

Part 12 – State Action & Certified Practice Rights

A central theme of this series of articles is that the California Board of Chiropractic Examiners (BCE) has the primary role in determining the additional practice rights, if any, that may be acquired by chiropractors completing the elective education and training presently mandated by the Chiropractic Act.

In Part 6 of this series we briefly looked at “specialization” within the medical and legal professions (**unlimited** rights practitioners). (See www.prescott-law.com > Ch. Journ. Art. > Fourth Series.) Rather than using the “specialization” approach, state regulatory agencies often simply adopt regulations **certifying the right to practice** specific methods of care not otherwise authorized by the basic, **limited** practice rights, license under their jurisdiction.

Of course, any certified practice rights must be consistent with the intent of the act administered by the respective agencies. As to chiropractors, that intent includes the following: 1) the 1922 Chiropractic Act granted chiropractors the right to “treat diseases, injuries, deformities, or other physical or mental conditions”, 2) the Act must be construed so as to not discriminate against any “school of chiropractic” practiced in 1922 (and advances thereon), 3) the BCE cannot authorize the practice of any new forms of practice without first requiring adequate education, training and examination of each particular chiropractor seeking to practice within those areas, and 4) the BCE cannot authorize chiropractors to practice any form of practice expressly excluded under the 1922 Act.

Before more specifically addressing the certification process we need to consider some fundamental legal principles.

Fundamentals

State Prescribed Curricula - At the start of the 20th Century it was generally thought that states could not constitutionally impose curriculum requirements on the healing arts. However, in 1912 the United States Supreme Court held that states could constitutionally prescribe such education and training. (*Collins* case). As a result, in 1913 the California Legislature enacted a new Medical Practice Act (MPA) prescribing the curriculum for licensure as either a physician and surgeon or drugless practitioner. (prescribed curricula were added for midwifery and chiropody by 1920)

Dr. Ratledge, the founder of what is now Cleveland Chiropractic College – L.A., sought to test the application of the 1913 MPA to chiropractors and he continued to practice without complying with the State mandated curriculum requirements. Criminal charges were filed against him and his case wound up in the California Supreme Court in 1916. Not surprisingly, the California Supreme Court adopted the reasoning of the *Collins* case and recognized that the “State” may **prescribe reasonable** minimum curriculum standards for licensure to practice the healing arts. This laid the foundation for the future regulation of not only the healing arts but most vocations and professions presently described in the California Business and Professions Code. The critical point is that there is a direct relationship between **State** prescribed education and training and practice rights. But how does the State operate in establishing the content of the prescribed education and training?

State Action – The State acts through both the legislature and/or state regulatory agencies such as the BCE. Two examples will suffice to demonstrate the point.

The California Physical Therapy Practice Act defines physical therapy (PT) but does **not** prescribe the number of hours or subjects required for the license. The delineation of hours and subject matter coverage has been left for the PT Board to determine. (The PT board requires completion of 1400 hours for the PT license.)

The Acupuncture Licensure Act defines acupuncture and requires the completion of a minimum of 3000 hours for the acupuncture license. But, the act does **not** specifically define the required subject matter content. The Acupuncture Board has defined in detail the subject matter to be covered in the required 3000 hours.

In effect, the specific subject matter content and specifically required hours for both the PT and acupuncture licenses are all “elective” and the respective state boards have been delegated the responsibility to **fill in the details**. They have done so.

The Chiropractic Act requires completion of at least 4000 hours of specifically identified subjects, including the requirement that 15% of the 4000 hours must be in “electives”. The BCE has the duty to define the subject matter content of the elective hours, but has generally failed to do so. May the BCE, in the process of **filling in such details**, adopt regulations authorizing specifically delineated practice rights?

Certification Models

To repeat, the state acts through both the legislature and/or various administrative (regulatory) agencies in establishing the education, training and examination standards for the practice of the various professions. As is obvious from the foregoing discussion, the legislature often defines a profession with a very broad brush leaving it to **the state agency to fill in the details**. Two examples will suffice to demonstrate the point.

Physical Therapists (PT) – The basic PT license does not authorize the performance of needle EMG. However, pursuant to express statutory authority, the PT board has adopted regulations to certify PTs as authorized to perform needle EMG upon successful completion of a 200 hour education and training course and related examination.

Dental/Podiatric Acupuncture – Section 4934(b) of the California Acupuncture Act makes it a misdemeanor for anybody other than an acupuncture licensee, physician and surgeon, podiatrist or dentist to “practice acupuncture”. Business and Professions Code section 4947 provides that licensed dentists and podiatrists may practice acupuncture based upon completion of “a course of instruction” approved by their respective licensing boards. (Apparently, physicians and surgeons are not statutorily required to complete any particular course of instruction to practice acupuncture.)

Pursuant to its general authority to “adopt reasonably necessary rules” to carry forward the objectives of the Dental Practice Act, the dental board presently requires completion of 80 hours of education and training for a dentist to be certified to practice acupuncture. Pursuant to its general

authority to regulate the continuing education of podiatrists, the podiatric board presently certifies podiatrists to practice acupuncture upon completion of 25 hours of education and training related to the lower extremities.

I do not understand how what the dentists and podiatrists are doing can be called “acupuncture”. The word “acupuncture” denotes the use of the holistic, yin-yang concepts of traditional Chinese medicine. Others, including chiropractors, should, however, be authorized to use dry needles for therapeutic purposes - calling it something such as bio-puncture, reflex therapeutics, or living matrix therapy, as determined by the BCE. On the other hand, acupuncturists are not adequately trained in Western diagnostics and/or basic science to justify asserting practice rights within those domains; especially if their doing so results in interference with the practice rights of chiropractors.

Conclusion

The BCE has authority to adopt rules as reasonably necessary to carry out the objectives of the Act and as needed for the protection of the public and may certify specific practice rights based upon elective education and training. But, only so long as the certified rights are not otherwise expressly precluded by the Chiropractic Act itself and so long as the BCE imposes reasonable education, training and examination requirements with respect thereto.

I will look at potential certified practice rights in homeopathy, herbal medicine and electrotherapeutics in subsequent articles.

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