

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 593

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO CHIROPRACTIC PRACTICE; AMENDING SECTION 54-704, IDAHO CODE,
2 TO DEFINE TERMS, TO REQUIRE A CERTIFICATE IN SPECIALIZED CLINICAL NU-
3 TRITION IN ORDER TO ADMINISTER CERTAIN ROUTES OF CLINICAL NUTRITIONAL
4 METHODS, TO AUTHORIZE THE STATE BOARD OF CHIROPRACTIC PHYSICIANS TO IS-
5 SUE A CERTIFICATE IN SPECIALIZED CLINICAL NUTRITION UPON THE ATTAINMENT
6 OF CERTAIN EDUCATIONAL AND OTHER REQUIREMENTS AND TO MAKE A TECHNICAL
7 CORRECTION; AMENDING CHAPTER 7, TITLE 54, IDAHO CODE, BY THE ADDITION
8 OF A NEW SECTION 54-704A, IDAHO CODE, ESTABLISHING A CHIROPRACTIC NU-
9 TRITIONAL SUBSTANCE FORMULARY COUNCIL AND TO PROVIDE FOR ITS DUTIES;
10 AMENDING SECTION 54-705, IDAHO CODE, TO PROVIDE AN EXCEPTION FOR CHI-
11 ROPRACTORS WHO HOLD A CERTIFICATE IN SPECIALIZED CLINICAL NUTRITION
12 AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 54-707, IDAHO
13 CODE, TO AUTHORIZE THE BOARD OF CHIROPRACTIC PHYSICIANS TO PROMULGATE
14 RULES REGARDING CERTIFICATION STANDARDS AND CONTINUING EDUCATION RE-
15 QUIREMENTS; AND TO PROVIDE FOR EFFECTIVE DATES.
16

17 Be It Enacted by the Legislature of the State of Idaho:

18 SECTION 1. That Section 54-704, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 54-704. CHIROPRACTIC PRACTICE. Chiropractic practice and procedures
21 which may be employed by physicians are as follows:

22 (1) The system of specific adjustment or manipulation of the articu-
23 lations and tissues of the body; the investigation, examination and clini-
24 cal diagnosis of conditions of the human body and the treatment of the human
25 body by the application of manipulative, manual, mechanical, physiothera-
26 peutic or clinical nutritional methods and may include the use of diagnostic
27 X-rays.

28 (a) "Adjustment" means the application of a precisely controlled
29 force applied by hand or by mechanical device to a specific focal point
30 on the anatomy for the express purpose of creating a desired angular
31 movement in skeletal joint structures in order to eliminate or de-
32 crease interference with neural transmission and correct or attempt to
33 correct subluxation complex; "chiropractic adjustment" utilizes, as
34 appropriate, short lever force, high velocity force, short amplitude
35 force, or specific line-of-correction force to achieve the desired
36 angular movement, as well as low force neuromuscular, neurovascular,
37 neuro-cranial, or neuro-lymphatic reflex technique procedures.

38 (b) "Clinical nutritional methods" as referenced herein means to
39 obtain and administer, prescribe, recommend, distribute or sell vi-
40 tamins, minerals, botanicals, herbals, homeopathic, phytonutrients,
41 antioxidants, enzymes and glandular extracts that are not listed as
42 controlled substances identified in 21 CFR 1308. Clinical nutritional

1 methods shall include the administration, prescription, recommenda-
 2 tion, distribution or sale of all over-the-counter vitamins, minerals
 3 and botanical substances that are generally available to the public.

4 (i) All licensed chiropractic physicians can administer, pre-
 5 scribe, recommend and distribute vitamins, minerals, botanicals,
 6 herbals, homeopathic agents, phytonutrients, antioxidants, en-
 7 zymes and glandular extracts only via oral, enteral, topical and
 8 transdermal routes of administration as long as the aforemen-
 9 tioned substances do not require a prescription drug order as
 10 described in subsection (2) of this section.

