STATE OF CONNECTICUT
CONNECTICUT BOARD OF CHIROPRACTIC EXAMINERS

IN RE: DECLARATORY RULING CONCERNING COMMERCIAL MOTOR VEHICLE MEDICAL EXAMINATIONS BY CHIROPRACTORS

FOR THE BOARD:

Matthew Scott, DC, Chairperson
Candito Carroccia, DC
Michele Imossi, DC
Sean Robotham, DC
Faraneh Carnegie-Hargreaves
Jean Rexford

DECLARATORY RULING

On January 9, 2014, the Connecticut Board of Chiropractic Examiners (the "Board") on its own motion initiated a proceeding for a declaratory ruling regarding whether the scope of chiropractic practice in Connecticut permits a chiropractor to conduct the testing and physical examination of body systems required on the Medical Examination Report codified in 49 C.F.R. § 391.43, to determine whether a driver is physically qualified to drive a commercial motor vehicle in interstate commerce and complete the Medical Examiner's Certificate on the Medical Examination Report. (Bd. Ex. 2.)

On January 21, 2014, a Notice of the Declaratory Ruling was published in the *Connecticut Law Journal* indicating the Board's intention to issue a ruling at its meeting on February 13, 2014. (Bd. Exh. 3.) That meeting was canceled due to inclement weather and eventually rescheduled to March 20, 2014.

On February 20, 2014, the Connecticut Chiropractic Association, Inc. requested party status in the declaratory ruling proceeding, which request was denied by the Board. (Bd. Ex. 4.)

At the March 20, 2014 meeting, the following Board members were present and participated in this Ruling: Matthew Scott, DC, Chairman; Faraneh Carnegie-Hargreaves, Public Member; Candito Carroccia, DC; Michele Imossi, DC; Jean Rexford, Public Member; and, Sean Robotham, DC. At the meeting, the Board entered Board Exhibits 1-5.

The Declaratory Ruling was conducted in accordance with Conn. Gen. Stat. § 4-176 and § 19a-9-1 et seq. of the Regulations of Connecticut State Agencies. To the extent that the

findings of fact actually represent conclusions of law, they should be so considered, and vice versa. SAS Int., Inc. v. S & H Computer Systems, Inc., 605 F. sup. 816 (Md. Tenn. 1985).

Findings of Fact

1. Pursuant to General Statutes § 20-27(d), the Board has recognized and approved chiropractic school and colleges accredited by the Council on Chiropractic Education. (Bd. Exh. 1.)
2. The Council of Chiropractic Education has accredited, among others, the following chiropractic school and colleges: Palmer College of Chiropractic in Davenport, IA; National University of Health Sciences in Lombard, IL; and, New York Chiropractic College in Seneca Falls, NY. (Bd. Exh. 1.)

Discussion and Law

Conn. Gen. Stat. § 4-176 authorizes an agency, such as the Board, to issue a declaratory ruling regarding, among other things, the applicability of the statutes or regulations to specified circumstances on matters within the agency's jurisdiction. By law, a declaratory ruling constitutes a statement of agency law and may also be utilized by the Board, on a case-by-case basis, in future proceedings before the Board concerning the practice of chiropractic.

Pursuant to federal law, a person is physically qualified to drive a commercial vehicle if that person, among other things, has complied with the medical examination requirements contained in 49 C.F.R. § 391.43. 49 C.F.R. § 391.41(a)(3)(i). On and after May 21, 2014, a medical examination under 49 C.F.R. § 391.43 must be performed by a medical examiner listed on the National Registry of Certified Medical Examiners (National Registry). 49 C.F.R. § 391.42; 49 C.F.R. § 391.43. To be listed on the National Registry, a medical examiner must, among other things, comply with the certification requirements contained in 49 C.F.R. § 390.103. Of importance, a medical examiner must be "[b]e licensed, certified, or registered in accordance with applicable State laws and regulations *to perform physical examinations*. The applicant must be an advanced practice nurse, *doctor of chiropractic*, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional *authorized by applicable State laws and regulations to perform physical examinations*." (Emphasis added.) 49 C.F.R. § 390.103. Thus, to qualify for a medical examiner certificate, a chiropractor in Connecticut must be licensed and comply with the other provisions of 49 C.F.R. § 390.103.

