic Physician Practice Act 61-4-1 through 17 NMSA 1978

Name: Amanda Roybal	Check if delegated authority <input checked="" type="checkbox"/>
Title: Board Administrator	
 Signature	10/14/11 Date Signed

2011 OCT 14 PM 2:28

This is an amendment to 16.4.15 NMAC, Sections 11 and 12, effective 11/13/2011.

16.4.15.11 CHIROPRACTIC FORMULARY:

- A. Hormones for topical, sublingual, oral use
 - (1) estradiol
 - (2) progesterone
 - (3) testosterone
 - (4) desiccated thyroid
- B. Muscle relaxers; cyclobenzaprine
- C. NSAIDs - prescription strength
 - (1) ibuprofen
 - (2) naproxen
- D. Prescription medications for topical use
 - (1) NMDC Ca² dextromethorphan
 - (2) NSAIDs
 - (a) ketoprofen
 - (b) piroxicam
 - (c) naproxen
 - (d) ibuprofen
 - (e) diclofenac
 - (3) muscle relaxers; cyclobenzaprine
 - (4) sodium channel antagonist; lidocaine
 - (5) ~~minerals: magnesium~~
- E. Homeopathics requiring prescription
- F. Other substances by injection
 - (1) sterile water
 - (2) sterile saline
 - (3) sarapin or its generic
 - (4) caffeine
 - (5) procaine HCL
 - (6) epinephrine
 - (7) homeopathic for injection
 - (8) lidocaine
 - (9) vitamins
 - (a) aqueous vitamin A (IM)
 - (b) ascorbic acid (vitamin C) (sub-Q or IM)
 - (c) cyanocobalamin (vitamin B12 (sub-Q or IM)
 - (d) folic acid (sub-Q IM)
 - (e) hydroxocobalamin (vitamin B12) (IM)
 - (f) methylcobalamin (vitamin B12) (IM)
 - (g) thiamin (vitamin B1) (IM)
 - (10) dextrose (with additional chiropractic board approved education)
 - (11) phenol (with additional chiropractic board approved education)
 - (12) autologous blood (with additional medical board approved education)
 - (13) collagenase (with additional medical board approved education)
 - (14) glucosamine (with additional medical board approved education)
 - (15) glycerin (with additional medical board approved education)
 - (16) platelet rich plasma (with additional chiropractic board approved education)
 - (17) sodium morrhuate (with addition medical board approved education)
 - (18) sodium hyaluronate (with addition medical board approved education)
- G. Glutathione for inhalation

[16.4.15.11 NMAC - N, 09/11/2009; A, 7/23/2010; A, 11/14/11]

16.4.15.12 CHIROPRACTIC FORMULARY ADDITIONAL EDUCATION REQUIRMENTS:

A. A certified advanced practice chiropractic physician shall be required to furnish proof of board approved education upon request of the board for any item in the formulary that stipulates board approved education additional to the certified advanced practice chiropractic physician education requirements as listed in statute.

B. A certified advanced practice chiropractic physician shall be authorized to administer vitamins and/or minerals by IV administration only upon proof of completion of a board approved program in IV therapy of not not less than 25 hours.

C. A certified advanced practice chiropractic physician shall be authorized to administer dextrose, phenol, autologous blood, and platelet rich plasma via injection only upon proof of completion of a board approved program in prolotherapy or its equivalent of not less than 50 hours.

[16.4.15.12 NMAC - N, 11/13/11]

Exhibit E

1 read, and I think many lawyers might agree with it, as
2 well, is by the use of injectable. You could say that,
3 "Okay. Vitamins are approved in Section A, but what if
4 these vitamins are injected and have to be prescribed?"
5 Then it obviously comes under Section B.

6 Lidocaine, if it's topical, that was approved.
7 But if it's injected and it needs to be prescribed, it
8 comes under all three Boards' jurisdiction.

9 And I really do not agree that there is a real
10 problem with reading the intent of the statute. And
11 through going through this last legislative session, it
12 was very clear the legislature wanted the Medical Board
13 to be involved with anything involving dangerous drugs,
14 anything prescribed, and controlled substances and
15 injectables. They stuck with the language from the
16 original.