11 (ii) A chiropractor wishing to administer, prescribe, recom-
 12 mend, distribute and sell natural substances referenced in sec-
 13 tion 54-704A, Idaho Code, through intravenous, intramuscular,
 14 intra-articular, subcutaneous and subdermal routes of adminis-
 15 tration, must apply for a certificate in specialized clinical
 16 nutrition. This certificate will be governed by subsection (4) of
 17 this section, by section 54-704A, Idaho Code, and by rules adopted
 18 by the board.

19 (c) "Manipulation" means an application of a resistive movement by ap-
 20 plying a nonspecific force without the use of a thrust, that is directed
 21 into a region and not into a focal point of the anatomy for the general
 22 purpose of restoring movement and reducing fixation.

23 (ed) "Massage therapy," also called massology, means the systematic
 24 manual or mechanical mobilization of the soft tissue of the body by such
 25 movements as rubbing, kneading, pressing, rolling, slapping and tap-
 26 ping, for the purpose of promoting circulation of the blood and lymph,
 27 relaxation of muscles, release from pain, restoration of metabolic bal-
 28 ance, and the other benefits both physical and mental.

29 (e) "Prescribe," for purposes of this chapter, means the direction,
 30 recommendation or suggestion, by a physician to a patient, of specific
 31 activities or lack of activity, which may include, but is not limited
 32 to, exercise, stretching, nutrition, diet, use of heat, ice, light,
 33 natural substances referenced herein, and durable and nondurable medi-
 34 cal equipment.

35 (2) Nothing herein contained shall allow any a licensed chiropractic
 36 physician to:

37 (a) Perform surgical operations or surgical procedures or practice ob-
 38 stetrics;

39 (b) Prescribe, dispense, independently administer, distribute,
 40 dDirect or suggest to the a patient that such patient shall use a drug,
 41 substance which, under federal law is required or product that, prior to
 42 being dispensed or delivered, is required by federal law to be labeled
 43 with either any of the following statements: (i) "Caution: Federal Law
 44 Prohibits Dispensing Without Prescription"; ~~or~~ (ii) "Rx Only"; (iii)
 45 "Caution: Federal Law Restricts This Drug To Use By or On The Order Of A
 46 Licensed Veterinarian"; or (iiiv) is a drug, substance or product which
 47 that is required by any applicable federal or state law or regulation to
 48 be dispensed on prescription drug order only or is restricted to use by
 49 practitioners only, with the exception of those substances or products
 50 approved by the chiropractic nutritional substance formulary council

1 identified and established in section 54-704A, Idaho Code, for use by
2 chiropractic physicians holding a certificate in specialized clinical
3 nutrition established in subsection (4) of this section.

4 (c) Nothing herein shall allow a chiropractic physician to obtain, ad-
5 minister, prescribe or dispense any prescription drug as defined in 21
6 CFR 1308, which includes schedules I-V of the uniform controlled sub-
7 stances schedule.

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

14 (4) The state board of chiropractic physicians shall issue a certifi-
15 cate in specialized clinical nutrition to chiropractic physicians licensed
16 in this state authorizing the chiropractic physician to administer, pre-
17 scribe, recommend, distribute or sell clinical nutritional substances
18 established in section 54-704A, Idaho Code. The certificate in specialized
19 clinical nutrition for chiropractic physicians shall allow the holder to
20 administer the substances listed in section 54-704A, Idaho Code, via intra-
21 venous, intramuscular, intra-articular, subcutaneous and subdermal routes
22 of administration. Such a certificate shall be issued only to a chiropractic
23 physician who:

24 (a) Has successfully completed a minimum of the following courses,
25 which are taught by faculty employed at a chiropractic college or uni-
26 versity accredited by an agency that is recognized by the United States
27 department of education:

28 (i) Forty-four (44) hours of didactic human nutrition or nutri-
29 tional pharmacology;

30 (ii) Forty-four (44) hours of practicum in human nutrition or nu-
31 tritional pharmacology; and

32 (iii) Thirty-two (32) hours of practicum in chiropractic in-
33 jectable nutrients, which must include sterile needle practices,
34 phlebotomy, proper injection technique, intravenous safety
35 practices, trigger point injections, intramuscular injections,
36 intravenous therapy, lab testing and blood chemistry interpreta-
37 tion.

