

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

DEPARTMENT OF CONSUMER AFFAIRS

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled for the proposed action.

Subject Matter of Proposed Regulations: Practice of Chiropractic Prohibited with Inactive License

Section Affected: Add section 310.3 to Article 2 of Division 4 of Title 16 of the California Code of Regulations (CCR)¹

Background and Statement of the Problem:

The Board of Chiropractic Examiners (Board) regulates the practice of chiropractic in California, including approximately 12,000 licensed doctors of chiropractic, 106 providers of chiropractic continuing education, and 20 chiropractic programs located throughout the United States and Canada. The Board was created on December 21, 1922, through the Chiropractic Initiative Act of California (Act), as the result of an initiative measure approved by California voters on November 7, 1922.

Protection of the public is the Board's highest priority when exercising its licensing, regulatory, and enforcement functions, and the Board's vision is ensuring California consumers receive high-quality, patient-centered and collaborative care. The primary methods by which the Board achieves this objective are: establishing minimum standards for chiropractic programs, licensure and practice, and continuing education; issuing licenses to eligible applicants; investigating complaints against licensees and disciplining them for violating provisions of the Act, the Board's regulations, and other laws that govern the practice of chiropractic; and monitoring licensees who have been placed on probation.

The Act, section 4(b), authorizes the Board to adopt regulations as it deems proper and necessary for the performance of its work, the effective enforcement and administration of the Act, the establishment of educational requirements for license renewal, and the protection of the public. The Act, section 4(e), authorizes the Board to do any and all things necessary or incidental to the exercise of its powers and duties.

Existing law, the Act, section 5, states it shall be unlawful for any person to practice chiropractic in this state without a license to do so, and section 15 specifies that it is a misdemeanor for any person to practice or attempt to practice chiropractic, or use the title "chiropractor" or "D.C." or any word or title to induce, or tending to induce, belief that

¹ Unless otherwise noted, all references to the CCR hereafter are to Title 16.

they are engaged in the practice of chiropractic without first complying with the provisions of the Act. Further, CCR section 310.2 (Use of Title by Unlicensed Persons) prohibits a person from engaging in the practice of chiropractic without holding an active license issued by the Board.

BPC section 700 states the intent of the Legislature to establish an inactive category of health professionals' licensure to allow a person who has a license or certificate in one of the healing arts, but who is not actively engaged in the practice of their profession, to maintain licensure or certification in a nonpracticing status. BPC section 701 requires each healing arts board to issue, upon application and payment of the normal renewal fee, an inactive license or certificate to a current holder of an active license or certificate whose license or certificate is not suspended, revoked, or otherwise punitively restricted by that board. BPC section 702 prohibits the holder of an inactive healing arts license or certificate from: 1) engaging in any activity for which an active license or certificate is required; and 2) representing that they have an active license.

However, the phrases "actively engaged in the practice" and "engage in any activity for which an active license is required," as used in BPC sections 700 and 702, are vague and do not provide clear direction to the Board's licensees on the activities within the practice of chiropractic that require an active doctor of chiropractic with annual continuing education and that cannot be performed by the holder of an inactive license. As a result, many licensees mistakenly believe that "engaging in the practice of chiropractic" refers solely to performing chiropractic adjustments or manipulations when the term encompasses a broader range of activities that require the professional judgment and clinical expertise of an actively licensed doctor of chiropractic.

The Board has drafted a proposal adding CCR section 310.3 to specify that the following types of activities within the practice of chiropractic require an active doctor of chiropractic license and cannot be performed by the holder of an inactive license:

- Directing, performing, or providing any of the activities specified in CCR section 302, subdivision (a)(1)–(3) and (5)–(7).
- Conducting, directing, performing, or recommending an evaluation, physical examination, or diagnostic imaging.
- Rendering an assessment, diagnosis, interpretation, prognosis, clinical impression, conclusion, or recommendation.
- Creating, directing, monitoring, or updating a treatment or care plan or clinical order.

At the October 24, 2024 meeting, the Board approved proposed text adding CCR section 310.3, directed staff to commence the formal rulemaking process, and authorized the executive officer to make any non-substantive changes to the package.

Since then, Board staff have corrected technical errors in the Note/citations to sections of the Act that have no substantive effect on the regulation.

Anticipated benefits from this regulatory action:

This proposal benefits the health and welfare of California residents and strengthens consumer protection by ensuring that only actively licensed doctors of chiropractic engage in the practice of chiropractic in the state, which helps assure that consumers are treated by a provider that has met ongoing requirements such as continuing education. This proposal also benefits licensed doctors of chiropractic by clearly specifying the types of activities within the practice of chiropractic that require an active license, which helps to avoid misconduct and prevent potential harm.

