

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH



Renée D. Coleman-Mitchell, MPH
Commissioner

Ned Lamont
Governor
Susan Bysiewicz
Lt. Governor

IN RE: DECLARATORY RULING CONCERNING PHYSICAL EXAMINATIONS
BY CHIROPRACTORS FOR NON-COMMERCIAL PILOTS

PETITIONER: ERNEST R. MARRONE II, D.C.

Pursuant to Conn. Gen. Stat. § 19a-14(f)(2), I hereby adopt the attached Declaratory Ruling of the Connecticut State Board of Chiropractic Examiners, rendered on January 16, 2020, as the Final Decision in this matter.

Dated at Hartford, Connecticut this 27th day of February, 2020.



Renée D. Coleman-Mitchell, M.P.H.
Commissioner



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**STATE OF CONNECTICUT
CONNECTICUT BOARD OF CHIROPRACTIC EXAMINERS**

IN RE: DECLARATORY RULING CONCERNING PHYSICAL
EXAMINATIONS BY CHIROPRACTORS FOR NON-COMMERCIAL
PILOTS

FOR THE BOARD: Candito Carroccia, DC, Chairperson
Karlos Boghosian, DC, Board Member
Gina Carucci, DC, Board Member
Sean Robotham, DC, Board Member

PROPOSED DECLARATORY RULING

Procedural Background

On November 13, 2017, Ernest R. Marrone II, D.C., petitioned the Connecticut Board of Chiropractic Examiners (the “Board”) to issue a declaratory ruling regarding whether the scope of chiropractic practice in Connecticut permits a chiropractor to perform the Federal Aviation Administration (FAA) BasicMed physical comprehensive medical examination.¹ Board Exhibits (“Bd. Exs.”) 1, 3.

On February 20, 2018, a Notice of the Declaratory Ruling Proceeding (“the Notice”) was published in the *Connecticut Law Journal* indicating the Board’s intention to issue a declaratory ruling pursuant to Conn. Gen. Stat. § 4-176 on the following issue:

Is it within the scope of practice for a licensed Chiropractic Physician in Connecticut to perform the FAA BasicMed comprehensive medical examination as set forth in 14 CFR §§ 61.23, 68.5 and 68.7 and complete the required Comprehensive Medical Examination Checklist.²

The Notice further indicated that all persons seeking status to participate were required to petition the Board by March 15, 2018 and that the Board would issue its rulings on the petitions for status by April 1, 2018. Bd. Ex. 3.

¹ Ernest Marrone also waived the statutory time requirements for issuing a ruling in this matter. Bd. Exs. 1.

² Pursuant to Conn. Gen. Stat. § 19a-14(f)(2) of the Connecticut General Statutes (“Statutes”), the Board’s declaratory ruling will be a proposed decision and the Commissioner of the Department of Public Health shall render the final determination of the matter. Bd. Ex. 2.

On March 12, 2018, the Connecticut Orthopaedic Society (“COS”) filed a Petition to Participate as an Intervenor. Bd. Ex. 4.

On March 14, 2018, the Connecticut State Medical Society (“CSMS”) filed a Petition to Participate as an Intervenor. Bd. Ex. 5.

On March 19, 2018, the Connecticut Chiropractic Association (“CCA”) filed a Petition to Participate as a Party. Bd. Ex. 6.

On March 26, 2018, the Connecticut Chiropractic Council (“CCC”) filed a Petition to Participate as a Party. Bd. Ex. 12.

On March 29, 2018, COS and CSMS were granted intervenor status pursuant to Conn. Gen. Stat. § 4-177a(b) and CCA and CCC were granted party status pursuant to Conn. Gen. Stat. § 4-177a(a). Bd. Exs. 7-10.