38 (b) On and after July 1, 2017, all active chiropractic physicians
39 wishing to obtain the certificate in specialized clinical nutrition
40 must first successfully complete the education outlined in subsection
41 (4) (a) of this section.

42 (c) All chiropractic physicians holding the certificate in specialized
43 clinical nutrition must maintain a current cardiopulmonary resuscita-
44 tion (CPR) and basic life support (BLS) certification, as well as have
45 BLS equipment on the chiropractic premises where treatment is being
46 performed.

47 (d) All chiropractic physicians holding the specialized clinical
48 nutrition certification must complete such regular and appropriate
49 continuing education requirements as shall be established by the state

1 board of chiropractic physicians pursuant to section 54-707(14), Idaho
2 Code.

3 SECTION 2. That Chapter 7, Title 54, Idaho Code, be, and the same is
4 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
5 ignated as Section 54-704A, Idaho Code, and to read as follows:

6 54-704A. CHIROPRACTIC NUTRITIONAL SUBSTANCE FORMULARY COUN-
7 CIL. (1) There is hereby established a chiropractic nutritional substance
8 formulary council, that is separate and distinct from the board of chiro-
9 practic physicians, to be composed of five (5) members. Two (2) members
10 shall be chiropractic physicians licensed under this chapter and shall be
11 appointed by the board of chiropractic physicians. At least one (1) of the
12 chiropractic physicians shall have previous experience in utilizing in-
13 jectable nutrition in the course of their practice. One (1) member shall be
14 a pharmacist licensed under chapter 17, title 54, Idaho Code, and shall be
15 appointed by the board of chiropractic physicians from a list of nominees
16 provided by the Idaho state board of pharmacy. One (1) member shall be a
17 medical physician licensed under chapter 18, title 54, Idaho Code, and shall
18 be appointed by the board of chiropractic physicians from a list of nominees
19 provided by the Idaho state board of medicine. One (1) member shall be a
20 public member appointed by the board of chiropractic physicians from nomi-
21 nations from any source.

22 (2) The initial council shall be appointed as follows: one (1) chiro-
23 practic physician shall be appointed for a one (1) year term; one (1) medi-
24 cal physician licensed under chapter 18, title 54, Idaho Code, and one (1)
25 pharmacist shall be appointed for a two (2) year term; and one (1) chiroprac-
26 tic physician and one (1) public member shall be appointed for a three (3)
27 year term. Thereafter, the term of office shall be three (3) years. A quorum
28 shall consist of three (3) members. No vote may be taken by the council with-
29 out a quorum.

30 (3) (a) It shall be the duty of the chiropractic nutritional substance
31 formulary council to establish a formulary for use by chiropractic
32 physicians, and immediately upon adoption or revision of the formu-
33 lary, the council shall transmit the approved formulary to the board
34 of chiropractic physicians, which shall review the formulary for board
35 approval. The formulary will be reviewed annually by the chiropractic
36 nutritional substance formulary council, or at any time at the request
37 of the board. Any additions or subtractions to the chiropractic for-
38 mulary approved by the chiropractic nutritional substance formulary
39 council shall be reviewed and approved by the board prior to being
40 adopted by rule.

