

SENATE HEALTH & WELFARE COMMITTEE
Thursday, January 28, 2016

ATTACHMENT 1

Introduction

The Idaho Chiropractic Practice Act regulates the practice of chiropractic in Idaho. The Board of Chiropractic Physicians is part of the executive branch of government and was created by statute to enforce and administer the Idaho Chiropractic Practice Act. As a governmental entity the Board's sole purpose is to protect the public health, safety, and welfare.

One of the Board's powers to carry out its charge is to establish administrative rules as necessary to implement the provisions of the Idaho Chiropractic Physicians Act. These rules are subordinate to the laws that comprise the Idaho Chiropractic Physicians Act, and they cannot expand beyond what the law authorizes.

Every agency that has rulemaking authority has to follow specific timeframes, processes, and procedures. These include review by the governor's office, publishing of notices in the Idaho Administrative Bulletin, and an ultimate review by the legislature.

Background to Previously Proposed Law Change to the Scope of Practice

May 2, 2014 – Public Meeting of the Board

The Board was advised by legal counsel from the Idaho Attorney General's Office about a conflict between the interpretation of Rule 020 and the scope of practice established in the statutes. Specifically, there was concern that Rule 020 went beyond the limits of a chiropractor's scope of practice set forth in Idaho Code § 54-704(2). It was recommended that any change to the Chiropractic scope of practice be done through the legislative process to change Idaho Code § 54-704(2). The Board was advised that ideally changes to the scope of practice are brought by the profession's association because those issues are driven by the industry.

The Board decided to invite the Idaho Association of Chiropractic Physicians (IACP) to the next meeting to discuss a joint effort to change the law and review Rule 020. The Board subsequently created a subcommittee to work on a proposal.

May 30, 2014-September 11, 2014 – Subcommittee and Board meetings on Legislative Proposal for Scope of Practice relating to Clinical Nutritional Methods

Subcommittee meetings and Board meetings were held to craft a legislative proposal to amend the statutory scope of practice as it related to use of clinical nutritional methods.

Subcommittee members included:

Dr. Henze, D.C. (Board member); Dr. Gaertner-Ewing D.C.; Dr. West D.C.; Ryan Fitzgerald, IACP; Molly Steckel, Idaho Medical Association; Representative from Board of Medicine; Representative from Board of Pharmacy; Reed Phillips, D.C., PhD.

Board meetings held in 2014: May 30, June 27, July 11, Aug. 1, Aug. 22, Sept. 5, Sept. 11.

Idaho Board of Chiropractic Physicians Timeline on Rulemaking and Scope of Practice
November 20, 2015

Minutes available through the Board website
at: <http://ibol.idaho.gov/IBOL/BoardAdditional.aspx?Bureau=CHI&BureauLinkID=70>

September 15, 2014 – Final draft of proposal sent to Governor's Office.

Deadline to submit final legislative proposal to Governor's Office for review.

September 15, 2014–October 2014 - Final draft of proposal sent to industry and regulatory entities.

Final draft of legislative proposal sent to Board of Veterinary Medicine, the Board of Pharmacy, the Board of Medicine, the Idaho Medical Association, and the Idaho Association of Chiropractic Physicians.

November 11, 2014 – Disapproval by the Governor's Office

Legislative proposal disapproved by the Division of Financial Management in Office of the Governor.

January 30, 2015 – Public Meeting of Board

The Board was informed that its proposed law regarding the scope of practice was not approved by the Governor's Office and returned to the Board. The Board was advised by the Governor's Office that as a scope of practice issue, the legislation needed to be brought by the industry association rather than the Board.

Dr. Henze, a Board member, reported that Ryan Fitzgerald, Executive of the Idaho Association of Chiropractic Physicians called him and reported that the Idaho Chiropractic Association had drafted a Bill and would be presenting it for the 2015 Legislation Session.