17 DR. DOGGETT: I would ask Superintendent
18 Dennis, would you like to testify? I know we've been
19 keeping you.

20 MR. MCKAY: I'm not Superintendent
21 Dennis. My name is Jim McKay. I'm general counsel for
22 Regulation and Licensing. We think that, on behalf of
23 Regulation and Licensing, that it is premature to act
24 on this particular part of the amendment. The reason
25 is two-fold:

1 The first one is that, to act on dangerous drugs
2 or controlled drugs, as the Medical Board was
3 testifying and has testified to earlier, when you're
4 talking about the new drugs for injection, it "shall be
5 submitted to the Board of Pharmacy and the New Mexico
6 Medical Board for approval."

7 There is no such approval before this Board at
8 this time. And when you're talking about difficult,
9 even somewhat contested drugs, as to what their
10 medicinal effect is or not, or is it -- the genesis of
11 those drugs, you want to make sure before you do act.
12 And of course, I'm talking of medical professionals
13 right now, as well. But you know in terms of -- you
14 have to be very careful and conscientious about such
15 injections.

16 At this point in time, though, we don't have any
17 kind of approval from the Medical Board, and that's
18 what's required. So in that sense, it's premature for
19 this Board to be acting on this matter at this time.
20 So we'd have to take a step back and get some kind of
21 approval from the Medical Board.

22 Now, I understand there were presentations made
23 by the subcommittee, and some of them are present, but
24 again, there was no record maintained of that for the
25 most part. But even if there was, you still would need

1 to have an approval as to what they approve of or don't
2 approve of before this Board could act.

3 Last, having had some experience in terms of
4 some other regulations, the way it works is kind of
5 like paint by the numbers. What I mean by that is, you
6 can have a statute, but the regulation can only have
7 the authority within the context of the statute;
8 otherwise, it becomes the tail wagging the dog, where
9 the regulations would have more power than the
10 statute. You simply cannot have that as a matter of
11 law. And that's what we believe would be the danger
12 and the problem at this point, to adopt a regulation
13 that has more authority than the statute permits.

14 So for those two reasons, we believe it's
15 premature to act on these particular amendments as
16 proposed right now.

17 DR. DOGGETT: Do any Board members have
18 questions of this witness?

19 (No response.)

20 DR. DOGGETT: Do audience members have
21 questions of Councilman McKay?

22 (No response.)

23 DR. DOGGETT: Thank you, Mr. McKay. Any
24 other testimony from the floor?

25 (No response.)

Exhibit F



August 17, 2011

Dr. William Doggett, D.C., FACO
Chair, Board of Chiropractic Examiners
Toney Anaya Building
2550 Cerrillos Road
Santa Fe, New Mexico 87505

RE: Proposed Changes to Rule NMAC 16.4.15

Dear Dr. Doggett,

We, the undersigned, are writing to you today to convey to you our opposition to the proposed formulary changes to be considered at the scheduled NMBCE Rules Hearing on August 30, 2011.

Our opposition arises not only out of a concern for the safety of the public, but a concern for how our profession may be perceived by the public, other healthcare professionals and government officials if the NMBCE moves forward and adopts the proposed formulary.

We are chiropractors, not lawyers; however, it seems clear to us that presently in NM any substance intended for injection is considered a drug. As far back as 2005 there was an Attorney General's Opinion, entered into the NMBCE minutes on February 18, 2005, concluding that the use of herbs and nutrients was an acceptable practice as long as they were not injected into the body, thereby becoming classified as a dangerous drug.

As specified under NMSA 16.4.9.2.B ... "Dangerous drugs or controlled substances, drugs for administration by injection and substances not listed in subsection A of this section shall be submitted to the board of pharmacy and the New Mexico medical board for approval." It was this limitation that HB127 appears to have been intended to eliminate. In as much as HB127 failed passage, 16.4.9.2 remains in effect, including subsection B. It seems clear the current proposed changes include numerous substances which are not included in subsection A and, therefore, would be subject to approval by the medical board and pharmacy board. The proposal to add a multitude of injectable substances and the addition of IV injections appears to be clearly outside the scope of the present law.

The hours of education specified in 16.4.15.12 are less than sufficient, in our opinion, to provide for the skill, judgement and clinical experience to safely administer such procedures. Postgraduate weekend seminars cannot provide sufficient training. Practitioners who want to prescribe and inject should be willing to follow presently established pathways; i.e., all curriculum, clinical training, testing, and certification should be provided under the supervision of the NMMB, until such time as the law is amended or changed through proper legislative channels.

We respectfully request the NMBCE to abide by the letter of the present law, and suggest any changes to the chiropractic formulary be deferred until such time as the appropriate approvals are obtained from the medical board and the pharmacy board. To proceed without these approvals would possibly be perceived as out right disregard for the present law and would reflect poorly on our entire profession in New Mexico.