41 (b) The chiropractic nutritional substance formulary council shall
42 only be allowed to add substances to the chiropractic formulary that
43 come from the following established categories:

44 (i) Vitamins. A group of organic compounds that are essential
45 for normal growth and nutrition and are required in small quanti-
46 ties in the diet because they cannot be synthesized by the body;

47 (ii) Minerals. A group of inorganic compounds that are essential
48 for growth and nutrition for the human body;

1 (iii) Botanical and herbal nutrients. A group of plant seeds,
2 berries, roots, leaves, bark or flowers that are used for medici-
3 nal purposes;

4 (iv) Phytonutrients. A group of naturally occurring plant chem-
5 icals not found in animal-based foods that are used for medicinal
6 purposes;

7 (v) Antioxidants. A group of man-made or natural substances that
8 may prevent or delay some type of cell damage;

9 (vi) Nondurable medical goods and ancillary substances. Certain
10 medical goods are consistent and necessary for the administra-
11 tion of injectable clinical nutritional administration, which
12 specifically include needles, syringes, intravenous tubing sets,
13 carrier solutions such as sterile water, oxygen, saline, lactated
14 ringers, dextrose five percent (5%), procaine, lidocaine, hep-
15 arin, epinephrine and diphenhydramine (benadryl).

16 (c) Nothing herein shall allow the members of the chiropractic nu-
17 tritional substance formulary council to add any drugs or substances
18 to the chiropractic formulary that come from the following legend
19 drug categories: analgesics, antacids, antianxieties, antiarrhyth-
20 mics, antibacterials, antibiotics, anticoagulants and thrombolytics,
21 anticonvulsants, antidepressants, antifungals, antihypertensives,
22 antipsychotics, antivirals, beta-blockers, bronchodilators, corti-
23 costeroids, cytotoxics, hypoglycemics, immunosuppressives, muscle
24 relaxants, sleeping drugs, tranquilizers or vaccines, unless those
25 substances are identified as fitting into one (1) of the natural sub-
26 stance categories identified in subsection (3) (b) of this section.

27 (d) Nothing herein shall allow the members of the chiropractic nutri-
28 tional substance formulary council to add any drugs or substances to
29 the chiropractic formulary that come from the uniform controlled sub-
30 stances schedule defined in 21 CFR 1308.

31 (e) Following the approval of the original formulary, no substance or
32 product shall be added to the formulary, obtained, administered, pre-
33 scribed or dispensed, except those of a similar nature and character-
34 istics as determined by the board to be consistent with the practice of
35 chiropractic; provided that at least one hundred twenty (120) days' ad-
36 vance notice of the proposal to allow the use of such substances is given
37 to the board of pharmacy and the board of medicine and neither board ob-
38 jects to the addition of such substances to the chiropractic formulary.

39 SECTION 3. That Section 54-705, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 54-705. EXCEPTIONS -- PROHIBITED PRACTICES -- NEGLIGENCE ESTAB-
42 LISHED. (1) Under the circumstances described and, subject in each case to
43 the limitations stated, the following persons, though not holding a license
44 to practice chiropractic in this state, may engage in activities included in
45 the practice of chiropractic:

46 (a) A person licensed by this state pursuant to chapter 18, title 54,
47 Idaho Code;

1 (b) A chiropractic assistant as shall be defined and regulated by the
2 board, administering a procedure set forth in section 54-704, Idaho
3 Code, but not including the adjustment or manipulation of articulations
4 of the body, as specifically directed by a chiropractic physician as
5 long as such directions are within the scope of chiropractic practice;

6 (c) A person rendering aid in an emergency, for which no fee for the ser-
7 vices is contemplated, charged or received;

8 (d) A person residing in another state or country and authorized to
9 practice chiropractic there, who is called in consultation by a person
10 licensed in this state to practice chiropractic, or who for the purpose
11 of furthering chiropractic education is invited into this state to con-
12 duct a lecture, clinic or demonstration, while engaged in activities in
13 connection with the consultation, lecture, clinic or demonstration, so
14 long as he does not open an office or appoint a place to meet patients or
15 receive calls in this state;

