

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

IN RE: DECLARATORY RULING CONCERNING COMMERCIAL MOTOR
 VEHICLE MEDICAL EXAMINATIONS BY CHIROPRACTORS

FOR THE BOARD: Candito Carroccia, DC, DABCN, Chairperson
 Matthew Scott, DC, Board Member
 Gina Carucci, DC, Board Member
 Melissa Muszynski, Public Member

DECLARATORY RULING UPON REMAND

Procedural Background

On January 9, 2014, the Connecticut Board of Chiropractic Examiners (“Board”), on its own motion, initiated a proceeding for a declaratory ruling regarding whether the scope of chiropractic practice in Connecticut permits a chiropractor to conduct the testing and physical examination of body systems required on the Medical Examination Report codified in 49 C.F.R. § 391.43 (Medical Examination Report), to determine whether a driver is physically qualified to drive a commercial motor vehicle in interstate commerce and complete the Medical Examiner’s Certificate on the Medical Examination Report. (Bd. Exh. II.)¹

On January 21, 2014, a Notice of the Declaratory Ruling was published in the *Connecticut Law Journal* indicated the Board’s intention to issue a ruling at its meeting on February 13, 2014. (Bd. Exh. III.) That meeting was canceled due to inclement weather and eventually rescheduled to March 20, 2014.

On February 20, 2014, the Connecticut Chiropractic Association, Inc. requested party status in the declaratory ruling proceeding, which request was denied by the Board. (Bd. Ex. IV)

At the March 20, 2014 meeting, the Board addressed the Declaratory Ruling in accordance with Conn. Gen. Stat. § 4-176 and § 19a-9-1 et seq. of the Regulations of Connecticut State Agencies (“Regulations”).

On May 8, 2014, the Board issued a Declaratory Ruling, finding that it was within the scope of practice of licensed chiropractors in Connecticut to conduct such testing and physical

¹The Board entered five exhibits on March 20, 2014 marked Board Exhibits 1-5, respectively. On October 2, 2014, after this matter was remanded by the trial court, the Board entered new exhibits marked Board Exhibits 1-14, respectively. For clarity, roman numerals will be used in this Ruling when referring to Board Exhibits 1-5 and numbers will be used when referring to Board Exhibits 1-14.

examinations of body systems required on the Medical Examination Report, to determine whether a driver is physically qualified to drive a commercial motor vehicle in interstate commerce and complete the Medical Examiner's Certificate on the Medical Examination Report.

On June 18, 2014, the Connecticut State Medical Society ("Medical Society") and Ian Tucker, M.D., filed an appeal from that Ruling to Superior Court. On August 4, 2014, the Board filed a Motion for Voluntary Remand, which was granted by the court.

On August 26, 2014, a Notice of Hearing for the Declaratory Ruling was provided to all interested parties through publication in the *Connecticut Law Journal*. Bd. Ex. 1. The Notice of Hearing indicated that a hearing would be held on October 2, 2014 and that persons seeking status to participate must file a petition with the Board by September 5, 2014 in accordance with Conn. Gen. Stat. § 4-176(d) and §§ 19a-9-26 through 19a-9-28 of the Regulations of Connecticut State Agencies. Notice was sent to the Medical Society, the Connecticut Medical Examining Board ("CMEB") and the Connecticut Chiropractic Association, Inc. ("Association").

On August 21, 2014, the Medical Society filed a request for extension of time beyond the September 5, 2014 to file said petition, which was granted by the Board. (Bd. Ex. 2.) On August 29, 2014, CMEB filed a similar motion for extension of time, which was also granted by the Board. (Bd. Ex. 3.)

On September 4, 2014, the Connecticut Orthopedic Society ("Orthopedic Society") filed a Petition to Participate as an Intervenor. Bd. Ex. 4. On September 5, 2014, the Association filed a Petition to Participate as Party. Bd. Ex. 5. On September 23, 2014, the Medical Society filed a Petition to Participate as an Intervenor.² Bd. Ex. 6.

On September 11, 2014, the Orthopedic Society was granted intervenor status and the Association was granted party status. (Bd. Exs. 7, 8.) On September 24, 2014, the Medical Society was granted intervenor status. (Bd. Ex. 9.) The Orthopedic Society, Association and Medical Society provided pre-filed testimony. (Bd. Exs. 10-13; Exs C-1-C-15, C-21.)