Respectfully submitted,

Dr. Jep Carter, Silver City, NM
Dr. Cathy Riekeman, Albuquerque, NM
Dr. Wayne Goforth, Gallup, NM
Dr. Marilyn Coady, Hobbs, NM
Dr. George Stribling, Albuquerque, NM
Dr. Jillana Burgess, Artesia, NM
Dr. Ron Mitchell, Las Cruces, NM

cc: Adam Feldman, Director of Boards and Commissions
J. Dee Dennis, Jr., Superintendent, Regulation and Licensing Department
Gary King, Attorney General
Zachary Shandler, Assistant Attorney General



Burgess Chiropractic Center

Dr. Jillana G. Burgess

315 W. Washington, Suite A
Artesia, New Mexico 88210
Phone (505) 748-3305



August 17, 2011

Amanda Roybal
NMBCE
2550 Cerrillos Rd
Santa Fe, NM 87505

Dear Mrs. Amanda Roybal:

It has come to my attention that the board is reviewing some proposed changes for the chiropractic profession. I can't be at the board meeting on August 30, 2011 to voice my opinion, thus, I am writing to you that I am against the proposed changes. I have been a licensed full-time practicing chiropractor here in New Mexico since 1983 and a member of the NMCA all this time. I am very concerned for this profession and my colleagues. My prayers are with you as the board makes these important decisions. Chiropractic was founded and based on being a drugless natural healing profession and it should stay this way.

Thank you.

Sincerely,

Jillana Burgess, D.C.

JB/ct

cc: Mr. Adam Feldman, Mr. J.D. Dennis

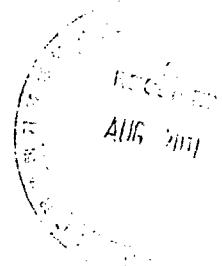
MEMBER:

Christian Chiropractic Association / United Chiropractors of New Mexico
International Chiropractic Association / American Chiropractic Association

Mitchell Chiropractic Life Center

901 Puerto Rico Avenue • P.O. Box 1768 • Alamogordo, New Mexico 88310 • Phone (575) 437-0350 • Fax (575) 437-0352
Donald Roy Mitchell, B.S., D.C. - Elizabeth Ann Mitchell, D.C. - Aubrey A. Blevins, D.C.

August 24, 2011



Amanda Roybal
NMBCE
2550 Cerrillos Road
Santa Fe, NM 87505

Dear Ms. Roybal,

I am writing to express my opinion on the rule changes that are to be addressed at the NMBCE hearing on August 30, 2011.

I am opposed to the rule change to include the administering of drugs by a chiropractor. It is my opinion that the drugs are dangerous to the public and that the level of education is not sufficient to allow for safe administration.

As a third generation chiropractor, I am sure that chiropractors are trained and educated to correct the cause of the disease and to not treat the symptoms. Therefore we are a drug free, natural healing profession that corrects the vertebral subluxation and allows the body to heal itself from above down, inside out.

Again I am strongly opposed to chiropractors administering drugs.

Sincerely

A handwritten signature in cursive script that reads 'Elizabeth Ann Mitchell, D.C.'.

Elizabeth Ann Mitchell, D.C.

CC

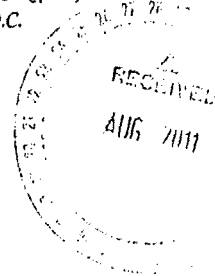
Mr. Adam Feldman

Mr. JD Dennis

Mitchell Chiropractic Life Center

901 Puerto Rico Avenue • P.O. Box 1768 • Alamogordo, New Mexico 88310 • Phone (575) 437-0350 • Fax (575) 437-0352
August 26, 2011 Donald Roy Mitchell, B.S., D.C. - Elizabeth Ann Mitchell, D.C. - Aubrey A. Blevins, D.C.

Amanda Royal
NMBCE
2550 Cerrillos Rd.
Santa Fe, NM 87505



Dear Ms Royal:

My name is Dr. Aubrey Blevins. I have been in chiropractic practice for 12 years. I come from a family of chiropractors, I am a fourth generation chiropractor on my mother's side and a 3rd generation chiropractor on my father's side.

