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MEMORANDUM VIA FACSIMILE

To: Concerned Parties
From: Alan M. Immerman, D.C.
Date: 5-17-95

I have just reviewed the new chiropractic board bill and it appears that this new law, besides requiring 12 hours of continuing education per year, opens the door for the chiropractic board to sanction any licensee whose practice is contrary to "recognized standards in chiropractic" such as the Mercy Guidelines. It also appears that the new law removes the explicit right of a licensee to subject a Board decision to judicial review.

Please read page 7, paragraph 15, in which the language was markedly changed by the new law. The Board can now sanction doctors for "any conduct or practice contrary to recognized standards in chiropractic...." The old language limited the Board to sanctioning doctors only for conduct that is contrary to recognized standards of ethics in chiropractic.

See page 8 and you will note that Section C was removed. This is the section that permitted judicial review of Board decisions.

For the record it should be known that the governing board of the Arizona Association of Chiropractic voted to lobby in favor of the continuing education law before Board members read the language. "The devil is in the details." I suspect that certain AAC leaders and Board members did not want the profession to know about the some of the new language.

What's next? I fully expect the Board to sanction doctors whose conduct is contrary to recognized chiropractic guidelines, and I fully expect the Board to hold that the Mercy Guidelines are recognized.

FILED

**Jane Dee Hull
Secretary of State**

State of Arizona
Senate
Forty-second Legislature
First Regular Session
1995

CHAPTER 259

SENATE BILL 1296

AN ACT

AMENDING SECTIONS 32-905, 32-921, 32-922, 32-922.01, 32-922.02, 32-923, 32-924 AND 32-926, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 8, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-931; RELATING TO THE STATE BOARD OF CHIROPRACTIC EXAMINERS.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-905, Arizona Revised Statutes, is amended to
3 read:

4 32-905. Executive director of board; duties; other personnel;
5 immunity

6 A. The board shall appoint ~~a~~ AN executive director who is not a
7 member of the board and who shall serve at the pleasure of the board.

8 B. The executive director shall:

9 1. Keep a record of the proceedings of the board.

10 2. Collect all monies due and payable to the board.

11 3. Pay to the state treasurer any monies received by the board.

12 4. Prepare bills for authorized expenditures of the board and obtain
13 warrants from the director of the department of administration for payment
14 of bills.

15 5. Administer oaths.

16 6. Act as custodian of the seal, books, minutes, records and
17 proceedings of the board.

18 7. At the request of the board, do and perform any other duty not
19 prescribed for the executive director elsewhere in this chapter.

20 C. The board may employ other permanent and temporary personnel as it
21 deems necessary to carry out the purposes of this chapter.

22 D. The executive director and a person acting pursuant to ~~his~~ THE
23 EXECUTIVE DIRECTOR'S direction is personally immune from civil liability for
24 all actions taken in good faith pursuant to this chapter.

1 Sec. 2. Section 32-921, Arizona Revised Statutes, is amended to read:
2 32-921. Application for license; qualifications of applicant;
3 fee; background investigations

4 A. A person ~~desiring~~ WHO WISHES to practice chiropractic in this
5 state shall, ~~SUBMIT A WRITTEN APPLICATION TO THE BOARD~~ at least forty-five
6 days ~~prior to~~ BEFORE the next scheduled examinations, ~~make written~~
7 ~~application to the board upon~~ ON a form and in the manner prescribed by the
8 board.

9 B. To be eligible for an examination and licensure, the applicant
10 shall:

11 1. Be a person of good character and reputation.

12 ~~2. Be a graduate of a regularly accredited four-year high school, or~~
13 ~~shall have equivalent education sufficient to satisfy the requirements for~~
14 ~~matriculation in the university of Arizona.~~

15 ~~3.~~ 2. Be a graduate of a chiropractic college, ~~THAT BOTH:~~
16 (a) IS accredited by or ~~having~~ HAS status with the council on
17 chiropractic education or IS accredited by an accrediting agency recognized
18 by the U.S. department of education or the council on post secondary
19 accreditation or ~~having~~ HAS the equivalent of ~~such~~ THESE standards as
20 determined by the board. ~~, teaching~~

21 (b) TEACHES a resident course of four years of not less than nine
22 months each year, or the equivalent of thirty-six months of continuous study,
23 ~~comprising~~ AND THAT COMPRISES not less than four thousand credit hours of
24 resident study ~~for the granting of~~ REQUIRED TO RECEIVE a degree of doctor of
25 chiropractic (D.C.).