Minutes available through the Board website
at: http://ibol.idaho.gov/IBOL/CHI/Minutes/CHI_MINUTES_2015-01-30.pdf

**Timeline and Background for Board of Chiropractic Physicians Rulemaking –
Docket No. 24-0301-1501**

Wednesday, March 18, 2015 – Hearing of House Health and Welfare Committee

Representative Fred Wood, Chairman of the House Health and Welfare Committee, introduced RS 23876 (which became HCR 20) rejecting IDAPA 24.03.01.020 stating that the Board was being given notice and an opportunity to work on an amendment before the 2016 legislative session to resolve concerns that the language of Rule 020 was inconsistent with the legislative intent.

Interested Parties in Attendance: Ryan Fitzgerald, IACP

March 18, 2015 Amended Agenda & Minutes of the House Health & Welfare*
HCR 20 Bill Text & Statement of Purpose

Idaho Board of Chiropractic Physicians Timeline on Rulemaking and Scope of Practice
November 20, 2015

**Representative Wood stated in committee that he had discussed the issue with the Board, but he actually discussed the issue with the IACP.*

Tuesday, March 24, 2015 – Public Meeting of the Board

The Board discussed HCR 20 with Representative Wood. The Board directed the Chair to work with the Bureau on developing a plan to work to address these issues and bring a report to the May 1, 2015 Board meeting.

Interested Parties in Attendance: none

March 24, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians

March 24, 2015 Minutes of the Board of Chiropractic Physicians

Friday, May 1, 2015 – Public Meeting of the Board

The Board discussed the concerns about Rule 020 and Idaho Code § 54-704. It was discussed that the administrative rules may not exceed what the laws allow. The Board decided to work on modernizing Idaho Code § 54-704 and revisions to Rule 020 to bring it in line with the statute.

Interested Parties in Attendance: Kris Ellis and Tony Smith, Eiguren, Fisher & Ellis.

May 1, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians

May 1, 2015 Minutes of the Board of Chiropractic Physicians

Friday, June 12, 2015 – Public Meeting of the Board

The Board reviewed proposed changes to Idaho Code § 54-704(2)(b) and proposed changes in Rule 020. The specific language updating the definition in the law regarding the prohibition on the use of legend and prescriptive drugs was discussed. Additionally, the Board reviewed the proposed revisions to Rule 020.

The Board recognized Ryan Fitzgerald of the IACP who informed the Board that the IACP had been discussing the law and rule changes with Representative Wood. He reported that the IACP would be providing education to chiropractors regarding the issue. He also informed the Board that the IACP was working on draft legislation that was broader in scope.

Interested Parties in Attendance: Ryan Fitzgerald, IACP; Tony Smith, Eiguren, Fisher & Ellis

June 12, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians

June 12, 2015 Minutes of the Board of Chiropractic Physicians

Friday, July 17, 2015 – Public Meeting of the Board

The Board reviewed in detail the specific proposed language changes to Idaho Code § 54-704(2)(b) and Rule 020. The Board passed a motion to submit the proposed language for the law and rule changes to the Governor's Office.

Ryan Fitzgerald of the IACP addressed the Board and stated that the IACP had met with Representative Wood about the law and rule changes. The IACP was also researching curriculum regarding the use of prescriptive drugs in chiropractic; however, the IACP did not have a presentation at that time.

Idaho Board of Chiropractic Physicians Timeline on Rulemaking and Scope of Practice
November 20, 2015

Interested Parties in Attendance: Ryan Fitzgerald, IACP; Tony Smith, Eiguren, Fisher, Ellis
July 17, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians
July 17, 2015 Minutes of the Board of Chiropractic Physicians

Tuesday, September 1, 2015 – Proposed Rule approved by Governor's Office

Division of Financial Management of the Office of the Governor notifies the Bureau of final approval for proposed rule change.

