

On Your Behalf: PCA Rejects Part of *Choosing Wisely* & Proposed ‘Specialty Advertising’ Reg

This week, the Pennsylvania Chiropractic Association’s initiatives resulted in two important actions:

- *PCA’s concerns on behalf of all PA DCs that led to a position opposing the X-ray portion of the controversial Choosing Wisely*
- *PCA’s opposition to proposed regulations by the PA State Board of Chiropractic on Chiropractic specialty advertising led to a critical response and constructive recommendations from the PA IRRC to the PA State Board of Chiropractic.*

Choosing Wisely

Essentially, the *Choosing Wisely* initiative was a well-intended and widely lauded effort by a variety of health professional associations to improve patient-doctor communications, ideally resulting in improved patient care. The *Choosing Wisely* initiative was supported by the American Chiropractic Association in 2017.

By the fall of 2017, Chiropractic associations, Chiropractic colleges and plenty of individual DCs were startled by and extremely concerned about wording in *Choosing Wisely* regarding the use of plain film radiography, specifically:

“In the absence of ‘red flags,’ do not obtain spinal imaging (X-rays) for patients with acute low-back pain during the six weeks after onset of pain” and “Do not perform repeat spinal imaging to monitor patients’ progress.”

In the latter part of 2017, PCA’s Board of Directors and other members engaged in a spirited and extensive dialogue about what, if any, response PCA should generate about *Choosing Wisely* and the above-noted language on X-rays.

This past Monday, April 23, 2018 the PCA Board of Directors unanimously supported a resolution (attached), which rejected the ACA’s endorsement of *Choosing Wisely* (as it relates to Chiropractic spinal imaging) and forwarded it to the leadership of the American Chiropractic Association. Following is an excerpt from the PCA’s resolution:

“NOW, THEREFORE, BE IT RESOLVED, by the PCA, that the PCA re-affirms that it fundamentally rejects the American Chiropractic Association (ACA) endorsement of the *Choosing Wisely* campaign as it relates to spinal imaging within a chiropractic setting.”

PA IRRC Response to PA State Board of Chiropractic

On February 9, 2018, Pennsylvania’s Independent Regulatory Review Commission (IRRC) received a transmittal letter and Regulatory Analysis Form from PA State Board of Chiropractic Chairperson J. Gerald Halloran, DC, requesting consideration by the IRRC of a proposed regulatory rulemaking that would:

“provide that an advertisement may not contain a representation that a licensee is a specialist in a chiropractic specialty unless the licensee holds certification or diplomate status in that specialty from a specialty board recognized by the American Chiropractic Specialties Board.”

In a letter dated, February 27, 2018, the PCA responded (attached) to IRRC Chairman George D. Bedwick. An excerpt follows:

“...the PCA recommends that the State Board of Chiropractic promptly draft and submit a revised proposal, designed to protect consumers of Chiropractic services who can be confused by ‘specialty advertising’ that does not accurately reflect advanced knowledge, training or skill, while still honoring the unique abilities of Doctors of Chiropractic.”

On Wednesday, April 25, 2018 the PCA received the IRRC's comments to the PA State Board of Chiropractic (attached). An excerpt of the IRRC's comments follows:

“We recommend that the Board meet with the commentators to gain a better understanding of their existing specialty certifications, as well as programs other than ABCS that offer valid specialty certifications. We also recommend that the Board work with the regulated community to draft and submit a revised proposed regulation that addresses the issues raised by commentators.”

The PCA stands ready to constructively engage with the PA State Board of Chiropractic to adequately and inclusively address this matter. PCA anticipates that the PA State Board of Chiropractic will address the specialty advertising regulation issue at its scheduled May 17, 2018 meeting in Harrisburg, which is open to the public.

PCA encourages all PA-licensed DCs who are concerned about the issue of specialty advertising to consider attending the PA State Board of Chiropractic meeting, scheduled to convene at 9am on Thursday, May 17, 2018 at:

**One Penn Center
2601 North Third Street
Harrisburg, PA 17110**

PCA always welcomes members' responses and questions to updates such as the above. As a PCA member-in-good-standing, if you have any questions about the above two issues, please respond at your convenience to pca@pennchiro.org

Thank you for being a member of YOUR PCA!



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PENNSYLVANIA CHIROPRACTIC ASSOCIATION BOARD OF DIRECTORS' RESOLUTION #1-2018

April 23, 2018

Certificate of Resolution Supporting the Chiropractor's Right to Clinical Decision-Making Regarding Radiology

WHEREAS, the Pennsylvania Chiropractic Association (PCA) embraces Conservative Care First as a verified public health policy strategy for safe and cost-effective health care for all Pennsylvanians;

WHEREAS, the PCA represents the interests of PA licensed doctors of chiropractic and pursues its purpose by informing, educating, and advocating on behalf of all doctors of chiropractic and their patients;

WHEREAS, the PCA recognizes it's responsibility not to set policy, but to protect and perpetuate the rights of individual chiropractors to choose the clinical procedures within the chiropractic standard of care and practice, that he or she believes best address the patient's complaint and/or diagnosis;

