

CONNECTICUT STATE BOARD OF CHIROPRACTIC EXAMINERS

IN RE: PETITION FOR DECLARATORY RULING CONCERNING
MANIPULATION UNDER ANESTHESIA

HEARING DATE: March 22, 2007

BOARD ATTORNEY: Daniel Shapiro, Assistant Attorney General

CONNECTICUT STATE BOARD OF
CHIROPRACTIC EXAMINERS MEMBERS:

Matthew Scott, D.C., Chairman
Michelle Imossi, D.C.
Paul Powers, D.C.
Sean Robotham, D.C.
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Marion Terry, Public Member
Jean Rexford, Public Member

DECLARATORY RULING

FACTS AND NATURE OF THE PROCEEDINGS

On July 20, 2006, the Connecticut State Board of Chiropractic Examiners (“the Board”) received a request dated July 6, 2006, from Dr. Richard P. Saporito, D.C., DABCO, Director of Postgraduate Education at the University of Bridgeport, to determine whether manipulation under anesthesia (“MUA”) is within the scope of chiropractic practice in the State of Connecticut.

On September 7, 2006, the Board agreed to conduct a declaratory ruling proceeding in accordance with Connecticut General Statutes (“the Statutes”) §4-176.

Prior to the March 22, 2007 hearing, intervenor status was given to the following individuals and organizations: Richard P. Saporito, D.C. from the University of Bridgeport, College of Chiropractic; the Department of Public Health (“DPH”); the Connecticut Medical Examining Board (“CMEB”); the Connecticut Medical Society (“CMS”); Peter Szykowiec, D.C. DACBSP; Jeffrey B. Gross, M.D., Chair of the Connecticut Anesthesiologist Society; the

Connecticut Chiropractic Association (“CCA”), and the Connecticut Orthopedic Society (“COS”). Board Exhs. 13-15.

At the hearing, Richard Saporito, D.C., appeared on behalf of the University of Bridgeport, College of Chiropractic; Peter Szykowitz, D.C. appeared; Attorney Michael Neubert appeared on behalf of the CMS and COS; Jennifer Filippone appeared on behalf of the Department; and, Dennis O’Neill, M.D. appeared on behalf of the CMEB.

DISCUSSION

By law, a declaratory ruling constitutes a statement of agency law which is binding upon those who participate in the hearing and may also be utilized by the Board, on a case by case basis, in future proceedings before it concerning licensed chiropractors. This ruling is intended to provide guidance to individual licensed chiropractors and others regarding whether MUA is within the scope of chiropractic practice in Connecticut. If a licensed chiropractor follows the guidance provided by this ruling, the Board will presume the chiropractor acted appropriately and in accordance with professional standards in any contested case concerning an issue addressed in this declaratory ruling. In situations where a chiropractor has departed from the guidance provided by this ruling, the Board will consider the facts of the specific case and determine whether there has been a violation of the relevant Statutes and/or Regulations of Connecticut State Agencies or a violation of the standard of care for chiropractors in Connecticut.

During the hearing, the Board received the following exhibits: a three page document with eleven attachments submitted by Dr. Saporito entitled, RE: Declaratory Ruling Proceeding Regarding Manipulation Under Anesthesia (Exhibit 22); a six page document with seven attachments submitted by Dr. Szykowitz entitled “Pre-Filed Written Testimony Regarding: Declaratory Ruling on Whether Manipulation Under Anesthesia (MUA) is Within The Scope of Chiropractic Practice in the State of Connecticut” (Exhibit 23); an eight page document submitted by the COS and CSMS entitled, “Pre-Filed Testimony of Behalf of the Connecticut Orthopedic Society and the Connecticut State Medical Society” (Exhibit 25); a six page document submitted by COS and CSMS entitled “Rebuttal Testimony of the Connecticut State

Medical Society and the Connecticut Orthopedic Society” (Exhibit 26); a two page document submitted by the Department entitled “Declaratory Ruling Proceeding Regarding Manipulation Under Anesthesia” (Exhibit 27); and, a one page document submitted by the CMEB entitled “Pre-filed Testimony of the Connecticut Medical Examining Board” (Exhibit 28).

On March 22, 2007, Dr. Saporito, testified on behalf of the University of Bridgeport, College of Chiropractic and adopted its pre-filed testimony; Dr. Szykowitz testified and adopted his pre-filed testimony; Dr. Brian Smith testified on behalf of the CMS and COS and adopted his pre-filed testimony; Jennifer Filippone testified on behalf of the Department and adopted her pre-filed testimony; and, Dr. Dennis O’Neill testified on behalf of the CMEB and also adopted his pre-filed testimony.

MUA is the application of manipulative and mobilization techniques to a patient who is unconscious in order to induce muscle relaxation, circumvent reflex spasm and avoid pain. Dr. Saporito’s position is that MUA is within the practice of chiropractors as long as the chiropractor performing the manipulation has a minimum of 30-36 hours of training in MUA, and the procedure is performed with the aid of a certified medical anesthesiologist. According to Dr. Saporito the chiropractor is responsible for the selection of the patient. Dr. Saporito further contends that manipulation is effective in increasing joint mobility, and releasing entrapped synovial or disc tissue, stretching or breaking adhesions, release of endomorphins, somatosomatic and viscerosomatic reflex responses and muscle relaxation. Tr. pp. 7-12; Exh. 22.