Thursday, October 1, 2015 – Public Meeting of the Board

The Bureau reported that the draft language for the law change had been submitted to the Governor's Office and the proposed rule change had been submitted for publication in the October 7, 2015 Administrative Bulletin. It was noted that the proposed law and rule changes would be linked to the Board's website, and notifications sent to interested parties.

The Board reviewed and approved a letter that would be reviewed by the Governor's Office and then sent to all licensees regarding the proposed law and rule changes.

Interested Parties in Attendance: none

Oct. 1, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians
Oct. 1, 2015 Draft Minutes of the Board of Chiropractic Physicians
Proposed Law & Rule section of Board's website

Wednesday, October 7, 2015 – Notice of Rulemaking published in Administrative Bulletin

Idaho Administrative Bulletin, October 7, 2015, Vol. 15-10, pp. 416-417

Friday, October 9, 2015

Bureau notifies IACP that the law and rule changes are available on the Board's website.

Wednesday, October 14, 2015 – Letter sent to all licensees regarding law and rule changes

Letter to all licensees from the Chair of the Board with notice and information of law and rule changes.

Friday, October 16, 2015 – Notice to legislative advisors of availability of law and rule changes

Bureau notifies legislative advisors that commonly work with Boards served by the Bureau that the proposed law and rule changes for each Board are available on their respective websites.

Friday, October 23, 2015 - Notice of Public Hearing posted; notification to IACP

Notice of Public Hearing published on Board website, and Bureau personally notifies Ryan Fitzgerald, Executive of IACP, of Public Hearing.

Notice of Public Hearing added to Proposed Law & Rule section of Board's website
Notice of Public Hearing

Idaho Board of Chiropractic Physicians Timeline on Rulemaking and Scope of Practice
November 20, 2015

Tuesday, October 27, 2015 – *Notification sent to interested parties regarding Public Hearing*

Email to all individuals requesting a public hearing on the rulemaking providing them with notification of Public Hearing.

Wednesday, October 28, 2015 – *Postcard sent to all licenses regarding Public Hearing*

Board mails a postcard to all licensees providing them with notification of Public Hearing.

Wednesday, November 4, 2015 – *Notice of Public Hearing published in Administrative Bulletin*

Publication of Notice of Public Hearing in Administrative Bulletin

Friday, November 6, 2015 – *Public Meeting of the Board*

The Bureau reviewed the timeline of the law and rules changes and that enough comments on the proposed rule had been received to hold a public hearing, which had been scheduled for November 10, 2015. The process for the hearing was also reviewed. The Board also reviewed the proposed law change and the letter that was sent by the Board to all licensees.

The Board also reviewed an email request from Ryan Fitzgerald, Executive of the IACP, for the Board to review a conceptual piece of legislation. The Board decided to invite Mr. Fitzgerald and the IACP to the next meeting of the Board and requested that the Board be allowed to review the proposed legislation or concept prior to that date.

[Nov. 6, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians](#)

[Nov. 6, 2015 Draft Minutes of the Board of Chiropractic Physicians](#)

Tuesday, November 10, 2015 – *Public Hearing on Rulemaking*

Public Hearing on rulemaking.

Friday, November 20, 2015 – *Public Meeting of the Board*

[Nov. 20, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians](#)

A hearing regarding the Idaho Board of Chiropractic Physicians' proposed rule will be held Tuesday, November 10, 2015 beginning at 9:00 a.m. at the JR Williams Building West Meeting Room, 700 West State Street, Boise ID 83702. Anyone may submit written comments at the public hearing regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony. The proposal and hearing notice can be found on the Board's website by going to www.ibol.idaho.gov. Click on the Chiropractic Board link on the left. Click on the third link from the top on the left hand side of the screen entitled "Proposed Laws & Rules." The proposal and notice will be in blue links on that page. If you have questions about the hearing on the proposed rule, please contact Cherie Simpson at 208-334-3233.