WHEREAS, the Pennsylvania Chiropractic Practice Act (63 P.S. § 625.102 et. seq.) defines the scope of practice of chiropractic to include, among other things, "the furnishing of necessary patient care for the restoration and maintenance of health; and the use of board-approved scientific instruments of analysis, **including X-ray . . .**"¹ (*emphasis added*);

WHEREAS, radiology is a scientifically proven component of the chiropractor's clinical practice, as the role of diagnostic radiology is clinically useful in evaluating multiple aspects of human spinal anatomy, biomechanics, postural faults, misalignments, vertebral subluxation complex, and other pathologies;

WHEREAS, the PCA recognizes that clinical practice guidelines do not, cannot, and should not represent a "set-in-stone" prescription of care, as they do not take into account such critical factors as the judgment of the chiropractor and the individual circumstances and values of the patient;

WHEREAS, the PCA is aware of recent publications from the American Board of Internal Medicine (ABIM) Foundation, as part of the ABIM Foundation's Choosing Wisely® campaign and the American Chiropractic Association (ACA) endorsement regarding the appropriateness of radiological spinal imaging for patients with low-back pain during the six weeks after onset in the absence of red flags and the PCA Board of Directors fundamentally rejects the statements

¹ 62 P.S. § 625.102

in this document that state: "Do not obtain spinal imaging for patients with acute low-back pain during the six (6) weeks after onset in the absence of red flags" as well as "Do not perform repeat imaging to monitor patient's progress" as they are in opposition to the Practicing Chiropractors' Committee for Radiology Protocols (PCCRP) Guidelines as accepted by the National Guideline Clearinghouse;

WHEREAS, the PCA recognizes that entities such as insurance companies and insurance claims reviewers have used this publication to deny the use of radiographic studies to patients and deny reimbursement for such studies to chiropractors;

WHEREAS, the PCA recognizes X-rays should be taken as clinically indicated, as a matter of public health, and based upon a thorough clinical evaluation within the lawful scope of the chiropractor in Pennsylvania; and

NOW, THEREFORE, BE IT RESOLVED, by the PCA, that the PCA re-affirms that it fundamentally rejects the American Chiropractic Association (ACA) endorsement of the Choosing Wisely campaign as it relates to spinal imaging within a chiropractic setting.

Unanimously approved by official vote of the PCA Board of Directors on April 23, 2018



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February 27, 2018

The Honorable George D. Bedwick, Chairman
Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

RE: State Board of Chiropractic – Proposed Regulation Change - Chiropractic Specialties, 49 Pa. Code, Chapter 5 (16A-4312)

Dear Chairman Bedwick:

After extensive discussion and careful consideration, the Pennsylvania Chiropractic Association (PCA), representing the interests of Pennsylvania's 4,000+ licensed Doctors of Chiropractic, **DOES NOT SUPPORT** the proposed regulation change to Chiropractic Specialties, 49 Pa. Code, Chapter 5 (16A-4312).

The PCA has concluded that the proposed regulation before the IRRC lacks clear, comprehensive and inclusive language that should govern Chiropractic specialty advertising. Also, PCA is certain that the proposed language, as currently written, will further confuse the public-at-large, as well as the hundreds of thousands of Pennsylvanians who regularly seek Chiropractic care. As such, the proposed language, while very well-intended, does not serve the public's interest.

In accordance with the original intent of the proposed language, the PCA recommends that the State Board of Chiropractic promptly draft and submit a revised proposal, designed to protect consumers of Chiropractic services who can be confused by "specialty advertising" that does not accurately reflect advanced knowledge, training or skill, while still honoring the unique abilities of Doctors of Chiropractic.

Thank you for your consideration of the PCA's opposition to the proposed regulation.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ray Benedetto', is written over a light blue horizontal line.

Raymond J. Benedetto, DC, DACNB
President

Comments of the Independent Regulatory Review Commission



State Board of Chiropractic Regulation #16A-4312 (IRRC #3197)

Chiropractic Specialties

April 25, 2018

We submit for your consideration the following comments on the proposed rulemaking published in the February 24, 2018 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Chiropractic (Board) to respond to all comments received from us or any other source.

1. Scope of Practice. – Consistency with statute; Protection of the public health, safety and welfare.

This regulation addresses advertising of specialties. In the Preamble, the Board states:

The Board is aware that a chiropractor might obtain a "certification" that does not truly reflect genuine advanced knowledge, training or skill, but instead is rather easily obtained. Unfortunately, the public, not knowing what certifications are meaningful, may be confused or deceived by the advertising of these credentials Because § 5.31(c)(5) already specifically addresses the advertising of chiropractic specialties, it appears appropriate to amend that provision to create a brighter line rule in the advertising of professional credentials.

This proposed regulation deletes the definition of "Chiropractic specialty" and amends a subparagraph on professional advertising requirements. However, the Board's regulation does not comprehensively address practice relating to specialty certifications that do not meet the existing definition of "Chiropractic specialty."