26 ~~4.~~ 3. Be physically and mentally able to practice chiropractic
27 skillfully and safely.

28 ~~5.~~ 4. Have a certificate of attainment for part I and part II and a
29 score of three hundred seventy-five or more on part III of the examination
30 conducted by the national board of chiropractic examiners.

31 C. The board may refuse to give an examination to an applicant who
32 either:

33 1. Fails to qualify for an examination under subsection B of this
34 section.

35 2. Has engaged during the period of two years next preceding his
36 application in conduct constituting grounds for ~~suspension~~ SANCTION pursuant
37 to section 32-924.

38 D. On making application, the applicant shall pay to the executive
39 director of the board a nonrefundable fee of one hundred dollars. The board
40 shall keep a register of all applicants and the result of each examination.

41 E. In order to determine an applicant's eligibility for examination
42 and licensure, the board may obtain criminal history record information from
43 the department of public safety pursuant to section 41-1750. The board shall
44 charge each applicant a fee necessary to cover the cost of the investigation.

1 The board shall forward this fee to the criminal identification section of
2 the department of public safety.

3 Sec. 3. Section 32-922, Arizona Revised Statutes, is amended to read:
4 32-922. Examinations

5 A. The examination for a license to practice chiropractic required of
6 applicants shall be conducted at a time and place designated by the board at
7 least semiannually. Each applicant to be examined shall first file a
8 completed application found to be true and correct and shall be given at
9 least twenty days' written notice of the time and place of the examination.

10 B. The examination shall be in English, practical in character and
11 designed to include subjects which are necessary to ascertain the applicant's
12 knowledge of and fitness to practice chiropractic safely and skillfully as
13 authorized in this state. Examinations shall include ~~subjects upon~~ MATERIAL
14 RELATING TO CHIROPRACTORS AND ARIZONA JURISPRUDENCE AND THE FOLLOWING
15 SUBJECTS AS TAUGHT BY ACCREDITED CHIROPRACTIC COLLEGES:

- 16 1. Anatomy. ~~—~~
- 17 2. Physiology. ~~—~~
- 18 3. Bacteriology. ~~—~~
- 19 4. Symptomatology. ~~—~~
- 20 5. Diagnosis, including physical, clinical, x-ray and laboratory
21 subjects. ~~—~~
- 22 6. Chiropractic orthopedics. ~~—~~
- 23 7. Principles of chiropractic and adjusting. ~~—~~
- 24 8. Neurology. ~~—~~
- 25 9. Chemistry, including biochemistry and nutrition. ~~—~~
- 26 10. Public health and hygiene. ~~— and~~
- 27 11. Chiropractic spinal analysis, ~~ethics and Arizona jurisprudence for~~
28 ~~chiropractors as taught by accredited chiropractic colleges.~~

29 C. The board may waive examination in those subjects that the
30 applicant passed previously with the percentage of correct answers prescribed
31 in subsection D in an examination conducted by the national board of
32 chiropractic examiners.

33 D. THE BOARD SHALL GRANT a license ~~shall be granted~~ to applicants who
34 correctly answer seventy-five per cent of all questions asked, ~~and sixty per~~
35 cent of the questions on each subject, ~~and WHO~~ pay the original license fee
36 of one hundred dollars.