STATE OF IDAHO

BUREAU OF OCCUPATIONAL LICENSES

700 West State Street
PO Box 83720
Boise, Idaho 83720-0063
(208) 334-3233
FAX (208) 334-3945
E-Mail ibol@ibol.idaho.gov
Website www.ibol.idaho.gov

October 14, 2015

Dear Licensee:

The Board of Chiropractic Physicians has submitted a proposed rule change and proposed law change for consideration by the 2016 Legislature. The Board has worked with interested parties on this issue.

The proposed rule change is in response to House Concurrent Resolution 20 that was introduced in the 2015 Legislative Session. **The House Concurrent Resolution proposed to strike Rule 020, which defines clinical nutritional methods.** This was in response to legislators' concerns that the current rule is being misinterpreted as allowing practice beyond the scope of the Idaho Chiropractic Act. The Resolution to strike Rule 020 was held in the House Health and Welfare Committee in order to allow the Board an opportunity to draft a rule in line with legislative intent. Rule 020 is being amended to remove the words "in all their forms" and to make sure everyone understands that clinical nutritional methods cannot exceed the scope of practice set forth in Section 54-704(2), Idaho Code.

The proposed law change modernizes the statutory language prohibiting chiropractors from administering, dispensing or using legend or prescriptive drugs in their practice. The proposed language mirrors the language defining a prescriptive/legend drug in the Idaho Pharmacy Act.

The proposals can be found on the Board's website by going to www.ibol.idaho.gov. Click on the Idaho Board of Chiropractic Physicians link on the left. Click on the third link on the left hand side of the screen entitled "Proposed Laws & Rules." The proposals will be a blue link on that page. Please take time to review the proposals. If you have questions or comments please submit them by **October 28, 2015**, to CHI@ibol.idaho.gov or by mail to: The Bureau of Occupational Licenses, P.O. Box 83720, Boise, ID 83720-0063.

You may be interested to know that the Board worked with the Idaho Association of Chiropractic Physicians on these issues last year and submitted a proposal to the Office of the Governor. That proposal was not approved for submission to the 2015 Legislature because it expanded the scope of practice, and traditionally, expansions of scope of practice are pursued by associations. It is the Board's understanding that the Association is aware of this and that it would need to work on any proposed legislation for the expansion of the scope of practice.

We hope this information is helpful to you.

Sincerely,

A handwritten signature in cursive script that reads "MaryJo White D.C., Chair".

MaryJo White, D.C., Chair
Idaho State Board of Chiropractic Physicians

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS
DOCKET NO. 24-0301-1501
NOTICE OF PUBLIC HEARING

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing. The action is authorized pursuant to Section(s) 54-707, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Tuesday, November 10, 2015 - 9:00 a.m.

JR WILLIAMS BLDG – WEST MEETING ROOM
700 W STATE ST
BOISE, ID 83702

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The summary of this action is found in Idaho Administrative Bulletin Vol. 15-10, dated October 7, 2015, pages 416 to 417.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking or the hearing schedule, contact Cherie Simpson at (208) 334-3233 or Cherie.simpson@ibol.idaho.gov.

Anyone may submit written comments at the public hearing regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony.

DATED this 22nd Day of October, 2015.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State Street
P O Box 83720
Boise, ID 83720-0063
Ph: (208) 334-3233 / Fax: (208) 334-3945



STATE OF IDAHO

BUREAU OF OCCUPATIONAL LICENSES

700 West State Street
P.O. Box 83720
Boise, Idaho 83720-0063
(208) 334-3233
FAX (208) 334-3945
E-Mail ibol@ibol.idaho.gov
Website www.ibol.idaho.gov

January 11, 2016

Dear Licensees:

As you know from the Idaho Board of Chiropractic Physician's prior correspondence, the Board has initiated rulemaking to amend Rule 20 and the Board is also proposing a bill to change the language in Section 54-704(2), Idaho Code. Based upon comments the Board has received from its previous correspondence, there seems to be some confusion about the proposed changes.