The Chiropractic Practice Act (Act) establishes that it is a violation for a chiropractor to hold "himself out as a specialist unless he possesses a post graduate certification in that specialty." Violations relating to specialties are serious offenses that potentially result in revocation of a license, fines and imprisonment. See 63 P.S. §§ 625.506(a)(17) and 625.702(12). Relating to specialties, the Act does not define the key terms "specialist," "specialty" or "post graduate certification." Under 63 P.S. § 625.302(3) of the Act, the Board has the power and duty "to promulgate, adopt and enforce in the manner provided by law, the rules and regulations necessary to carry out this Act." We believe it is in the best interests of the public, licensed chiropractors and the Board to establish in regulation what the terms "specialist," "specialty" and "post graduate certification" mean and to clearly establish when a violation of the Act occurs.

The Act and the Board's regulation are much more prescriptive and clear relating to adjunctive procedures and certification. The Act defines "adjunctive procedures" at 63 P.S. § 625.102 and addresses certification to use them at 63 P.S. § 625.304, including requirements to pass an examination on the use of adjunctive procedures and to complete 100 hours of study in the use of adjunctive procedures, as approved by the Board. Under its existing regulation in 49 Pa. Code Chapter 5, the Board specifies certification to use adjunctive procedures (§ 5.14) and includes on the list of unprofessional conduct practicing or advertising adjunctive procedures without a certificate to use adjunctive procedures issued by the Board (§ 5.81(1)(xiv)). Shouldn't the practice of a specialty warrant similar provisions in regulation?

Upon review of the Act and the proposed regulation, we question how the regulation adequately protects the public from a chiropractor practicing a specialty based on attaining what the Board considers to be invalid training to qualify as a specialist. The Act specifies serious penalties for practicing a specialty without proper certification, but we believe delegates authority to the Board to establish in regulation the details of a proper certification to carry out the Act. Therefore, the Board's regulation should establish what a specialty is, how a chiropractor can qualify as a specialist and what constitutes a violation in practice and professional advertising.

Given that these subject areas were not included in the proposed regulation, and therefore there was no opportunity for public comment on these issues, we recommend that the Board withdraw this regulation. We further recommend that the Board draft a new proposed regulation in consultation with the regulated community that comprehensively addresses specialty practices, patient safety and advertising.

If the Board does not withdraw the regulation, we submit the following comments on the proposed regulation.

2. Existing specialty certifications. – Economic impact; Reasonableness.

In the Regulatory Analysis Form (RAF), the Board repeatedly states it does not expect this rulemaking will have any financial, economic or social impact. However, the regulation limits specialties to those endorsed by the American Board of Chiropractic Specialties (ABCS). Public commentators said they hold valid specialty certifications that were earned from organizations other than ABCS and meet the same criteria as ABCS. The proposed regulation would exclude them from advertising their specialties. Therefore, we question how the regulation would not impact these individuals and why this impact was not included in the RAF responses.

3. Section 5.1. Definitions. – Consistency with statute; Need; Clarity.

The Board proposes to delete the definition of "Chiropractic specialty." The Preamble explains that this definition is unnecessary. We disagree for two reasons. First, the term "specialty" is used several times in the statute, but is not defined in the statute. See 63 P.S. §§ 625.506(a)(17) and 625.702(12). Therefore, the Board should establish in regulation its interpretation of this term. Second, since this term is used in existing Subsection 5.31(a), deleting the term from the definitions would make Subsection 5.31(a) unclear. We recommend maintaining this term in the regulation, with amendments as needed to address the issues raised by commentators as noted below.

4. Section 5.31. Professional advertising. – Economic impact; Reasonableness.

Paragraph (c)(5) is proposed to be amended to rely on “certification or diplomate status in that specialty from a board recognized by the American Board of Chiropractic Specialties.” In the Preamble, the Board lists numerous specialties recognized by ABCS. The Board further explains that these specialty boards require passing a certification examination after a full-time residency of at least three years or a part-time residency of more than 300 hours of education and clinical practice.

We received ten public comments that were submitted during the public comment period either representing chiropractic associations or individual chiropractors. All of these comments oppose limiting advertisement of specialties to those recognized by ABCS. Generally, these comments outline many other certifications and diplomate programs they believe should qualify for specialty certification. Several are concerned that certifications earned in the past would be negated by the proposed regulation. The Pennsylvania Chiropractic Association (PCA) does not support the proposed regulation and believes it will confuse the public. The International Chiropractors Association (ICA) does not support the proposed regulation and objects to the “arbitrary and unwarranted exclusion” of ICA certifications. Both PCA and ICA recommend that the Board draft and submit a revised proposed regulation.

While the Board provided details of the numerous certifications available under ABCS, it did not explain why it chose to only accept ABCS certifications or why other certifications should be excluded. The public commentators state there are other certifications that are equivalent and should be acceptable. We are concerned that the regulation, as written, would impose a hardship on chiropractors who may currently hold valid specialty certifications. We recommend that the Board meet with the commentators to gain a better understanding of their existing specialty certifications, as well as programs other than ABCS that offer valid specialty certifications. We also recommend that the Board work with the regulated community to draft and submit a revised proposed regulation that addresses the issues raised by commentators.