37 ~~E. In the examination upon subjects of chiropractic theory and~~
38 ~~practice, applicants shall be known and designated by numbers only and their~~
39 ~~identities shall be kept secret from those grading. A written transcript or~~
40 ~~tape recording shall be made of the examination. The board may destroy the~~
41 ~~transcript or the tape recording twelve months after the examination.~~

1 ~~F. An applicant who fails in no more than two of the subjects examined~~
2 ~~upon may, within one year, be reexamined in the failed subjects as a~~
3 ~~continuation of the first examination on payment of a reexamination fee of~~
4 ~~seventy-five dollars per subject.~~

5 ~~G. E. An applicant failing WHO FAILS the examination for the first~~
6 ~~time may retake the examination on payment of the application fee WITHIN ONE~~
7 ~~YEAR IF THE APPLICANT SUBMITS AN UPDATED APPLICATION THAT MEETS THE~~
8 ~~REQUIREMENTS OF SECTION 32-921.~~

9 ~~H. An applicant failing the examination a second or subsequent time~~
10 ~~may retake the examination at a regularly scheduled examination but shall~~
11 ~~refile as a new applicant.~~

12 ~~I. F. An applicant who fails to SHALL REAPPLY FOR LICENSURE IF THE~~
13 ~~APPLICANT DOES NOT pay the original license fee within one year after having~~
14 ~~been notified by the board of entitlement THAT THE APPLICANT IS ELIGIBLE to~~
15 ~~RECEIVE a license is required to reapply for a license.~~

16 Sec. 4. Section 32-922.01, Arizona Revised Statutes, is amended to
17 read:

18 32-922.01. Reciprocity; requirements

19 A. The board shall issue a license to practice chiropractic under this
20 section to an applicant who MEETS BOTH OF THE FOLLOWING REQUIREMENTS:

21 1. Holds a current license to practice chiropractic issued after
22 examination by a licensing board in another state or country in which the
23 licensing requirements are at least substantially equivalent, in the opinion
24 of the board, to those of this state and the other state or country grants
25 similar reciprocal privileges to chiropractors licensed in this state.

26 2. RECEIVES A GRADE OF AT LEAST SEVENTY-FIVE PER CENT ON THE ARIZONA
27 JURISPRUDENCE EXAMINATION.

28 B. The applicant shall pay the application fee prescribed by section
29 32-921 and present proof satisfactory to the board that:

30 1. A license issued by any other state has not been ~~suspended or~~
31 ~~revoked~~ SANCTIONED for any cause which is a basis of ~~suspension or revocation~~
32 ~~of a license~~ A SANCTION IMPOSED BY THE BOARD pursuant to this chapter, except
33 for failure to pay fees.

34 2. ~~He~~ THE APPLICANT has not previously failed to pass the examination
35 in this state.

36 3. ~~He~~ THE APPLICANT has been engaged in the practice of chiropractic
37 continuously for not less than three of the five years immediately preceding
38 the application.

39 Sec. 5. Section 32-922.02, Arizona Revised Statutes, is amended to
40 read:

41 32-922.02. Specialties; certification; fee

42 A. In order to practice a chiropractic specialty a licensee shall be
43 certified in that specialty by the board.

1 B. An applicant who wishes to take the acupuncture examination shall
2 submit documentation to the board of his successful completion of a minimum
3 of fifty ~~credit~~ hours of study at an accredited chiropractic college or
4 postgraduate study with an instructor on the active or postgraduate staff of
5 an accredited chiropractic college.

6 C. An applicant who wishes to take the physiotherapy examination shall
7 submit documentation to the board of his successful completion of a minimum
8 of one hundred twenty ~~credit~~ hours of study at an accredited chiropractic
9 college or postgraduate study with an instructor on the active or
10 postgraduate staff of an accredited chiropractic college.

11 D. The board shall issue a certificate to any applicant who correctly
12 answers seventy-five per cent of all questions asked on the specialty
13 examination and who pays a certificate fee of one hundred dollars.

14 E. On making application, the applicant shall pay to the executive
15 director of the board a nonrefundable fee of one hundred dollars. The board
16 shall keep a register of all applicants and the result of each examination.

17 Sec. 6. Section 32-923, Arizona Revised Statutes, is amended to read:
18 32-923. Change of address; annual renewal fee; failure to
19 renew; waivers

20 A. Every person licensed pursuant to this chapter shall within thirty
21 days notify the board in writing of any change in residence or office
22 address.