Specific purpose of, and rationale for, each adoption, amendment, or repeal:

1. Add Section 310.3.

Purpose: This new section will prohibit the holder of an inactive doctor of chiropractic license from engaging in any activity for which an active license is required and specify the types of activities that require an active license in subdivisions (a) through (d).

Rationale: It is necessary for the Board to adopt a regulation that explicitly prohibits the holder of an inactive doctor of chiropractic license from engaging in any activity that requires an active license, and that clearly identifies those activities. The phrases “actively engaged in the practice” and “engage in any activity for which an active license is required,” as used in BPC sections 700 and 702, are vague and subject to misinterpretation. This ambiguity has led to confusion among licensees regarding what constitutes the practice of chiropractic and which activities are restricted to those holding an active license.

A common misconception is that “engaging in the practice of chiropractic” refers only to performing chiropractic adjustments or manipulations. However, the practice of chiropractic encompasses a broad range of professional activities that require the clinical judgment, decision-making, and expertise of an actively licensed doctor of chiropractic, such as conducting evaluations, rendering diagnoses or clinical impressions, and developing or recommending treatment plans.

Inactive licensees are not subject to the Board’s annual continuing education requirements, which are essential for maintaining clinical competency and staying current with standards of practice and patient care. Allowing individuals with inactive licenses to perform activities that require current knowledge and professional judgment poses a significant risk to the health, safety, and welfare of the public.

2. Add subdivision (a).

Purpose: This new subdivision will specify that directing, performing, or providing any of the activities specified in CCR section 302, subdivision (a)(1)–(3) and (5)–(7) requires an active doctor of chiropractic license and cannot be performed by the holder of an inactive license.

Rationale: CCR section 302, subdivision (a)(1)–(3) and (5)–(7) includes the following activities:

- Manipulating and adjusting the spinal column and other joints of the human body and manipulating the muscle and connective tissue related thereto;
- Using all necessary mechanical, hygienic, and sanitary measures incident to the care of the body, including, but not limited to, air, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound, water, and physical therapy techniques in the course of chiropractic manipulations and/or adjustments (treatment methods are commonly referred to as modalities);
- Other than as explicitly set forth in section 10(b) of the Act, treating any condition, disease, or injury in any patient and diagnosing, so long as such treatment or diagnosis is done in a manner consistent with chiropractic methods and techniques and so long as such methods and treatment do not constitute the practice of medicine by exceeding the legal scope of chiropractic practice;
- Employing the use of vitamins, food supplements, foods for special dietary use, or proprietary medicines, if the substances are also included BPC section 4057, so long as such substances are not included in *materia medica* as defined in BPC section 13 and the use of such substances in the treatment of illness or injury is within the scope of chiropractic practice;
- Using X-ray and thermography for diagnosis and diagnostic ultrasound equipment for neuromuscular skeletal diagnosis;
- Practicing a system of chiropractic and advertising modalities authorized by CCR section 302.

It is necessary to clarify that these activities can only be performed by an actively licensed doctor of chiropractic because they represent the core components of chiropractic practice that require current clinical knowledge, technical proficiency, and professional judgment, and allowing anyone else to perform these activities puts consumers at risk of harm. Performing spinal and joint manipulations, utilizing therapeutic modalities, diagnosing and treating conditions within the chiropractic scope, and employing diagnostic tools like X-ray and ultrasound are complex procedures that directly impact public health and safety. These functions must be performed in

accordance with the current standards of care, which are reinforced through the Board's continuing education requirements for active licensees. Inactive licensees are not required to maintain ongoing competency and may lack the up-to-date training necessary to safely and effectively perform these activities. Without current knowledge and skills, there is a heightened risk of misdiagnosis, improper treatment, or harm to patients. Further, allowing inactive licensees to engage in these activities would undermine the regulatory framework designed to ensure that only qualified, competent, and actively licensed practitioners provide chiropractic care in the state.

3. Add subdivision (b).

Purpose: This new subdivision will specify that conducting, directing, performing, or recommending an evaluation, physical examination, or diagnostic imaging requires an active doctor of chiropractic license and cannot be performed by the holder of an inactive license.

Rationale: It is necessary to clarify that these activities can only be performed by an actively licensed doctor of chiropractic because they involve the application of professional judgment, clinical decision-making, and current knowledge of chiropractic standards and practices, and allowing anyone else to perform these activities puts consumers at risk of harm. Evaluations, physical examinations, and diagnostic imaging are foundational components of patient assessment and care planning. These activities directly influence diagnoses, treatment decisions, and patient outcomes and must be performed by individuals who are actively licensed and in compliance with the Board's continuing education requirements. Allowing individuals with inactive licenses to conduct, direct, perform, or recommend these activities poses a risk to the health and safety of patients because inactive licensees are not required to maintain their clinical skills and knowledge.