On March 29, 2018, a Notice of the Hearing was published in the *Connecticut Law Journal*. Bd. Ex. 11. A hearing was held on May 31, August 30 and November 8, 2018 and was conducted in accordance with §§ 4-176(g), 4-177c(b), 4-178 and 4-179 of the Statutes and §§ 19a-9-24 through 19a-9-29 of the Regulations of Connecticut State Agencies (“the Regulations”). On all three days of hearing, Attorney Layne S. Gakos appeared on behalf of CSMS; Attorneys Mary Alice Moore Leonhardt appeared on behalf of the CCA; Attorney James S. Turner appeared on behalf of CCC. At the hearing on May 31, 2019, Mariam Hakim-Zager, M.D., MPH, President of COS and Susan Schaffman, Executive of COS appeared on behalf of COS. Ernest Marrone did not appear or participate at the scheduled hearings.

The intervenors, CCA and CCC provided pre-filed testimony, which they adopted under oath during the hearing, and witnesses were available for questioning and cross-examination. Intervenor Exhibits (“Int. Exs.”) A-E, CCC Exhibits (“CCC Exs.”) 1, 2; CCA Exhibits (“CCA Exs.”) 1-8; Transcript May 31, 2018 Hearing, pages (“Tr. 5/31/18, pp.”), 15-137, Transcript August 30, 2018, pages (“Tr. 8/30/2018, pp.”) 22-281; Transcript November 8, 2018, pages (“Tr. 11/8/2018, pp.”) 5-40.³

³ At the conclusion of the November 8, 2018 hearing, the Parties were afforded an opportunity to file proposed findings of facts and briefs by December 13, 2018 and rebuttal briefs by January 11, 2019. Tr. 11/8/18, p. 62. CSMS and CCC filed Post Hearing Briefs and Proposed Findings of Fact on December 17, 2018. Bd. Ex. 16 and 18. CCA filed its Post Hearing Brief and Proposed Findings of Fact on December 19, 2018. Bd. Ex. 17. Rebuttal Briefs were filed by CSMS and CCC on January 14, 2019 and by CCA on January 15, 2019. Bd. Ex. 19, 20 and 21.

All Board members involved in this Ruling attest they have heard the case or read the record in its entirety. This Ruling is based entirely on the record and sets forth the Board's findings of fact and conclusions of law, and an order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H Computer Systems, Inc.*, 605 F. Sup. 816 (Md. Tenn. 1985).

Findings of Fact

1. Pursuant to Conn. Gen. Stat. § 20-27(d), the Board has recognized and approved chiropractic schools and colleges accredited by the Council on Chiropractic Education. Tr. 5/31/18, pp. 104-05.
2. The Council of Chiropractic Education is an accrediting agency and is the only agency recognized by the United States Department of Education to accredit Doctor of Chiropractic degree programs. The Council of Chiropractic Education specifies core educational requirements for Doctor of Chiropractic degree programs, requiring extensive didactic and hands on clinical training in performing physical examinations. CCA Ex. 3; Tr. 5/31/18, pp. 104-05.
3. The Council of Chiropractic Education has accredited the following chiropractic school and colleges: Cleveland University; D'Youville College; Keiser University; Logan University; National University of Health Sciences; New York Chiropractic College; Palmer College; Parker University; Sherman College; University of Western States; University of Bridgeport; Texas Chiropractic College; Southern California University of Health Sciences; Life Chiropractic College West; Northwestern Health Science University, and Life University. CCA Ex. 8; CCC Ex. 2; Tr. 5/31/18, pp. 118-19.
4. Under BasicMed, individuals may operate certain specified small aircrafts as a pilot-in-command without holding a third-class FAA Airman Medical Certificate if such individuals meet certain requirements under federal law. 14 C.F.R. §§ 61.113(i), 61.23(c)(3)(i) and 68.5(b). Pertinent to this Ruling, federal law requires such individuals to receive a comprehensive medical examination by a state licensed physician during the previous 48 months in accordance with 14 C.F.R. 61.2(c)(3)(i). The state-licensed physician must conduct the medical examination in accordance with the comprehensive medical examination checklist (checklist) set forth in 14 C.F.R. § 68.7, check each item

