

**DELEGATION OF ADJUNCTIVE PROCEDURES TO UNLICENSED SUPPORT  
PERSONNEL/STAFF IN PENNSYLVANIA**

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On July 7, 2017, in the case of State Farm Mutual Automobile Insurance Company et al. v. Robert J. Cavoto, Jr., et al., a Delaware County Common Pleas Judge rendered a decision that chiropractors may not delegate massage, manual therapy, and therapeutic exercises to unlicensed support personnel/staff. The decision disregards the plain language of the Chiropractic Practice Act, the position of the State Board of Chiropractic, as well as other state agencies and years of Pennsylvania case law. This decision affects ALL chiropractors, including those who do not bill insurance, because this is an interpretation of the Chiropractic Practice Act. Chiropractors who delegate these procedures to unlicensed individuals could face disciplinary action by the State Board of Chiropractic that could result in license suspension or revocation. For chiropractors who bill insurance, improper delegation may cause certain insurance payers to use the decision as justification for claim denials and to seek recoupment of previously paid claims – and perhaps even to bring fraud actions against other Pennsylvania Chiropractors.

In regards to use of unlicensed supportive personnel by chiropractors in the Commonwealth of Pennsylvania, the Pennsylvania Chiropractic Practice Act states the following:

*Nothing in this act shall prohibit a licensed chiropractor from utilizing the assistance of **unlicensed** supportive personnel performing under the direct on-premises supervision of a licensed chiropractor, provided that a chiropractor **may not delegate** any activity or duty to such **unlicensed** individuals which requires **formal education or training** in the practice of chiropractic or the **knowledge and skill** of a licensed chiropractor. (emphasis added).*

63 P.S. § 625.601

In State Farm v. Cavoto, the Pennsylvania Superior Court in 2011 ruled that passive modalities may be delegated to unlicensed personnel under certain circumstances. The Superior Court then remanded the case back to the Delaware County Court of Common Pleas with instructions for the Judge to review the therapeutic exercises that Dr. Cavoto delegated to unlicensed individuals and to determine whether those procedures require formal education or training or the knowledge and skill of a licensed chiropractor. After a trial, the court declared the following:

1. **Passive Modalities.** Non-specialized tasks associated with the performance of passive modalities (e.g. the placement of hot/cold packs, turning machines on/off, assisting patients on and off tables) may be delegated to unlicensed support personnel so long as a licensed chiropractor makes all of the clinical decisions and the chiropractor provides direct on-premises supervision. Clinical decision making includes, but is not limited to decisions regarding necessity, frequency, duration, location, etc. More specifically, once a chiropractor has made the clinical decision regarding a patient's care to utilize Electrical Muscle Stimulation, Mechanical Traction, Hot Packs/Cold Packs, and/or Hydrotherapy.
2. **Massage Therapy.** Massage Therapy cannot be delegated to unlicensed support personnel/staff.
3. **Therapeutic Procedures/Exercises.** Therapeutic Procedures/Exercises cannot be delegated to unlicensed support personnel/staff.
4. **Manual Therapy.** Manual Therapy cannot be delegated to unlicensed support personnel/staff.

The court's decision does not prohibit a chiropractor from delegating massage therapy to a licensed massage therapist. Licensed massage therapists, however, cannot provide therapeutic exercises because the services are not within a licensed massage therapist's scope of practice. Chiropractors are cautioned that some insurance payers have medical policies that prohibit reimbursement for massage therapy when performed by a licensed massage therapist; therefore, chiropractors are urged to review applicable medical/reimbursement policies.

The court did not specifically address whether ultrasound can be delegated to unlicensed individuals.

Chiropractors who prescribe therapeutic exercises are required to personally provide the one-on-one contact with the patient. Practices with a high volume of therapeutic exercises should consider hiring additional licensed chiropractors to perform these services that require direct one-on-one patient contact. Use of trained or certified individuals such as athletic trainers or exercise physiologists is also prohibited, since they are unlicensed. Chiropractors should also consider providing therapy procedures simultaneously to two or more individuals as a group therapy service. The individuals can be, but need not be performing the same activity. The chiropractor involved in group therapy services must be in constant attendance, but one-on-one patient contact is not required.

**Jason B. Martin, Esquire is the founder of The Martin Law Firm, P.C. Mr. Martin represents Pennsylvania chiropractors and other health care providers in the areas of compliance, insurance audits and recoupment, Act 6 peer reviews, Medicare audits and appeals, licensure and disciplinary matters, and other related areas. Mr. Martin also currently serves as general counsel to the Pennsylvania Chiropractic Association.**

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