A hearing was held on October 2, 2014, and was conducted in accordance with §§ 4-177c(b), 4-178 and 4-179 of the Statutes and § 19a-9-1 et seq. of the Regulations. Attorney Mary Alice Moore Leonhardt appeared on behalf of the Association. At the hearing, the pre-

² CMEB did not file a petition to participate in this proceeding.

filed testimony was adopted under oath and witnesses were available for questioning and cross-examination.³

All Board members involved in this Ruling attest that they have heard the case or read the record in its entirety. This Ruling is based entirely on the record and sets forth 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. (Bd. Ex. 14; Ex. C-5.)
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 to verify student competencies in the areas of diagnosis and case management. (Exs. C-3, C-5; Tr. 10/2/14, pp. 79, 88.)
3. The Council of Chiropractic Education has accredited the following chiropractic school and colleges: Cleveland Chiropractic College, D'Youville College, Life University, Life Chiropractic College West, Logan University, Southern California University of Health Sciences, National University of Health Sciences, New York Chiropractic College, Northwestern Health Science University, Palmer College of Chiropractic, Parker University, Sherman College of Chiropractic, Texas Chiropractic College, University of Bridgeport and University of Western States. (Bd. Ex. 14.)
4. The federal regulations set forth the medical examination requirements for commercial driver fitness determinations by a medical examiner, including a Medical Examination Report that must be completed by the medical examiner as well as Advisory Criteria. 49 C.R.F. §§ 391.43, 391.41.

³The pre-filed testimony of Michael Vajda was not entered as an exhibit but marked for identification purposes. (Exh. C-22 (marked for Id); Tr. 10/2/2014, p. 72.)

5. The review and discussion of patient health histories under 49 C.F.R. § 391.43, including but not limited to reviewing and discussing the effects of medications and over-the-counter medications while driving, are taught at Board recognized and approved schools or colleges (Ex. C-1, C-4, C-5, C-7, C-8, C-9, C-10, C-11, C-12, C-13, C-15, C-23; Tr. 10/2/2014, pp. 26-27, 31, 33, 34, 44-47, 50-55, 61, 63-66, 74-86.)
6. Vision testing and examinations for diagnosis and analysis under 49 C.F.R. § 391.43 are taught at Board recognized and approved schools or colleges. (Exs. C-1, C-4; Tr., pp. 44, 45, 50-52, 56, 64-65, 74-86.)
7. Hearing testing and examinations for diagnosis and analysis under 49 C.F.R. § 391.43 are taught at Board recognized and approved schools or colleges. (Exs. C-1, C-4; Tr., pp. 44-45, 50-52, 56, 64-65, 74-86.)
8. Taking a person's blood pressure and pulse rate for diagnosis and analysis and diagnosing hypertension under 49 C.F.R. § 391.43 are taught at Board recognized and approved schools or colleges. (Exs. C-1, C-4, C-5, C-7, C-8, C-9, C-10, C-11, C-12, C-13, C-15, C-23; Tr., pp. 35, 44-45, 50-52, 64-65, 74-86.)
9. Conducting laboratory and other testing, including urinalysis, for diagnosis and analysis under 49 C.F.R. § 391.43 are taught at the Board recognized and approved schools. (Exs. C-1, C-4, C-5, C-7, C-8, C-9, C-10, C-11, C-12, C-13, C-15, C-23; Tr., pp. 42, 44-45, 50-52, 55, 62, 64-65, 74-86.)
10. Performing a physical examination for diagnosis and analysis under 49 C.F.R. § 391.43 is taught at the Board recognized and approved schools or colleges. (Exs. C-1, C-4, C-5, C-7, C-8, C-9, C-10, C-11, C-12, C-13, C-15, C-23; Tr., pp. 36, 44-45, 50, 52, 61-65, 74-86.) Such physical examination includes: (1) determining a person's height and weight, (2) examining a person's general appearance for marked overweight, tremors, signs of alcoholism, problem drinking or drug abuse; (3) examining a person's eyes for pupillary equality, reaction to light, accommodation, ocular motility, ocular muscle imbalance, extraocular movement, nystagmus, exophthalmos, inquiring about retinopathy, cataracts, aphakia, glaucoma, and macular degeneration, and making specialist referrals; (4) examining a person's ears for ear disease, scarring of tympanic membrane, occlusion of external canal, and perforated eardrums; (5) examining a person's mouth and throat for irreparable deformities likely to interfere with breathing or swallowing; (6) examining a