- specified during the examination and address, as medically appropriate, every medical condition listed and any medications the individual is taking. 14 C.F.R. §§ 68.5.
5. The review and discussion of patient health histories set forth in the checklist in 14 C.F.R. § 68.7 is taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 104-108; CCA Exs. 3, 8; CCC Ex. 2.
 6. Performing a clinical examination of the head, face, neck, and scalp as required by the checklist in 14 C.F.R. § 68.7 are diagnostic techniques taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-21, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
 7. Performing a clinical examination of the nose, sinuses, mouth and throat as required by the checklist in 14 C.F.R. § 68.7 are diagnostic techniques taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-108, 120-21, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
 8. Performing a clinical examination of ears, general (internal and external canals), and eardrums (perforation) as required by the checklist in 14 C.F.R. § 68.7 are diagnostic techniques taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08. 120-21, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
 9. Performing a clinical examination of the eyes (general), ophthalmoscopic, pupils (equality and reaction), and ocular motility (associated parallel movement, nystagmus) as required by the checklist in 14 C.F.R. § 68.7) are diagnostic techniques taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08. 120-21, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
 10. Performing a clinical examination of lungs and chest (not including breast examination) as required by the checklist in 14 C.F.R. § 68.7 are diagnostic techniques taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-21, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
 11. Performing a clinical examination of the heart (precordial activity, rhythm, sounds, and murmurs) as required by the checklist in 14 C.F.R. § 68.7 are diagnostic techniques taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-21, 126-27; CCA Exs. 3, 8; CCC Ex. 2.

12. Performing a clinical examination of the vascular system (pulse, amplitude, and character, and arms, legs and others) as required by the checklist in 14 C.F.R. § 68.7 are diagnostic techniques taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-108, 120-22, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
13. Performing a clinical examination of the abdomen and viscera (including hernia) as required by the checklist in 14 C.F.R. § 68.7 are diagnostic techniques taught at the Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-22, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
14. Performing a clinical examination of the anus (not including digital examination) as required by the checklist in 14 C.F.R. § 68.7 is a diagnostic technique taught at the Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-22, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
15. Performing a clinical examination of the skin as required by the checklist in 14 C.F.R. § 68.7 is a diagnostic technique taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-22, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
16. Performing a clinical examination of the G-U system (not including pelvic examination) as required by the checklist in 14 C.F.R. § 68.7 is a diagnostic technique taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-22, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
17. Performing a clinical examination of the upper and lower extremities (strength and range of motion) as required by the checklist in 14 C.F.R. § 68.7 are diagnostic techniques taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-22, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
18. Performing a clinical examination of the spine and other musculoskeletal as required by the checklist in 14 C.F.R. § 68.7 are diagnostic techniques taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-22, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
19. Performing a clinical examination of identifying body marks, scars, and tattoos (size and location) as required the checklist in 14 C.F.R. § 68.7 are diagnostic techniques taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-23, 126-27; CCA Exs. 3, 8; CCC Ex. 2.

20. Performing a clinical examination of lymphatics as required by the checklist in 14 C.F.R. § 68.7 is a diagnostic technique taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-23, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
21. Performing a clinical examination of neurologic examinations (tendon reflexes, equilibrium, senses, cranial nerves, coordination, etc.) as required by the checklist in 14 C.F.R. § 68.7 is a diagnostic technique taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-23, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
22. Performing a clinical examination of psychiatric for appearance, behavior, mood, communication, and memory as required by the checklist in 14 C.F.R. § 68.7 is a diagnostic technique taught at the Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-24, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
23. Performing a clinical examination of general systemic as required by the checklist in 14 C.F.R. § 68.7 is a diagnostic technique taught at the Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-24, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
24. Performing a clinical examination of hearing as required by the checklist in 14 C.F.R. § 68.7 is a diagnostic technique taught at the Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-24, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
25. Performing a clinical examination of vision (distant, near, and intermediate vision, field of vision, color vision, and ocular alignment) as required by the checklist in 14 C.F.R. § 68.7 is a diagnostic technique taught at the Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-24, 126-27; CCA Exs. 3, 8; CCC Ex. 2.
26. Performing a clinical examination of blood pressure and pulse as required by the checklist in 14 C.F.R. § 68.7 are diagnostic techniques taught at the Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 34-35, 104-08, 120-27; CCA Exs. 3, 8; CCC Ex. 2.
27. Performing a clinical examination of anything else the state-licensed physician, in his or her medical judgment, considers necessary as required by the checklist in 14 C.F.R. § 68.7 are diagnostic techniques taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 104-08, 120-27; CCA Exs. 3, 8; CCC Ex. 2.

