

KANSAS CONTACTS DR. MEGEHEE....DR THORPE PROVIDES CLARIFICATION TO NEW YORK SITUATION

Dr. Mike Megehee, 1st Vice President of Safe Drivers, and as most of us know the President of TeamCME, was recently contacted by a representative of the Kansas Chiropractic Association.

Dave, FYI

Hi Doctor, my state association has worked on the NY decertification and they came up with this. Hope this helps. Here in Kansas we have very open practice scope laws. Sounds like that is where the NY hang up is.

Cheers!

On Tue, Jun 14, 2016 at 2:38 PM, judy pope <judypopelaw@yahoo.com> wrote:

I spoke with Ross Lanzafane this afternoon about the decertification of DC Certified Medical Examiners in New York to get the back story on this situation.

New York has a very limited scope of practice which basically relates to detecting and treating spinal subluxations, nutrition services, and xrays. They have been able to stretch it a bit to provide treatment to areas outside the spine, but they basically have to make a connection between that other area and a potential subluxation in the spine.

When the NY State Chiropractic Licensing Board was first asked whether the DOT examination requirements fell within the scope of practice for chiropractic, they wrote a very equivocal letter response which satisfied DOT at the time. In late 2014 or early 2015, the DOT physical requirements were amended to add various tests. In September 2015, the chiropractic college in NY applied with DOT to become a Certified Examiner. In 2015, the State licensing Board reviewed the request in light of the additional exam requirements and issued an Opinion letter saying that the new testing requirements (eye examinations, hearing tests, etc.) fell outside the scope of chiropractic. After that, a few DC's tried to get certified and the licensing board said they couldn't due to scope of practice issue. The DOT got wind of the situation and issued its letter decertifying NY DC's from being Certified Medical Examiners.

Given this information, I think you are probably safe in Kansas due to your very open scope of practice. As long as the DOT doesn't require prescription services, obstetrics, or surgery as part of its exam process, you should be okay.

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Email, Dr. Dave to Dr. Mike

*Good morning Mike,
Have been up and at it since 5 as usual.*

To begin with, Ross Lanzafane is the NYSCA attorney and typically espouses the NYSCA line. I have worked with him on a few things for NYSCA over the years. Very competent attorney, but if the facts listed

below have been provided by Ross, he is way off. In fairness to him, because the ED of NYSCA is an attorney also, they do not use Ross as much anymore, and even though he is familiar with some things he most likely is missing a significant amount of the puzzle. When we contacted him last fall prior to putting Mary Alice Moore Leonhardt on retainer, he had mentioned the same thing, was unfamiliar of some of the things we presented to him etc. He was still of the opinion at the time that the urine dip stick issue in New York was still a problem.

It is true that the NY scope of practice law is limited and in need of change. Interpretations made by the board over the years have always allowed for the use of a physical exam that includes all components of any other exam performed by any other health professional. They continue to approve for CEU's courses that include this type of physical exam and differential diagnosis.

Concerning the correspondence from Ms. Pope.

1. The scope also goes on to include terms such as "Human body", and the effects of nerve interference. It defines chiropractic theory on the SED website additionally, meaning the relationship of structure and function in "Health" and disease, as well as describes typical symptoms of this (neck and arm pain, back and leg pain, dizziness, asthma, stress and much much more). Additionally it describes a DC as a primary care practitioner, who considers many other reasons for your symptoms and that as a result we can consult with other providers about a patient's condition. Lastly it list what a person may expect during their typical chiropractic visit, and it includes a thorough history and physical exam.

2. The State Board was first asked about a DOT physical, as you know, in 2005. At the request of Kelly Webb of the FCLB, to the Board, Cynthia Laks, the executive secretary of the Board responded back that the chiropractor in New York could perform each of the components of a DOT physical, including such things as a comprehensive history, and a physical examination. It went even further to state that we could advise a driver to review the side effects of medication to ensure that any of the over the counter medications they may be taking do not interfere with their driving. There were numerous other confirmation's of a DC's ability to perform a DOT physical until 2013 including courses that I taught that included DOT physicals approved by the Board, and a Board review concerning Pre placement screening examinations in 2011 that stated that it was in the lawful scope of practice for a chiropractor to perform a physical exam, and that it was in our scope to perform a pre placement physical (a stand alone fitness for duty exam that includes everything that a DOT physical does). Heck, the current president of the board is a friend of mine, and worked for my company for many years. He performed 100's of these exams for my company. For your information,

3. The board reiterated this position numerous times through 2013 until there was a change of board membership. At this time the NYCC applied for CEU's for the course they were teaching. This was the first time as you know that the board had indicated any issue concerning this. I had provided much of the information mentioned to NYSCA, and much more of course. This is also when Donna Liewer advise us about Title 17 in the state, and she had indicated to me that she would recommend that because NYS medical boards are advisory in nature, that this would actually trump a **change of opinion** by the board. This information was passed on to NYSCA. My last conversation at the time related to what was needed concerning the urine dip stick. As you remember, I had a meeting with the FMCSA about this and investigated with the NYS Dept of Health as to how this was done legally. All seemed fine.

4. All seemed fine until September of 2015 when many but not all of the chiropractic CME's in New York received an unsigned letter from the board. Thats when we began to get ourselves aligned into a group and begin the process of potentially defending ourselves should their be board action. You are aware of this letter. It is not a cease and desist, and uses terms such as "interpreted" and "may", which are all quite odd. The only risk that was mentioned related to the fact that our malpractice insurance "may" not cover us for this. None of us in New York to this day have been contacted by the board. None of us has had any board action brought against us either. We were prepared for that. None was taken. Our legal team found this to be highly unusual also. In a review of board notes, it was apparent that they knew that we all were still performing these exams.