23 B. Every person licensed to practice chiropractic in this state shall
24 annually make a renewal application to the board prior to January 1 after
25 original issuance of a license ~~for a renewal license certificate~~ and pay a
26 renewal license fee of one hundred dollars. The renewal application shall
27 be made upon a form and in a manner prescribed by the board. The executive
28 director shall annually, thirty or more days before the renewal application
29 and renewal fee are due, ~~send to all chiropractors licensed to practice in~~
30 ~~this state~~ by first class mail a renewal application and notice requiring
31 license renewal and payment of the renewal fee.

32 C. ~~Failure on the part of the licensee to make~~ THE BOARD SHALL
33 AUTOMATICALLY SUSPEND A LICENSE IF THE LICENSEE DOES NOT SUBMIT an
34 application for renewal and pay the renewal license fee ~~shall~~ AS REQUIRED BY
35 THIS SECTION. ~~automatically suspend the rights and privileges granted~~
36 ~~pursuant to this chapter.~~

37 D. ~~A certificate may be reinstated on payment of~~ THE BOARD MAY
38 REINSTATE A LICENSE IF THE PERSON COMPLETES AN APPLICATION FOR REINSTATEMENT
39 AS PRESCRIBED BY THE BOARD, COMPLIES WITH THE CONTINUING EDUCATION
40 REQUIREMENTS FOR EACH YEAR THAT THE LICENSE WAS SUSPENDED, PAYS the annual
41 renewal license fee for each year that the license was suspended, ~~payment of~~
42 AND PAYS an additional fee of one hundred dollars. ~~and, if requested by the~~
43 ~~board, presentation of evidence satisfactory to the board that the suspended~~
44 ~~licensee is professionally able to engage in the practice of chiropractic and~~

1 ~~still possesses the professional knowledge required. An applicant who fails~~
2 ~~to DOES NOT request reinstatement within two years of the date of suspension~~
3 ~~shall apply for a license as a new candidate pursuant to section 32-921 OR~~
4 ~~32-922.02. The board may, after a hearing, refuse to reinstate a certificate~~
5 ~~under this subsection on any of the grounds prescribed in section 32-924,~~
6 ~~subsection A.~~

7 ~~D.~~ E. The board may waive the annual renewal license fee when a
8 licensee presents evidence satisfactory to the board that the licensee has
9 permanently retired from the practice of chiropractic and has paid all fees
10 required by this chapter prior to waiver.

11 ~~E.~~ F. During such period of waiver the retired licensee shall not
12 engage in the practice of chiropractic. A violation of this subsection shall
13 subject the retired licensee to the same penalties as are imposed in this
14 chapter upon a person who practices chiropractic without a license.

15 ~~F.~~ G. The board may reinstate a retired licensee to active practice
16 upon payment of the annual renewal license fee and presentation of evidence
17 satisfactory to the board that the retired licensee is professionally able
18 to engage in the practice of chiropractic and still possesses the
19 professional knowledge required. The board may, after a hearing, refuse to
20 reinstate a retired licensee to active practice under this subsection on any
21 of the grounds prescribed in section 32-924, subsection A.

22 Sec. 7. Section 32-924, Arizona Revised Statutes, is amended to read:

23 32-924. Grounds for sanction; hearing

24 ~~A. The board may issue an order of censure, and impose a civil penalty~~
25 ~~of not more than five hundred dollars or may prescribe probation, or may~~
26 ~~refuse to issue a license to an applicant, or may revoke or suspend a~~
27 ~~license, after a hearing, upon any of the following grounds whether occurring~~
28 ~~in this state or elsewhere:~~

29 A. AFTER A HEARING THE BOARD MAY TAKE THE FOLLOWING ACTIONS TO
30 SANCTION A PERSON FOR ANY OF THE GROUNDS LISTED IN SUBSECTION
31 B:

- 32 1. ISSUE AN ORDER TO CEASE AND DESIST.
- 33 2. ISSUE AN ORDER OF CENSURE.
- 34 3. IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS.
- 35 4. PRESCRIBE TERMS OF PROBATION.
- 36 5. REFUSE TO ISSUE A LICENSE TO AN APPLICANT.
- 37 6. REVOKE OR SUSPEND A LICENSE.
- 38 B. THE FOLLOWING ARE GROUNDS FOR SANCTIONS, REGARDLESS OF WHERE THEY
- 39 OCCUR:

- 40 1. Employment of fraud or deception in securing a license.
- 41 2. Practicing chiropractic under a false or assumed name.
- 42 3. Impersonating another practitioner.