Dr. Peter Szykowitz testified that chiropractic physicians who are trained and certified to perform MUA are qualified to provide this procedure at an ambulatory surgery center or hospital. His position is that MUA is identical to other procedures performed in the office setting on conscious patients, except that in the case of MUA, the patient is under conscious sedation, which allows the patient’s own protective reflexes to respond. Dr. Szykowitz stated that chiropractors who perform MUA have tactile feedback, eliminating the possibility of overstretching of muscles, and joint capsules. He further testified that chiropractic physicians should decide which patient is a candidate for the procedure, while a primary care physician should perform a pre-procedure medical history and physical examination; inquire about drugs or vitamins the patient is taking, drug allergies, and prior experience with sedation; and, order and

review the necessary laboratory tests and/or x-rays. Anesthesia should only be provided by a board-certified anesthesiologist or by a certified registered nurse anesthesiologist supervised by an anesthesiologist. Tr. pp. 31-32.

In his rebuttal testimony, Dr. Szyrkowicz disagreed with any proposal that this issue be addressed by the legislature. He testified that MUA is a surgical procedure; MUA poses a risk of vascular, stroke, spine, and neural injuries; and, there is a need for a new underwriting scheme for chiropractic physicians who perform MUA. Board Exh. 29.

Dr. Brian Smith testified on behalf of COS and CSMS, adopting the pre-filed testimony of Dr. Michael Marks. His position is that MUA is a surgical procedure, outside the scope of practice of chiropractors, and that chiropractors are not trained and/or qualified to diagnosed complications during the procedure such as stroke, bleeding, fracture, and ligament injuries. He further testified that chiropractors' insurance premiums are significantly less than those of physicians who perform spinal manipulation, and that surgeons are required to dictate surgical notes. Tr. pp. 50-70.

Jennifer Filippone, Chief of the Practitioner Lincensing and Investigation Section of the Department, adopted her pre-filed testimony which stated that: (1) the petition for the declaratory ruling did not define MUA; did not identify the persons who would administer the anesthesia during the surgery and evaluate the patient before or after the procedure; and did not specify the levels of anesthesia to be used and/or the required training for chiropractors who perform the procedure; (2) surgery, and the prescribing and administration of drugs is outside the scope of practice of chiropractors; (3) MUA may only be performed at a licensed hospital or outpatient facility; (4) restrictions on chiropractor physicians who perform MUA should be imposed; and (5) guidelines for chiropractic physicians performing MUA are best addressed through the legislative process. Tr. pp. 71-77.

Dr. Dennis O'Neill, Chair of the CMEB, adopted his pre-filed testimony. His position is that there are serious complications associated with MUA such as fracture of bones, joint dislocation, and various vascular injuries. Because chiropractic physicians are not qualified to diagnose and treat such injuries, MUA is outside the scope of practice of chiropractors. Tr. pp. 80-86.

The Statutes section 20-24(1) mentions but does not define “adjustment, manipulation and treatment of the human body,” and does not specifically state whether manipulation under anesthesia is within the scope of practice of chiropractors. As demonstrated by the testimony, the answer to the question of whether MUA is within the scope of chiropractic practice is not clear on the face of the statute.

The purpose of this declaratory ruling is to determine the applicability to specified circumstances of a provision of the general statutes. In this case, the question is whether MUA is within the chiropractic scope of practice as set forth in Chapter 372 of the Connecticut General Statutes. Conn.Gen. Stat. § 20-24(1) provides that:

The practice of chiropractic means the practice of that branch of the healing arts consisting of the science of adjustment, manipulation and treatment of the human body in which vertebral subluxations and other malpositioned articulations and structures that may interfere with the normal generation, transmission and expression of nerve impulse between the brain, organs and tissue cells of the body, which may be a cause of disease, are adjusted, manipulated or treated.

The Board agrees that licensed chiropractors may perform MUA only as described in and as limited by the Conclusion and Ruling below.

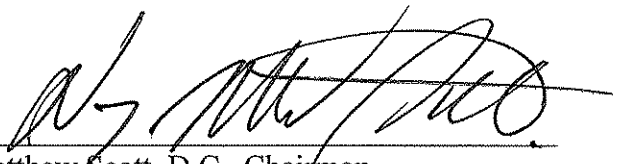
CONCLUSION AND RULING

In conclusion, the Board adopts the following Declaratory Ruling and has determined that MUA is within the scope of chiropractic practice *only* if it is performed in the following manner:

1. MUA must be performed at a hospital or outpatient surgical facility that is licensed by the Connecticut Department of Public Health.
2. All patients undergoing an MUA procedure to be performed by a chiropractor must be evaluated pre-MUA by a licensed physician and by a licensed anesthesiologist.
3. If a chiropractor is to perform the manipulation or adjustment, a licensed physician and a licensed anesthesiologist must be physically present during the entire MUA procedure.
4. The physician who is physically present during the procedure is ultimately responsible for the medical care of the patient pre-MUA, during MUA, and post-MUA.

5. Prior to a chiropractor performing the manipulation or adjustment during an MUA procedure, a licensed physician must make the decision that a patient is a proper candidate for MUA.
6. The chiropractor's role in MUA is solely to perform the manipulation or adjustment of the patient as defined in the Statutes.
7. Prior to performing MUA as described above, the licensed chiropractor must be trained in MUA.

September 10, 2009



Matthew Scott, D.C., Chairman
Connecticut Board of Chiropractic Examiners