16 (e) A person authorized to practice chiropractic in another state or
17 country rendering chiropractic care in a time of disaster or while car-
18 ing for an ill or injured person while at the scene of an emergency and
19 while continuing to care for such person;

20 (f) Nothing in this chapter shall be construed as preventing or re-
21 stricting the practice, services or activities or requiring licensure
22 pursuant to the provisions of this chapter, of any person licensed or
23 registered in this state by any other law, from engaging in any health
24 care profession or occupation for which such person is licensed or reg-
25 istered;

26 (g) A medical officer of the armed forces of the United States, of the
27 United States public health service, or of the veterans administration,
28 while engaged in the performance of his official duties;

29 (h) A person administering a remedy, diagnostic procedure or advice as
30 specifically directed by a physician;

31 (i) A person administering a family remedy to a member of the family;

32 (j) A person authorized or licensed by this state to engage in activi-
33 ties which may involve the practice of medicine;

34 (k) A person who administers treatment or provides advice regarding the
35 human body and its functions that:

36 (i) Does not use legend drugs or prescription drugs in such
37 practice, except for chiropractors that have a limited use of
38 prescriptive substances by obtaining a certificate in special-
39 ized clinical nutrition, as provided for in sections 54-704 and
40 54-704A, Idaho Code;

41 (ii) Uses natural elements such as air, heat, water and light;

42 (iii) Only uses class I or class II nonprescription, approved,
43 medical devices as defined in section 513 of the federal food, drug
44 and cosmetic act;

45 (iv) Only uses vitamins, minerals, herbs, natural food products
46 and their extracts, and nutritional supplements; and who

47 (v) Does not perform surgery;

48 (vi) Requires each person receiving services to sign a decla-
49 ration of informed consent which includes an overview of the
50 health care provider's education which states that the health care

1 provider is not an "M.D." or "D.O." and is not licensed under the
2 provisions of this chapter;

3 (1) Any person who practices massage therapy as defined in section
4 54-704(1) (ed), Idaho Code;

5 (m) A chiropractic intern, as defined and regulated by the board, who is
6 registered with the board to practice chiropractic under the direct su-
7 pervision of a licensed chiropractic physician pursuant to a preceptor
8 program adopted and developed by the rules of the board.

9 (2) Except as provided in subsection (1) of this section, it is unlaw-
10 ful for any person to practice chiropractic in this state without a license
11 and, upon conviction thereof, shall be fined not less than one thousand dol-
12 lars (\$1,000) nor more than three thousand dollars (\$3,000), or imprisoned
13 for not less than six (6) months nor more than one (1) year, or by both such
14 fine and imprisonment.

15 (3) It is unlawful for any person to assume or use the title or desig-
16 nation "chiropractor," "chiropractic physician," "doctor of chiropractic,"
17 the initials "D.C.," or any word, title or abbreviation thereof calculated
18 to induce the belief that he is engaged in the practice of chiropractic or to
19 indicate to the public that such person is licensed to practice chiropractic
20 pursuant to this chapter unless such person is so licensed, and upon convic-
21 tion thereof, such person shall be fined not less than five hundred dollars
22 (\$500) nor more than three thousand dollars (\$3,000), or imprisoned for not
23 less than six (6) months nor more than one (1) year, or by both such fine and
24 imprisonment.

25 (4) When a person has been a recipient of services constituting the un-
26 lawful practice of chiropractic, whether or not he knew the rendition of the
27 services was unlawful, proof of the rendition of unlawful services to the re-
28 cipient, in an action against the provider of such services for damages al-
29 legedly caused by the services, constitutes prima facie evidence of negli-
30 gence, shifting the burden of proof to such provider of unlawful services.
31 The following damages in addition to any other remedies provided by law may
32 be recovered in such an action:

33 (a) Amount of any fees paid for the unlawful services; and

34 (b) Reasonable attorney's fees and court costs.