5. The dates listed concerning board contact with the FMCSA do not jive with the dates we have. We performed a FOIA request and received all documents regarding this issue. There were two contacts by the Board to the FMCSA in response to the FMCSA's request for clarification. One in 2013 and one on

May 20, 2014. As I had informed you, neither definitively stated that it was out of our scope. On the contrary, in the 2014 response it gave an either or situation. On one had if it includes these things the DC would be able to perform a DOT physical and if it included the need to diagnose and treat the conditions listed then we would not. The FMCSA interpreted this to say that we could do the exam, and that is why we were included on the National Registry in 2014.

6. Concerning hearing and vision mentioned by Ms. Pope, this is part of any physical exam, and has been approved by the board since the beginning of our scope of practice law was passed in New York. Those are cranial nerves. Evaluation of cranial nerves has been approved as recently as within the last few months by the board. I should mention that it is also included in the pre placement physical exam that the board reviewed in 2011, and was deemed ok at that time.

7. Our decertification in New York by the FMCSA was unusual and possibly may have violated their own regulation as to how it was performed as you and I have discussed. Furthermore it was based on a copy of the letter that I had previously mentioned that was sent to the FMCSA. As mentioned before, it is unsigned by the board which is a clear issue in and of itself. Also, the action taken may have required public hearings in the state, another potential issue. And remember, no one in the state who was performing DOT physicals had any board action taken against them.

8. Remember also the evidence of possible outside influence in the state and possibly in other things occurring around the country. From the email exchange by Natalie Hartenbaum in December, to the MEDMAC decision and the term coined by Natalie (The New York Model), we have clear evidence of some elements that are potentially trying to eliminate us from the National Registry using this approach. Even states like Kansas can be at risk if you look at her email to you. Her comments relating to the need to evaluate what we treat was being necessary in particular. So if Kansas does not allow a DC to treat diabetes or congestive heart failure, then as time goes on, they could be at risk as more of the states with weaker laws fall to this approach. Also, there was a on the NTSB website that was forwarded to me by Scott Greneth from an MD who stated that if a DC did not prescribe medication then we should not be included in performing DOT physicals. **SO THE NEW YORK MODEL IS EXPANDING IN ITS METHODS TO RESTRICT THE PROFESSION NOT ONLY IN PERFORMING DOT PHYSICALS BUT IN OTHER AREAS SUCH AS SPORTS PHYSICALS AND COAST GUARD PHYSICALS AS YOU AND I HAVE ALSO DISCUSSED.**

9. We know that the DOT requirements were not amended in late 2014 or early 2015, especially relating to the physical examination requirements. They are exactly the same as they were. Furthermore we have no correspondence from our FOIA request relating to this. I would also reference the 2011 decision regarding pre placement exams to indicate the boards approval previously relating to any potential amendment associated with this reference of some sort of change of requirements. There is no physical that could potentially exceed this exam unless it required something like a EKG or blood work. And we know that if anything like this is required in a DOT physical it is typically and most always performed by treating providers, not the CME.

10. Despite our repeated requests for a meeting with the deputy commissioner of professions for the NYS SED, he has ignored us till now. He is the person who appears to be solely responsible for the change of opinion in the state. I have heard, but have no confirmation at this point, that the board may have in a split vote approved our ability to perform a DOT physical but this individual made the interpretation. He is an attorney who is working in the appointed position. We have friendly state senators and other legislators putting on added pressure. Again, I cannot confirm this currently, but this is currently being investigated.

Thanks for this information Mike. If the future, please instruct any inquiries of this situation to contact myself or Mary Alice Moore Leonhardt concerning this issue.

Dave

(continuation...)

Hi again,
Three more things:

1. In your email exchange with Natalie Hartenbaum, she referenced that this had been what she had been sent, and that the issue dealt with the ability of a DC to perform a physical exam. First, who sent the generic copy of the letter to her, and how did she know that the issue dealt with the physical exam. That was not referenced in the letter sent to the DC's (that again wasn't signed). That would have been insider knowledge. Remember, our board in New York is multidisciplinary and has MD's as well as other professionals. How she would have this knowledge sent to her is highly suspicious. Even though I do not feel that there was outside influence in 2013, I am suspicious of it now. If you look at the decision in California concerning sports physicals, the medical society made the argument that our physical exam for a spinal problem doesn't go far enough. That was the same argument by the MEDMAC committee concerning Coast Guard physicals (they used the definition of chiropractic as you mentioned from the ACA website). Interesting isn't it.

2. Multiple DC's have been added to the National Registry within the state, the most recent was April 5th, of 2016. That is less than a month from the the emergency removal from the National Registry on June 1st. You and I know that the FMCSA must confirm licensure in the state prior to putting any professional on the National Registry. This doctor was approved at that time.

3. All exams conducted by DC CME's in the state are considered valid by the FMCSA from May 21, 2014 through June 1, 2016 under the same state law. As we discussed this represents possibly up to 30,000 exams performed. So we are considered valid under the same law that we cannot perform these exams following June 1st. How frustrating is that. Again, an issue for the state and possibly for FMCSA.

It is my opinion from what I have read that the attorney has chosen only selective parts of the statute to form an opinion, but not all of the statute. Our statute is certainly in need of an update, but it ignores all of the He also does not reference any previous decisions by the board regarding physical exams, diagnosis, and differential diagnosis. There is a ton. Very suspicious.

Dave