By way of background, the issue with the rule was brought to the Board's attention based upon the testimony of some Chiropractors before the legislature last year regarding the Naturopath legislation. Apparently during their testimony, a number of Chiropractors reviewed the type of treatment they currently provided which included the use of prescription/legend drugs. When the Chiropractors were questioned by legislators regarding under what authority they could utilize prescription/legend drugs, they cited Rule 20. A number of legislators were surprised and concerned about chiropractors exceeding their statutory scope of practice. As a result, a House Concurrent Resolution was proposed last year by a legislator to strike Rule 20 in its entirety. However, the Chairman of the House Health and Welfare Committee agreed to postpone consideration of the Concurrent Resolution which eliminated Rule 20 in its entirety, and gave the Board an opportunity to revise Rule 20. The Chairman also suggested that the Board should modernize its law. The Board has now proposed a rule and law change to clarify (and eliminate any confusion) that the use of prescription/legend drugs is not part of a chiropractor's scope of practice.

The Board is charged with ensuring the public health, safety and welfare. To that end, the legislature has empowered the Board to establish administrative rules, as necessary, to implement laws comprising the Act. These rules are subordinate to the Act and they cannot expand beyond what the Act authorizes. In short, administrative rules only implement laws; they cannot exceed what is allowed by the law. The Board's proposed Rule 20 is being amended to remove "in all their forms" and to make sure everyone understands that clinical nutritional methods cannot exceed the scope of practice set forth in 54-704 (2), Idaho Code.

The Board's proposed law change is intended to clarify the statutory language currently prohibiting the use of legend/prescriptive drugs in the practice of chiropractic. The proposed changes utilize language from the Idaho Pharmacy Act to modernize the definition of a legend/prescriptive drug. Under the proposal, Chiropractors can continue to use any clinical nutritional substance as long as the substance is not a legend/prescriptive drug.

At the same time the Chairman of House Health and Welfare visited with the Board about Rule 20 and modernizing the law, he also visited with the Idaho Association of Chiropractic Physicians (IACP) about what they would need to do if they wanted to change the scope of practice for chiropractors. At the Board's meeting on November 20th, 2015, the IACP presented to the Board draft legislation it was considering presenting to the 2016 Legislature regarding the scope of practice for chiropractic physicians. Their proposal includes allowing chiropractors with certain education and training to use certain legend/prescriptive drugs in their practice. If you have questions on the IACP's proposed legislation, please direct those questions to the IACP.

For more in-depth information regarding the current rulemaking and the proposed laws change as well as a detailed timeline with links to the minutes of the Board's meetings, please visit the Board's website at www.ibol.idaho.gov. Click on the Idaho Board of Chiropractic Physicians link on the left. Click on the third link on the left hand side of the screen entitled "Proposed Laws & Rules." The timeline will be a blue link on that page.

The Board's charge is public protection and it must work within the current law. The Association's charge is to promote the profession and any changes to the scope of practice are within the purview of the Association.

Sincerely,

MaryJo White, D.C., Chair
Idaho State Board of Chiropractic Physicians

STATEMENT OF PURPOSE

RS 24009

In this bill, the Idaho Board of Chiropractic Physicians is modernizing the language with regard to the statutory prohibition that provides chiropractors are not entitled to administer, dispense, or use legend or prescriptive drugs in their practice.

FISCAL NOTE

There is no impact on the General Fund or the Bureau's dedicated fund.

Contact:

Cherie Simpson
Idaho Board of Chiropractic Physicians
208-334-3233

Statement of Purpose/Fiscal Note

Bill No.



LEGISLATURE OF THE STATE OF IDAHO



Sixty-third Legislature

Second Regular Session - 2016

IN THE _____

BILL NO. _____

BY _____

AN ACT

RELATING TO CHIROPRACTIC PRACTICE; AMENDING SECTION 54-704, IDAHO CODE, TO REVISE RESTRICTIONS RELATING TO PRESCRIBING, DISPENSING, INDEPENDENTLY ADMINISTERING, DISTRIBUTING, DIRECTING OR SUGGESTING TO PATIENTS CERTAIN DRUGS, SUBSTANCES OR PRODUCTS AND TO MAKE TECHNICAL CORRECTIONS.

