

**Arkansas State Board of Chiropractic Examiners
Teleconference
Thursday, June 24, 2021**

CALL TO ORDER

The special meeting was called to order by Tanya Holt, D.C., President, at 1:02 p.m.

ROLL CALL

Board Members present:

Michael Courtney, D.C.
Harold Gunter
Sarah Hays, D.C.
Jack McCoy
Kent Moore, D.C.
Gregory Ungerank, D.C.
Tanya Holt, D.C.

Board Members absent:

None

Staff present:

Laurie Mayhan, Executive Director
Brad Nye, Assistant Attorney General

Guests present:

James Raker, D.C.
Steven Bennett, D.C.

Old Business

AR BlueCross BlueShield – J. Raker

Dr. Raker, over the past several months has submitted documentation and/or his concerns about ARBCBS denying or reducing insurance payments compared to other providers, and concerns about ARBCBS defining or determining what is within the ASBCE scope of practice. Dr. Courtney proposed the question to counsel, “Can an insurance company determine/dictate scope of practice?” Counsel stated that the board is here to protect the public health and safety, it’s here to license and regulate licensees of the board. The legislature sets by definition in your statute what your scope of practice is, the courts then interpret the appropriate scope of practice. He agrees that the board can adopt a stance as to what they believe the appropriate scope of practice to be for a D.C. and he thinks that interpretation should be and would be given great deference until and at such time someone were to challenge it and a court were to disagree with the board. But he thinks its perfectly appropriate for the board to say they believe that x-raying extremities is within the scope of practice of a DC or we believe that covid testing is within the scope of practice. He stated the board can adopt that as its position and he thinks that perfectly appropriate. As to whether the insurance company is determining scope of practice, he does not read it that way, he reads this to be a contract between a carrier and a provider for services and they are electing what to pay for and what not pay for, and they do this in many different areas not just D.C.’s, OTs PTs, MDs, etc. Counsel thinks it would be appropriate for the board to if they would like to do so again, to draft a letter to send to BCBS, and to the AR Ins. Dept. to reiterate the stance of the board that these services in particular or any other services that have come into question that the board believe them to be within the scope of practice. He thinks from that point if any DC that is still aggrieved by private insurance carrier for not getting paid for services rendered their avenue would be to file a complaint to go through the AR Ins. Dept. and they exist for this very reason, they can go through the consumer complaint process. The bulletin 1789 from 1989 that Dr. Raker is heavily relying on is guidance and is not law or a promulgated rule and is no longer in effect and has been superseded and shouldn’t be relied on. That being said, he does not disagree that under the any willing provider statutes, and under 23-79-114 that the bulletin reference that there may be an issue there, but that issue would best be addressed through AID or if a particular DC or other provider fell to find redress through AID, he thinks they would need to retain private counsel and pursue it that way through a civil lawsuit. He thinks the board needs to be careful in how we message that publicly, b/c the board is not here to lobby for a particular interest, again public health and safety, regulating licensees, establishing scope of practice from a policy standpoint subject to a court to challenge. He thinks the association and society might be better avenue if the board wanted more DCs in the state to be aware of the issue and perhaps pursue a particular carrier or pursue AID if they are not getting movement, but he doesn’t think it’s something that this board needs to take this up on it’s own at least not outside a reiteration via letter to the carriers and AID indicating what the boards position is at to the scope of practice. This is the approach the board needs to take.

Dr. Courtney asked counsel if the board could request an AG opinion with the simple question, “Can an insurance company determine scope of practice?” Counsel confirmed that under 25-16-706(a)3 the board could but it should be carefully worded.

Dr. Raker was asked to refile his complaint or have his staff member refile their complaint regarding reimbursements that have been limited compared to same codes reimbursed to other types of providers.

Dr. Courtney motion that Covid-19 testing is with the chiropractic scope of practice. Motion seconded by Dr. Ungerank. Motion passed.

Dr. Courtney motioned that this board request an AG opinion regarding whether an insurance company can determine scope of practice and request that this board’s attorney will research the issue to see if an opinion has already been decided regarding this issue. Motion seconded by Mr. Gunter. Discussion followed about wording of motion. Dr. Courtney withdrew is original motion and rephrased it stating, “Can an insurance

company determine a physician's scope of practice and base that as a reason for non-payment in light of 23-79-114." Mr. Gunter seconded the new motion. Motion passed.

Counsel stated he would need to also review an AG opinion 2001-251 from State Senator Claude Cash out of Jonesboro who specifically asked the question, Are Ins. Companies that cover medical treatment required to cover chiropractic care at the same level of coverage, Are ins. Comp that cover medical treatment required to cover alternative medical treatment such as massage therapy and acupuncture at the same level unless the insurance company provide chiropractors the same opportunities to become apart of a list of approved care providers as those doctors who provide the more traditional treatment. The number one question asked there is the level of care payment and the response to that opinion is an affirmative. Counsel will reach out to the opinions team to see if they need to clarify that opinion or if it will answer the board's request. Counsel will forward a copy of the opinion to the director and then it can be dispersed to the board.

Counsel stated that, for the record, he represents only the board and is not giving any independent legal advice.

New Business

Temporary (supervised) License Requests

Derek J. Gililand submitted a supervised temporary license request in hopes to be licensed before the July orientation. Dr. Courtney motioned to approve his supervised temporary license. Motion seconded by Dr. Ungerank. Motion passed.

Richard S. Parsons submitted a supervised temporary license request in hopes to be licensed before the July orientation. Dr. Ungerank motioned to approve his supervised temporary license. Motion seconded by Dr. Hays. Motion passed.

ADJOURN

Dr. Courtney moved to adjourn. Dr. Moore seconded. Motion passed. The Board adjourned at 1:55 p.m.

Board minutes approved: July 20, 2021