I am writing regarding the upcoming NMBCE meeting on August 30, 2011. I would like to ask you to vote No on "Part 15 Chiropractic Advanced Practice certification Registry". It is my firm belief that chiropractic is and always has been a drug free, natural healing profession. In addition, I feel that when HB127 (which addressed this same issue) was defeated in the New Mexico Senate committee, the chiropractors of New Mexico and the people of this state and all across this country clearly voiced their opposition to chiropractors prescribing and administering drugs.

Thank you for your time and again I ask that you vote No to Chiropractic Advanced Certification Registry.

Sincerely,

A handwritten signature in black ink that reads "Aubrey A. Blevins, D.C.". The signature is fluid and cursive, with a large, stylized initial "A" and "B".

Aubrey A. Blevins, D.C.

CC
Mr. Adam Feldman
Mr. JD Dennis



Goforth Chiropractic, L.L.C.



Dr. P. D. Goforth

08/18/2011

Adam Feldman, Boards and Commissions
Office of the Governor
490 Old Santa Fe Trail, Room 400
Santa Fe, NM 87501

Dear Sir,

I am a licensed, practicing Chiropractic physician in Socorro and have been practicing for 16 years.

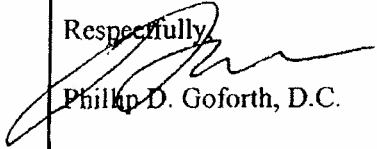
It is my understanding that our state board and political committee's are once again pushing to pass legislation to allow Advanced Practitioners of Chiropractic (A-PC) to dispense dangerous drugs. This action is apparently being pushed as a Rule's Change Hearing by the NMBCE later this month.

This same effort was defeated recently as house bill (HB-127) due to the diligence of opposing Chiropractors and alert legislators. I am embarrassed to say that I, once again, have to ask that this effort be thwarted in order to preserve the integrity of my profession as a distinct "natural therapeutic" form of healthcare.

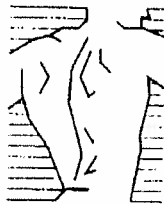
I am opposed to this continued push by a faction of our profession that would elevate risk, change image and purpose and potentially undermine over 100 years of efforts on the part of national organizations to keep Chiropractic distinct.

Please consider looking into this agenda further and at your discretion.

Respectfully,


Phillip D. Goforth, D.C.

Cc: Superintendent J. Dee Dennis, Regulation & Licensing Dept.
Members of the Board of Chiropractic Examiners
Zachary Shandler, Assistant Attny. General



Dr. Herbert M. Beatty

8004 Pennsylvania Circle N.E. • Albuquerque, NM 87110
Tel. (505) 268-2465 • Fax (505) 268-0820 • docbeatty@aol.com

22 August, 2011

New Mexico Board of Chiropractic Examiners
2550 Cerrillos Road
Santa Fe, NM 87505

RE: Current rule change proposals

Dear Members of the Board,

The New Mexico Board of Chiropractic Examiners is required to abide by the language of the rules and regulations under which it is given its authority for acting on any matter that comes before it. In the case of the proposed changes currently being heard regarding the expansion of the scope of practice of chiropractic to include a formulary, the board is subject to the letter and intent of the law as promulgated and passed by the New Mexico Legislature and signed into law by former Governor Bill Richardson. The language of the legislation is quite explicit in its mandate that a formulary shall be developed by the NMBCE and by the New Mexico Medical Board and the New Mexico Board of Pharmacy. Furthermore, the current language of the Chiropractic Advanced Practice Certification Registry states in 16.4.15.7 'E,' "Chiropractic formulary shall mean those substances that have been approved for use by the chiropractor registered in advanced practice by the Chiropractic Board and as by statute with consensus between the New Mexico Medical Board and the New Mexico Board of Pharmacy."

The reality is this: neither the Board of Pharmacy nor the Medical Board have given their consent for the formulary as expanded to include certain injections as well as prescriptive rights of certain other drugs in the proposed changes. Furthermore, the legislative language of HB275 authorizing the expanded scope of practice and creating the Advanced Practice Certification clearly intends for the New Mexico Board of Pharmacy and the New Mexico Medical Board to be a part of the consensus or approval process. Synonyms for the word "consensus" are *general agreement, accord, concurrence, consent, unanimity, unison* and *unity*. This language was reasonable and necessary as the use and dispensing of certain "dangerous drugs" has historically been outside the scope of chiropractic practice. Without this approval, the makeup of the formulary should not proceed and, until such time that there is consensus, the formulary must be considered non-approved except for those items on the formulary that are not in dispute. Another question that truly begs an answer is why the current proposed expansion of the formulary contains procedures that are highly controversial medical practices such as glutathione for inhalation, EDTA and autologous blood. If the chiropractic profession is ever to achieve "cultural authority" it cannot be seen to pursue medical practices that are highly controversial, unproven and not recognized by the very professions that chiropractic will be dependent upon for