4. Add subdivision (c).

Purpose: This new subdivision will specify that rendering an assessment, diagnosis, interpretation, prognosis, clinical impression, conclusion, or recommendation requires an active doctor of chiropractic license and cannot be performed by the holder of an inactive license.

Rationale: It is necessary to clarify that these activities can only be performed by an actively licensed doctor of chiropractic because they involve critical clinical determinations that directly impact patient care and safety and allowing anyone else to perform these activities puts consumers at risk of harm. Rendering an assessment, diagnosis, interpretation, prognosis, clinical impression, conclusion, or recommendation requires the application of current clinical knowledge, professional judgment, and decision-making skills that are maintained through active licensure and ongoing continuing education. These functions are central to the practice of chiropractic and form the basis for treatment planning and patient management. Inactive licensees may

not possess current knowledge of evolving standards, diagnostic criteria, or best practices. Allowing individuals with inactive licenses to perform these activities could result in outdated or inappropriate clinical decisions, placing patients at risk and undermining the quality of care.

5. Add subdivision (d).

Purpose: This new subdivision will specify that creating, directing, monitoring, or updating a treatment or care plan or clinical order requires an active doctor of chiropractic license and cannot be performed by the holder of an inactive license.

Rationale: It is necessary to clarify that these activities can only be performed by an actively licensed doctor of chiropractic because they involve the development and management of individualized patient care, and allowing anyone else to perform these activities puts consumers at risk of harm. Creating, directing, monitoring, or updating a treatment or care plan or clinical order requires the application of current clinical knowledge, critical thinking, and professional judgment to ensure that clinical care is appropriate, effective, and responsive to the patient's condition. These activities are dynamic and must reflect the latest standards of practice, evidence-based guidelines, and regulatory requirements—all of which are reinforced through the Board's continuing education requirements for active licensees. In contrast, inactive licensees are not required to maintain ongoing competency and may lack current knowledge necessary to safely manage patient care. Allowing inactive licensees to engage in these functions could result in outdated or inappropriate treatment plans, mismanagement of care, and increased risk to public health and safety.

6. Add Note.

Purpose: A Note section is being added to cite the Board's authority to adopt the regulation pursuant to section 4 of the Act and reference section 5 of the Act and BPC sections 700 and 702.

Rationale: It is necessary to accurately cite the Board's authority to adopt the regulation and specify the statutes the regulation interprets.

Underlying Data

Technical, theoretical, or empirical studies, reports, or documents relied upon:

- Assembly Bill 1659 (Low, Chapter 249, Statutes of 2018)
- Bill Analysis of AB 1659 by Senate Business, Professions and Economic Development Committee, Dated June 7, 2018

- Agendas, Materials, and Minutes from the Following Public Meetings:
 1. August 25, 2023 Licensing Committee Meeting – Agenda Item 5
 2. March 8, 2024 Licensing Committee Meeting – Agenda Item 5
 3. October 24, 2024 Board Meeting – Agenda Item 16B

Business Impact:

The Board has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

Existing law, the Act, sections 5 and 15, BPC section 702, and CCR section 310.2, already prohibits the practice of chiropractic without an active doctor of chiropractic license issued by the Board, including engaging in the practice of chiropractic with an inactive license. This proposal clarifies existing law by specifying the types of activities within the practice of chiropractic that require an active doctor of chiropractic license and cannot be performed by the holder of an inactive license.

This proposal is not anticipated to result in additional costs to licensees or businesses or to have any adverse impact on businesses, including those owned or operated by licensees. However, to the extent that any licensee or business is not already in compliance with existing law and the proposed regulation, any workload and costs of compliance are anticipated to be completed within normal business operations.

Economic Impact Assessment:

The Board has determined that this regulatory proposal will have the following effects:

- It will not create jobs or eliminate jobs within the State of California because the proposal only clarifies existing law by specifying the types of activities within the practice of chiropractic that require an active doctor of chiropractic license and cannot be performed by the holder of an inactive license. This clarification of existing law will not affect the number of jobs within the state.
- It will not create new business or eliminate existing businesses within the State of California because the proposal only clarifies existing law by specifying the types of activities within the practice of chiropractic that require an active doctor of chiropractic license and cannot be performed by the holder of an inactive license. This clarification of existing law will not affect the number of businesses within the state.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposal only clarifies existing law by specifying

the types of activities within the practice of chiropractic that require an active doctor of chiropractic license and cannot be performed by the holder of an inactive license. This clarification of existing law will not impact the expansion of business within the state.

- This regulatory proposal benefits the health and welfare of California residents and strengthens consumer protection by ensuring that only actively licensed doctors of chiropractic engage in the practice of chiropractic in the state.
- This regulatory proposal does not affect worker safety because it has nothing to do with worker safety.
- This regulatory proposal does not affect the state's environment because it has nothing to do with the environment.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Board welcomes comments from the public.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Board welcomes comments from the public.