person's heart for murmurs, extra sounds, enlarged heart, pacemaker, and implantable defibrillator; (7) examining a person's lungs and chest for abnormal chest wall expansion, abnormal respiratory rate, abnormal breath sounds including wheezes or alveolar rales, impaired respiratory function, cyanosis, and conducting further pulmonary tests or chest x-rays after abnormal findings; (8) examining a person's abdomen and viscera for enlarged liver, enlarged spleen, masses, bruits, hernia, and significant abdominal wall muscle weakness; (9) examining a person's vascular system for abnormal pulse and amplitude, carotid or arterial bruits, and varicose veins; (10) examining a person's genito-urinary system for hernias; (11) examining a person's extremities and limb impairments for loss or impairment of leg, foot, toe, arm, hand or finger, perceptible limp, deformities, atrophy, weakness, paralysis, clubbing, edema, hypotonia, insufficient grasp and prehension in upper limb to maintain steering wheel grip, and insufficient mobility and strength in lower limb to operate pedals properly; (12) examining a person's spine and the musculoskeletal system for previous surgery, deformities, limitation of motion, and tenderness; and, (13) examining a person's neurological system for impaired equilibrium, coordination or speech pattern, asymmetric deep tendon reflexes, sensory or positional abnormalities, abnormal patellar and Babinski's reflexes, and ataxia. (Exs. C-1, C-4, C-5, C-7, C-8, C-9, C-10, C-11, C-12, C-13, C-15, C-23; Tr. pp. 22-23, 25, 31, 36, 44-45, 50-52, 54, 61-65, 74-86.)

11. Determining whether a person is physically qualified to drive a commercial motor vehicle under 49 C.F.R. 391.41(b)(1)-(12) is taught at the Board recognized and approved schools or colleges. (Exs. C-1, C-4, C-5, C-7, C-8, C-9, C-10, C-11, C-12, C-13, C-15, C-23; Tr., pp. 44-45, 50-52, 74-86.)
12. Determining whether a person is physically qualified to drive a commercial motor vehicle only when: wearing corrective lenses, wearing a hearing aid, accompanied by a specific waiver, driving within an exempt intra-city zone (49 C.F.R. 391.62), accompanied by a Skill Performance Evaluation Certificate, or qualified by operation of 49 C.F.R. 391.64, is taught at the Board recognized and approved schools or colleges. (Exs. C-1, C-4, C-5, C-7, C-8, C-9, C-10, C-11, C-12, C-13, C-15, C-23; Tr., pp. 44- 46, 50-52, 74-86.)

13. Determining whether a person, who is an insulin-controlled diabetic, is physically qualified to drive a commercial vehicle is taught at the Board recognized and approved schools or colleges. (Exs. C-1, C-4; Tr., pp. 34, 44, 45, 50-55, 74-86.)

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 drive a commercial vehicle if that person, among other things, has complied with the medical examination requirements contained in 49 C.F.R. § 391.43. 49 C.F.R. § 391.41(a)(3)(i). On and after May 21, 2014, a medical examination under 49 C.F.R. § 391.43 must be performed by a medical examiner listed on the National Registry of Certified Medical Examiners ("National Registry"). 49 C.F.R. § 391.42; 49 C.F.R. § 391.43. To be listed on the National Registry, a medical examiner must, among other things, comply with the certification requirements contained in 49 C.F.R. § 390.103. Of importance to this Ruling, a medical examiner must be "[b]e licensed, certified, or registered in accordance with applicable State laws and regulations *to perform physical examinations*. The applicant must be an advanced practice nurse, *doctor of chiropractic*, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional *authorized by applicable State laws and regulations to perform physical examinations*." (Emphasis added.) 49 C.F.R. § 390.103. Thus, to qualify for a medical examiner certificate, a chiropractor in Connecticut must, in addition to complying with the other provisions of 49 C.F.R. § 390.103, be licensed, certified or registered in accordance with state law to perform physical examinations and authorized by state laws to perform physical examinations.

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 for commercial driver fitness determinations 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).

The federal regulations set forth the medical examination requirements for commercial driver fitness determinations by a medical examiner, including a Medical Examination Report that must be completed by the medical examiner as well as Advisory Criteria published by the Federal Motor Carrier Safety Administration. See 49 CFR §§ 391.43, 391.41.

In issuing this declaratory ruling, the Board has reviewed the pertinent federal regulations as well as the Medical Examination Report and Advisory Criteria 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, the Medical Examination Report and Advisory Criteria are taught at Board recognized and approved schools or colleges. Findings of Fact ¶¶ 1, 3, 5-13. Pursuant to Conn. Gen. Stat. § 20-28(b)(2), 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 Connecticut to perform such tests and physical examinations of body systems to determine whether a person is physically qualified to drive a commercial motor vehicle in interstate commerce and complete the Medical Examiner's Certificate on the Medical Examination Report.

Ruling

Based on the foregoing, the Board concludes that the scope of chiropractic practice in Connecticut permits a licensed chiropractor to conduct the testing and physical examination of body systems required on the Medical Examination Report codified in 49 C.F.R. § 391.43, to determine whether a driver is physically qualified to drive a commercial motor vehicle in interstate commerce and complete the Medical Examiner's Certificate on the Medical Examination Report.

APRIL 23, 2015
Date

Candito P. Carroccia D.C.
Candito Carroccia, DC, DABCN,
Chairperson