1 4. Habitual use of alcohol, narcotics or stimulants to the extent of
2 incapacitating ~~him~~ THE LICENSEE for the performance of his professional
3 duties.

4 5. Unprofessional or dishonorable conduct of a character likely to
5 deceive or defraud the public or tending to discredit the profession.

6 6. Conviction of a misdemeanor involving moral turpitude or of a
7 felony.

8 7. Gross malpractice, repeated malpractice or any malpractice
9 resulting in the death of a patient.

10 8. Representing that a manifestly incurable condition can be
11 permanently cured, or that a curable condition can be cured within a stated
12 time, if such is not the fact.

13 9. Offering, undertaking or agreeing to cure or treat a condition by
14 a secret means, method, device or instrumentality.

15 10. Refusing to divulge to the board upon demand the means, method,
16 device or instrumentality used in the treatment of a condition.

17 11. Giving or receiving or aiding or abetting the giving or receiving
18 of rebates, either directly or indirectly.

19 12. Acting or assuming to act as a member of the board if such is not
20 the fact.

21 13. Advertising in a false, deceptive or misleading manner.

22 14. Refusal, revocation or suspension of a license by any other state
23 or country, unless it can be shown that such was not occasioned by reasons
24 which relate to the ability to safely and skillfully practice chiropractic
25 or to any act of unprofessional conduct.

26 15. Any conduct or practice contrary to recognized standards of ~~ethics~~
27 in chiropractic or any conduct or practice which constitutes a danger to the
28 health, welfare or safety of the patient or the public or any conduct,
29 practice or condition which impairs the ability of the licensee to safely and
30 skillfully practice chiropractic.

31 16. Violating or attempting to violate, directly or indirectly, or
32 assisting in or abetting the violation of or conspiring to violate any of the
33 provisions of this chapter OR ANY BOARD ORDER.

34 17. Failing to designate himself and sign his name, wherever required,
35 in any capacity as "chiropractic doctor", "chiropractic physician" or "doctor
36 of chiropractic" or failing to use and affix the initials "D.C." after his
37 name.

38 18. Failing to place or cause to be placed the word or words
39 "chiropractic", "chiropractor", "chiropractic doctor" or "chiropractic
40 physician" in any sign or advertising media he uses.

41 19. Using physiotherapy without passing an examination in that subject
42 and without being certified in that specialty by the board.

43 20. Using acupuncture without passing an examination in that subject
44 and without being certified in that specialty by the board.

1 21. Engaging in sexual intercourse or oral sexual contact with a
2 patient in the course of treatment.

3 22. Billing or otherwise charging a patient or third party payor for
4 services, appliances, tests, equipment, an x-ray examination or other
5 procedures not actually provided.

6 23. Intentionally misrepresenting TO or omitting a material fact to
7 FROM the patient or third party payor concerning charges, services,
8 appliances, tests, equipment, an x-ray examination or other procedures
9 offered or provided.

10 24. Advertising chiropractic services, appliances, tests, equipment,
11 x-ray examinations or other procedures for a specified price without also
12 specifying the services, procedures or items included in the advertised
13 price.

14 25. Advertising chiropractic services, appliances, tests, equipment,
15 x-ray examinations or other procedures as free without also disclosing what
16 services or items are included in the advertised service or item.

17 26. Billing or charging a patient or third party payor a higher price
18 than the advertised price in effect at the time the services, appliances,
19 tests, equipment, x-ray examinations or other procedures were provided.