35 (5) The board shall refer all violations made known to it to an appro-
36 priate prosecuting attorney. The board shall render assistance to a prose-
37 cuting attorney in the prosecution of a case pursuant to this section.

38 SECTION 4. That Section 54-707, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 54-707. POWERS AND DUTIES. The board shall have the authority to:

41 (1) Hire or appoint employees, including an executive director, inves-
42 tigators, attorneys, consultants and independent hearing examiners;

43 (2) Establish, pursuant to the provisions of chapter 52, title 67,
44 Idaho Code, rules for the administration of the provisions of this chapter;

45 (3) Conduct investigations and examinations and hold hearings;

46 (4) Revoke or suspend licenses to practice chiropractic after provid-
47 ing the licensee with an opportunity for an appropriate contested case in ac-
48 cordance with the provisions of chapter 52, title 67, Idaho Code;

1 (5) In any disciplinary proceeding pursuant to this chapter to adminis-
2 ter oaths, take depositions of witnesses within or without the state in the
3 manner provided by law in civil cases, and shall have the power throughout
4 the state of Idaho to require the attendance of such witnesses and the pro-
5 duction of such books, records, and papers as it may desire at any hearing
6 and, for that purpose, the board may issue a subpoena for any witnesses or
7 subpoena duces tecum to compel the production of any books, records or pa-
8 pers, directed to the sheriff of any county in the state of Idaho, where such
9 witness resides or may be found, which shall be served and returned in the
10 same manner as a subpoena in a criminal case is served and returned. The fees
11 and mileage of the witnesses shall be the same as that allowed in the district
12 courts in criminal cases, which fees and mileage shall be paid from any funds
13 in the state treasury in the same manner as other expenses of the board are
14 paid. The licensee accused in such proceedings shall have the same right of
15 subpoena upon making application to the board therefor. In any case of dis-
16 obedience to, or neglect of, any subpoena or subpoena duces tecum, served
17 upon any person, or the refusal of any witness to testify to any matter re-
18 garding which he may lawfully be interrogated, it shall be the duty of the
19 district court of any county in this state in which this disobedience, ne-
20 glect or refusal occurs, on application by the board to compel compliance
21 with the subpoena, to issue its order directing compliance with such sub-
22 poena, and in the event of a violation of such order, to compel compliance
23 with such order by proceedings for contempt as in the case of disobedience of
24 the requirement of a subpoena issued from such court or for refusal to tes-
25 tify therein;

26 (6) Seek injunctive relief prohibiting the unlawful practice of chiro-
27 practic;

28 (7) Make and enter into contracts in the necessary performance of its
29 duties pursuant to this chapter;

30 (8) Develop and submit a proposed budget setting forth the amount nec-
31 essary to perform its functions;

32 (9) Perform such other duties as set forth in the laws of this state;

33 (10) Provide such other services and perform such other functions as are
34 necessary to fulfill its responsibilities;

35 (11) Adopt rules to provide for reasonable fees and for administrative
36 costs and to assess costs reasonably and necessarily incurred in the en-
37 forcement of this chapter when a licensee has been found to be in violation
38 thereof;

39 (12) Adopt a rule requiring continuing education as a condition of con-
40 tinued licensure; ~~and~~

41 (13) Adopt rules pursuant to chapter 52, title 67, Idaho Code, to estab-
42 lish and operate a system of peer review for chiropractic physicians which
43 shall include, but not be limited to, the appropriateness, quality, utiliza-
44 tion, and cost of chiropractic services and the ethical performance of chi-
45 ropractic care; and

46 (14) Adopt rules pursuant to chapter 52, title 67, Idaho Code, to create
47 and establish standards for a specialized clinical nutrition certification
48 and continuing education standards required to maintain the certification.

1 SECTION 5. Sections 2 and 4 of this act shall be in full force and effect
2 on and after July 1, 2016. Sections 1 and 3 of this act shall be in full force
3 and effect on and after July 1, 2017.