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

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

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

(1) The system of specific adjustment or manipulation of the articulations and tissues of the body; the investigation, examination and clinical diagnosis of conditions of the human body and the treatment of the human body by the application of manipulative, manual, mechanical, physiotherapeutic or clinical nutritional methods and may include the use of diagnostic X-rays.

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

(b) "Manipulation" means an application of a resistive movement by applying a nonspecific force without the use of a thrust, that is directed into a region and not into a focal point of the anatomy for the general purpose of restoring movement and reducing fixation.

(c) "Massage therapy," also called massology, means the systematic manual or mechanical mobilization of the soft tissue of the body by such movements as rubbing, kneading, pressing, rolling, slapping and tapping, for the purpose of promoting circulation of the blood and lymph, relaxation of muscles, release from pain, restoration of metabolic balance, and the other benefits both physical and mental.

(2) Nothing herein contained shall allow any physician to:

(a) Perform surgical operations or practice obstetrics;

(b) Prescribe, dispense, independently administer, distribute, direct or suggest to the a patient that such patient shall use a drug, substance which or product that, under federal law is required, prior

1 to being dispensed or delivered, to be labeled with ~~either~~ any of the
2 following statements: (i) "Caution: Federal Law Prohibits Dispensing
3 Without Prescription"; ~~or~~ (ii) "Rx only"; (iii) "Caution: Federal Law
4 Restricts This Drug To Use By or On The Order Of A Licensed Veterinar-
5 ian"; or ~~(iiiiv)~~ is a drug, substance or product which is required by any
6 applicable federal or state law or regulation to be dispensed on pre-
7 scription drug order only or is restricted to use by practitioners only.

8 (3) Chiropractic practice, as herein defined, is hereby declared not
9 to be the practice of medicine within the meaning of the laws of the state
10 of 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.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS

DOCKET NO. 24-0301-1501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2016 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date as specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-707, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule adopts the amendments made in the proposed rule to Rule 20. This rule is being amended to remove the words "in all their forms" and to make sure everyone understands that clinical nutritional methods cannot exceed the scope of practice set forth in 54-704(2), Idaho Code.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2015 Idaho Administrative Bulletin, Vol. 15-10, pages 416 and 417.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 23rd day of November, 2015.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, ID 83702
Ph. (208) 334-3233 / Fax (208) 334-3945

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-707, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 20 is being amended to remove the words "in all their forms" and to make sure everyone understands that clinical nutritional methods cannot exceed the scope of practice set forth in 54-704(2), Idaho Code.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the revisions to this rule are simple in nature. This proposal was discussed during noticed, open meetings of the Board with interested parties in attendance.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 577-2584.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 4th Day of September, 2015.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0301-1501

020. SCOPE OF PRACTICE (RULE 20).

Clinical nutritional methods as referenced in Section 54-704, Idaho Code, include, but are not limited to, the clinical use, administration, recommendation, compounding, prescribing, selling, and distributing vitamins, minerals, botanical medicine, herbals, homeopathic, phytonutrients, antioxidants, enzymes and glandular extracts, and durable and non-durable medical goods and devices in all their forms. Nothing herein shall allow any deviation from Section 54-704(2), Idaho Code. (4-2-08)()

November 27, 2015

Representative Fred Wood
VIA EMAIL: fwood@house.idaho.gov

Re: Chiropractic Statute

Dear Representative Wood:

Recently you inquired about the chiropractic statute and whether it permits licensees to dispense prescribed medications. Following is a response to your questions.