In Connecticut, the scope of practice for licensed chiropractors is set forth in § 20-28(b) of the Statutes. Relevant to this matter, § 20-28(b)(2) of the Statutes, provides that:

> (b) Any chiropractor who has complied with the provisions of [Chapter 372] may: . . . (2) Examine, analyze and diagnose the human living body and its diseases, and use for diagnostic purposes the x-ray or any other general method of examination for diagnosis and analysis taught in any school or college of chiropractic which has been recognized and approved by the State Board of Chiropractic Examiners.

Pursuant to this statute, a chiropractor, who has complied with the provisions of Chapter 372 of the General Statutes, may perform testing and physical examinations for diagnostic purposes for commercial driver fitness determinations if such testing and physical examinations are taught in any school or college recognized and approved by the Board. See *Jutkowitz v. Dep't of Health Servs.*, 220 Conn. 86 (1991).

The federal regulations set forth the medical examination requirements for commercial driver fitness determinations by a medical examiner, including a Medical Examination Report that must be completed by the medical examiner as well as Advisory Criteria published by the Federal Motor Carrier Safety Administration. See 49 CFR §§ 391.43, 391.41.

In issuing this declaratory ruling, the Board reviewed the pertinent federal regulations as well as the Medical Examination Report and Advisory Criteria contained therein to determine whether such testing and physical examinations of body systems required by those provisions are taught in any school or college recognized and approved by the Board. In making its ruling, the Board applied its specialized knowledge and expertise in the field of chiropractic regarding the curriculum taught at the Board recognized and approved schools or colleges identified in Finding of Fact 2 of this Ruling, which recognized and approved schools or colleges the expert Board members attended. See Pet v. Dept. of Health Services, 228 Conn. 651, 665-666 (1994). The Board finds the following.

It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to review and discuss a driver's health history and potential hazards of medications, including over-the-counter medications, while driving, in accordance with 49 C.F.R. § 391.43. The Health History section of the Medical Examination Report for Commercial Driver Fitness Determination provided in the federal regulations at 49 C.F.R. § 391.43, is completed by the driver and provides details relating to the driver's illness or injury in

the last 5 years; head/brain injuries, disorders or illnesses; seizures, epilepsy (medication); eye disorders or impaired vision; ear disorders, loss of hearing or balance; heart disease or heart attack, other cardiovascular conditions (medication); heart surgery; high blood pressure (medication); muscular disease; shortness of breath; lung disease, emphysema, asthma, chronic bronchitis; kidney disease, dialysis; liver disease; digestive problems; diabetes or elevated blood sugar (medication); nervous or psychiatric disorders (medication); loss of or altered consciousness; fainting, dizziness; sleep disorders; stroke or paralysis; missing or impaired hand, arm, foot, leg, finger, toe; spinal injury or disease; chronic low back pain; regular or frequent alcohol use, and, narcotic or habit forming drug use. The review and discussion of patient health histories, such as the above, and the effects of medications while driving are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.

The Testing section of the Medical Examination Report for Commercial Driver Fitness Determination and Advisory Criteria provided in the federal regulations requires the Medical Examiner to test and examine the driver's vision, hearing, blood pressure/pulse rate, laboratory and other test findings and to perform a physical examination checking the driver's body systems. Each of these requirements is addressed below:

1. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct vision testing and examinations for diagnostic purposes in accordance with 49 C.F.R. § 391.43. Such testing, examinations, and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.
2. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct hearing testing and examinations for diagnostic purposes in accordance with 49 C.F.R. § 391.43. Such testing, examinations and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.
3. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to assess for diagnostic purposes a person's blood pressure and pulse rate and diagnosis hypertension in accordance with 49 C.F.R. § 391.43. Such assessments and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.

4. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct laboratory and other testing for diagnosis purposes in accordance with 49 C.F.R. § 391.43. Such testing and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.
5. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic purposes and determine a person's height and weight in accordance with 49 C.F.R. § 391.43. Such examination and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.
6. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic purposes of a person's general appearance in accordance with 49 C.F.R. § 391.43 by checking for: marked overweight, tremor, signs of alcoholism, problem drinking, or drug abuse. Such examination and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.
7. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic purposes of a person's eyes in accordance with 49 C.F.R. § 391.43 by checking for: pupillary equality, reaction to light, accommodation, ocular motility, ocular muscle imbalance, extraocular movement, nystagmus, exophthalmos, inquiring about retinopathy, cataracts, aphakia, glaucoma, and macular degeneration, and making specialist referrals. Such examination and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.
8. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic purposes of a person's ears in accordance with 49 C.F.R. § 391.43 by checking for: ear disease, scarring of tympanic membrane, occlusion of external canal, and perforated eardrums. Such examination and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.
9. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic

purposes of a person's mouth and throat in accordance with 49 C.F.R. § 391.43 by checking for: irremediable deformities likely to interfere with breathing or swallowing. Such examination and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.

10. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic purposes of a person's heart in accordance with 49 C.F.R. § 391.43 by checking for: murmurs, extra sounds, enlarged heart, pacemaker, and implantable defibrillator. Such examination and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.

11. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic purposes of a person's lungs and chest in accordance with 49 C.F.R. § 391.43 by checking for: abnormal chest wall expansion, abnormal respiratory rate, abnormal breath sounds including wheezes or alveolar rales, impaired respiratory function, cyanosis, and conducting further pulmonary tests or chest x-rays after abnormal findings. Such examination and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.

12. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic purposes of a person's abdomen and viscera in accordance with 49 C.F.R. § 391.43 by checking for: enlarged liver, enlarged spleen, masses, bruits, hernia, and significant abdominal wall muscle weakness. Such examination and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.

13. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic purposes of a person's vascular system in accordance with 49 C.F.R. § 391.43 by checking for: abnormal pulse and amplitude, carotid or arterial bruits, and varicose veins. Such examination and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.

14. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic purposes of a person's genito-urinary system in accordance with 49 C.F.R. § 391.43 by checking for hernias. Such examination and analysis are taught at the Board recognized and approved schools or college identified in Finding of Fact #2s.

15. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic purposes of a person's extremities and limb impairments in accordance with 49 C.F.R. § 391.43 by checking for: loss or impairment of leg, foot, toe, arm, hand, finger, perceptible limp, deformities, atrophy, weakness, paralysis, clubbing, edema, hypotonia, insufficient grasp and prehension in upper limb to maintain steering wheel grip, and insufficient mobility and strength in lower limb to operate pedals properly. Such examination and analysis are taught at Board recognized and approved schools or colleges identified in Finding of Fact #2.

16. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic purposes of a person's spine and the musculoskeletal system in accordance with 49 C.F.R. § 391.43 by checking for: previous surgery, deformities, limitation of motion, and tenderness. Such examination and analysis are taught at Board recognized and approved schools or colleges identified in Finding of Fact #2.

17. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to conduct a physical examination for diagnostic purposes of a person's neurological system in accordance with 49 C.F.R. § 391.43 by checking for: previous surgery, deformities, limitation of motion, and tenderness. Such examination and analysis are taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.

18. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to determine whether a person meets the standards set forth in 49 C.F.R. 391.41(b)(1)-(12) and is physically qualified to drive a commercial motor vehicle. How to make such determination is taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.

19. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to determine whether a person meets the standards set forth in 49 C.F.R. 391.41(b)(1)-(12) and is physically qualified to drive a commercial motor vehicle only when: wearing corrective lenses, wearing a hearing aid, accompanied by a specific waiver, driving within an exempt intracity zone (49 C.F.R. 391.62), accompanied by a Skill Performance Evaluation Certificate, or qualified by operation of 49 C.F.R. 391.64. How to make such determination is taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.

20. It is within the scope of practice, as set forth in § 20-28(b)(2) of the Statutes, for a chiropractor licensed in Connecticut to determine whether a person is qualified by operation of 49 C.F.R. 391.64, as an insulin-controlled diabetic driver, to be physically qualified to drive a commercial vehicle. How to make such determination is taught at the Board recognized and approved schools or colleges identified in Finding of Fact #2.

Ruling

Based on the foregoing, the Board concludes that the scope of chiropractic practice in Connecticut permits a licensed chiropractor to conduct the testing and physical examination of body systems required on the Medical Examination Report codified in 49 C.F.R. § 391.43, to determine whether a driver is physically qualified to drive a commercial motor vehicle in interstate commerce and complete the Medical Examiner's Certificate on the Medical Examination Report.

3/8/14
Date

Matthew Scott, D.C., Chairperson