20 27. Advertising a specialty or procedure which requires a separate
21 examination or certificate of specialty, unless the licensee has satisfied
22 the applicable requirements of this chapter.

23 ~~B. C. PURSUANT TO BOARD RULES, the board on its own initiative shall
24 investigate and may hold hearings on alleged violations of this section.
25 Prior to a hearing, the board shall give written notice of the alleged
26 violations and of the date, time and place of the hearing to the person
27 charged. The person charged shall appear at the hearing and may be
28 represented by an attorney.~~

29 ~~C. Decisions of the board are subject to judicial review pursuant to
30 title 12, chapter 7, article 6.~~

31 Sec. 8. Section 32-926, Arizona Revised Statutes, is amended to read:

32 32-926. Practice of chiropractic without license prohibited;

33 exemptions

34 A. It is unlawful for a person to:

35 1. Practice chiropractic in this state without having first obtained
36 a license as provided in this chapter.

37 2. Work as a chiropractic assistant except under the supervision of
38 a doctor of chiropractic.

39 3. Use the abbreviation "~~C.H.A.~~" "Ch.A" unless the person is working
40 under the supervision of a doctor of chiropractic pursuant to rules adopted
41 by the board.

42 ~~B. Nothing in this chapter shall be construed to~~ THIS CHAPTER DOES
43 NOT prevent:

1 1. Any out-of-state practitioner holding a license granted by another
2 state, territory or district from meeting within this state in consultation
3 with a doctor of chiropractic holding a license pursuant to this chapter,
4 provided that such out-of-state practitioner does not open an office or
5 appoint a place of meeting to receive patients in this state.

6 2. Any person from acting at the direction and under the supervision
7 of a doctor of chiropractic holding a license pursuant to this chapter, if
8 such THAT person is acting in an assistant or technical capacity, IS not in
9 violation of this chapter, and does not hold himself out to the public as
10 being licensed to practice chiropractic.

11 3. Any chiropractic student from participating in a preceptorship
12 training program approved by the board.

13 4. A person engaged solely in clerical or administrative work in an
14 office of a doctor of chiropractic from using the term "chiropractic
15 assistant" to describe his duties.

16 Sec. 9. Title 32, chapter 8, article 2, Arizona Revised Statutes, is
17 amended by adding section 32-931, to read:

18 32-931. Continuing education; requirements

19 A. THE BOARD BY RULE MAY REQUIRE EACH LICENSEE TO COMPLETE UP TO
20 TWELVE HOURS OF CONTINUING EDUCATION EACH CALENDAR YEAR AS A CONDITION OF
21 LICENSURE RENEWAL.

22 B. CONTINUING EDUCATION SHALL COVER TOPICS LISTED IN SECTION 32-922,
23 SUBSECTION B AND SECTION 32-922.02 AND SHALL BE TAUGHT BY A FACULTY MEMBER
24 OF A COLLEGE OR UNIVERSITY THAT IS ACCREDITED BY OR HAS STATUS WITH THE
25 COUNCIL ON CHIROPRACTIC EDUCATION OR IS ACCREDITED BY AN ACCREDITING AGENCY
26 RECOGNIZED BY THE UNITED STATES DEPARTMENT OF EDUCATION OR THE COUNCIL ON
27 POSTSECONDARY ACCREDITATION OR HAS THE EQUIVALENT OF THESE STANDARDS AS
28 DETERMINED BY THE BOARD.

29 C. COMPLIANCE WITH THIS SECTION SHALL BE DOCUMENTED AT THE TIMES AND
30 IN THE MANNER AS PRESCRIBED BY THE BOARD IN RULE.

31 D. FAILURE OF A PERSON HOLDING A LICENSE TO PRACTICE CHIROPRACTIC TO
32 COMPLY WITH THIS SECTION WITHOUT ADEQUATE CAUSE BEING SHOWN IS GROUNDS FOR
33 PROBATION OR SUSPENSION OF THE PERSON'S LICENSE.

APPROVED BY THE GOVERNOR APRIL 19, 1995

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 21, 1995