As you may be aware, the history of the practice of chiropractic in this state can be traced back to the early 1900's. Early efforts at legislative creation of a practice act date from 1917. If there is one common thread that can be followed from early days until more recent times, it is that the chiropractic scope of practice has always been a matter of some controversy. Historically, issues have included discussion of whether chiropractors are "physicians" for purposes of providing Medicare services; or if practitioners are entitled to use diagnostic and clinical laboratory procedures for diagnosis; or does the practice extend from use of air, water, heat and light to include the use of vitamins and minerals. When the current Chiropractic Practice Act (Act) was adopted in 1980, Idaho Code section 54-704 (1) set forth "practices and procedures" which could be used, including the use of clinical nutritional methods, as well as clinical diagnosis of conditions of the body and the use of diagnostic x-rays. Idaho Code section 54-704 (1).

Although the definition of "practice of chiropractic" remains unchanged since 1980, the Act was amended in 1993 to further define the terms adjustment, manipulation, and massage therapy. Idaho Code section 54-704 (1)(a-c). Although the topic has been mentioned in board meeting minutes on a fairly regular basis since 1972, the phrase "clinical nutritional methods," was not further defined in 1993 nor has it since been further updated or defined in code. For the past several years, however, this phrase has been the source of much controversy. Further definition of the term has been the subject of several rule making efforts, a current rule, a withdrawn "written interpretation," and a pending rule promulgation.

1. Does Idaho Code section 54-704 (2) (a-b) permit a chiropractic physician to prescribe medications that require a prescription?

No. Neither Idaho Code section 54-704 (2) (a), nor 54-704 (2) (b), permit chiropractic physicians to prescribe prescription medications. Strictly construed, Idaho Code section 54-704 (2) (b) prohibits chiropractic physicians from even suggesting or directing that a patient use a prescription medication.

In relevant part, Idaho Code section 54-704 provides:

(2) Nothing herein contained shall allow any physician to:

(a) Perform surgical operations or practice obstetrics;

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

2. If Idaho Code section 54-704(2)(a-b) prohibits chiropractic physicians from prescribing medicines, may the Board of Chiropractic Physicians permit the prescription of medications contained in Idaho Code section 54-704(2)(a-b) by promulgating a board rule?

No. Within their delegated authority, regulatory boards are permitted to promulgate rules which implement, interpret, or prescribe (1) law or policy or (2) the agency's procedural or practice requirements. This analysis will assume, but does not opine, that a board's authority to promulgate rules for the "administration" of its chapter can be read to allow it to adopt rules clarifying the statutorily established scope of practice. Assuming that the requisite statutory authority to promulgate a rule exists, a board rule may interpret the statutory scope of practice in a manner consistent with the underlying statute. The rule cannot "override" the legislatively created scope of practice by permitting activities which are otherwise prohibited. To the extent that Idaho Code section 54-704(2)(a-b) prohibits practitioners from prescribing certain medications, it is impermissible for the board to promulgate a rule to the contrary.

Referred to as Rule 20, IDAPA 24.03.01.020 clarifies the term "clinical nutritional methods," one of several treatment modalities included within the chiropractic scope of practice. The term is not further defined within the statute. As promulgated, the rule permits "the clinical use, administration, recommendation, compounding, prescribing, selling, and distributing vitamins, minerals, botanical medicine, herbals, homeopathic, phytonutrients, antioxidants, enzymes, and glandular extracts, durable and non-durable medical goods and devices in all their forms." Read in context with the statute, Rule 20 permits a licensed chiropractic physician to utilize those "vitamins, minerals, botanical medicines, herbals, homeopathic, phytonutrients, antioxidants, enzymes or glandular extracts, medical goods and devices" which are not otherwise prohibited by Idaho Code section 54-704 (2)(a-b).

This response is provided to assist you. If you have any questions or concerns, please do not hesitate to call me at (208) 334-4111 or email at kay.christensen@ag.idaho.gov.

Sincerely,

S. KAY CHRISTENSEN
Division Chief
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c: Brian Kane, Assistant Chief Deputy, Legislative Counsel