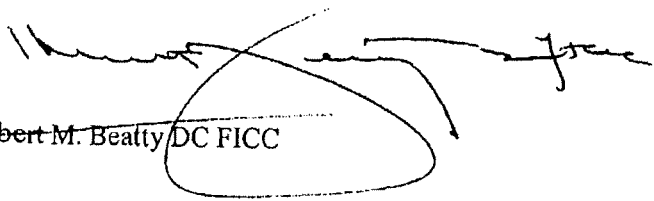
the recognition that so many Advanced Practice Chiropractors want to achieve in order to become Primary Care Physicians with full prescriptive rights. In order to gain the respect sought, one must abide by and meet the standards of care in the fields of medicine and pharmacy. This proposed formulary clearly does not approximate those standards.

In addition, the NMBCE has exceeded its authority by creating Advanced Practice Registration Provisions 16.4.15.8 "A-J" for implementation of a formulary that has never been agreed upon other than certain oral substances and topicals. Therefore, the criteria for Advanced Practice hours of certification and the approved content of those hours cannot be determined in as much as the formulary has not been determined. How can the NMBCE approve of continuing education for a scope of practice yet to be defined? Chiropractic Formulary Additional Education Requirements, 16.4.15.12 "A-D," becomes a road to nowhere without an approved formulary. An Advanced Practice Chiropractor would be, in a sense, all dressed up with no place to go. In actuality, the training would be a waste of the chiropractor's time and money for procedures not yet allowable under the law.

I would like each member of the NMBCE to know that I personally supported the Advanced Practice Act with the language as legislated into law. The language could not be clearer regarding the need to cooperatively engage with the Board of Pharmacy and the Medical Board in the implementation of this broader scope of practice. The NMBCE has used the doctrine of "detrimental reliance" in order to acquiesce to those chiropractors who thought they were going to be able to use injectables although a formulary was never approved by consensus as mandated. The NMBCE should not find itself in this position again as any and all members of the chiropractic profession and the general public must be able to rely with clarity and certainty on the parameters by law, statute and regulation of chiropractic practice. This clearly is not the case at this time.

My suggestion to the NMBCE and to my fellow chiropractors pursuing Advanced Practice Chiropractic is this: if the current language of the law that provides for Advanced Practice seems unworkable, go back to the legislature and amend the law in an open public hearing and debate. The current changes are ill timed and ill conceived and overreaching.

Respectfully,

A handwritten signature in black ink, appearing to read "Herbert M. Beatty". The signature is fluid and cursive, with a large loop at the end.

Herbert M. Beatty DC FICC

Exhibit G



WORLD FEDERATION OF CHIROPRACTIC | FÉDÉRATION MONDIALE DE CHIROPRA TIQUE | FEDERACIÓN MUNDIAL DE LA QUIROPRÁCTICA

3080 Yonge Street Suite 5065 Toronto ON Canada M4N 3N1

1 416 484 9978 • 1 416 484 9665 fax • www.wfc.org • congress@wfc.org

WFC POLICY STATEMENT

Use of Prescription Drugs

Approved by the Assembly of the World Federation of Chiropractic

Orlando, April 30, 2003

WHEREAS the scope of chiropractic practice includes the management of patients with acute and chronic headache, neck pain and back pain and other neuromusculoskeletal disorders;

AND WHEREAS some of these patients may at times benefit from the use of prescription drugs and, as a result, a small minority of chiropractors has advocated seeking an expansion of the scope of chiropractic practice to include rights to prescribe drugs;

AND WHEREAS the art, philosophy and science of chiropractic have always emphasized the inherent recuperative power of the body to heal itself without the use of drugs or surgery and the legal scope of practice of chiropractic in all jurisdictions is based upon that premise;

AND WHEREAS it is desirable that there be international consistency in the essential components of the practice of chiropractic;

NOW THEREFORE IT IS RESOLVED by the World Federation of Chiropractic that for reasons of chiropractic principle, patient welfare and interdisciplinary cooperation the practice of chiropractic does not include the use of prescription drugs, and chiropractic patients who may benefit from prescription drugs should be referred, where appropriate, to a medical doctor or other suitably qualified health care practitioner.

Exhibit H