28. Exercising medical discretion to address, as medically appropriate, any medical conditions identified, and to exercise medical discretion in determining whether any medical tests are warranted as part of the comprehensive medical examination as required by 14 C.F.R. § 68.7 are diagnostic techniques taught at Board recognized and approved schools or colleges. Tr. 5/31/18, pp. 104-108, 125; CCA Exs. 3, 8; CCC Ex. 2.
29. Discussing all drugs the individual reports taking (prescription and nonprescription) and their potential to interfere with the safe operation of an aircraft or motor vehicle is taught at Board recognized and approved schools and colleges.⁴ Tr. 5/31/18, pp. 84-85, 104-08, 115-128; Tr. 8/30/18, pp. 65-68; Tr. 11/18/19, pp. 31-34; CCA Exs. 3, 5, 6, 8; CCC Ex. 2.

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 act as pilot-in-command of a small aircraft that is authorized to carry not more than six (6) occupants, and has a maximum certificated takeoff weight of not more than 6,000 pounds if that person, among other things, has complied with the comprehensive medical examination requirements contained in 14 C.F.R. §§ 61.23, 68.5 and 68.7 during the previous 48 months. In accordance with 14 C.F.R. § 68.5(a)(2), the comprehensive medical examination must be performed by a state-licensed physician.

The FAA relies upon each State's determination of whether a person is a state-licensed physician. CCA Exs. 1, 2. The FAA has indicated that if a person holds a license as a physician issued by any state, territory or possession, the he or she meets the requirements as a state-licensed physician. CCA Exs 1, 2. The FAA also recognizes other classes of "state-licensed physicians" if the State determines such other classes have the privileges, training and experience

⁴ Although chiropractors may have limited discussions of prescription and nonprescription drugs required for the FAA exam, chiropractic physicians must be cautious not to exceed their scope of practice. See Conn. Gen. Stat. § 20-28(b)(1) (prohibiting the prescribing and administering to any person any medicine or drug included in materia medica, except vitamins.) In conducting such discussions, a chiropractor may not recommend, discontinue or otherwise change any drug or medication, with the exception of vitamins, a patient may be taking. Conn. Gen. Stat. § 20-28. Any recommendations or changes to any drugs or medications, except for vitamins, taken by a patient shall be made by a licensed physician or other appropriate health care professional.

to conduct all portions of the comprehensive medical examination checklist. CCA Exs 1, 2. In Connecticut, chiropractors are licensed as chiropractic physicians and thus are considered "state-licensed physician." Conn. Gen. Stat. § 20-24.

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 and fitness determinations of pilots-in-command of small aircraft 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).

In issuing this declaratory ruling, the Board reviewed the pertinent federal regulations as well as the checklist 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.

The Board finds that all of the tests and physical examinations for diagnosis and analysis required by the pertinent federal regulations and checklist are taught at Board recognized and approved schools or colleges. Pursuant to § 20-28(b)(2) of the Statutes, a licensed chiropractor may use any general method of examination for the diagnosis and analysis taught in any school or college of chiropractic that has been recognized and approved by the Board. Therefore, it is within the scope of practice for licensed chiropractors in the State of Connecticut to perform the FAA BasicMed comprehensive medical examination and complete the required comprehensive medical examination checklist.

Ruling

Based on the foregoing, the Board concludes that the scope of chiropractic practice in Connecticut, as set forth in § 20-28(b)(2) of the Statutes, permits a licensed chiropractor to perform the FAA BasicMed physical comprehensive medical examination as set forth in 14 C.F.R. § 61.23, 68.5, and 68.7 and complete the required checklist.

1.16.2020
Date


Candito Carroccia, D.C., Chairperson