



# Chiropractic Quality Assurance Commission

Newsletter May – August 2013 Edition

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## Welcome to the Chiropractic Quality Assurance Commission Newsletter

This purpose of our newsletter is to help keep the chiropractic community informed of issues related to Washington State laws, as well as the work of the Chiropractic Quality Assurance Commission (commission).

### Message from the Chair – Harold Rasmussen, DC

It seems like just yesterday I was appointed to the commission. What an honor and privilege that appointment has been! Because my term as the chair ended when I was replaced by a new chair in June, this will be my last message as the chair. I will express some highlights that I've experienced as both the vice-chair and chair.

During my two-year tenure as vice-chair, many extremely beneficial things were placed into motion by the immediate past chair, Dr. Ron Rogers. These changes allowed the commission to move forward and do a better job with protecting public safety. It also gave chiropractors a better understanding of the issues that the commission faces through improved communication.

Dr. Rogers was very instrumental with updating [WAC 246-808-560](#) – Documentation of Care. The update to this rule was necessary. Often the commission sees records and documentation that fall below the standard. This carries over with billing and coding as well. The commission investigates these areas the most. Through the investigatory process, it is common to find deficiencies with billing, coding, and documentation. With the changes to the documentation rule, and by educating the profession, our goal is to see a decrease in complaints within these areas. This should reduce litigation expenses and overall commission costs.

Dr. Rogers started the commission newsletter. This avenue allows for a direct voice between the public and the profession, sharing matters that the commission thinks are important.

He also created a mentor program for chiropractors who have problems adhering to the [laws](#) and [rules](#). They can choose to get help and support from a mentorship. This will help them gain better skills and understanding of what is expected wording to the laws and rules.

Another accomplishment of Dr. Rogers while serving as chair was getting the department's approval to increase the program manager's time from 50 percent to 90 percent. This has helped us accomplish many of our goals.

### Governor

The Honorable Jay Inslee

### Department of Health

John Wiesman, DrPH, MPH, Secretary

Bob Nicoloff

Executive Director

[Leann Yount](#)

Program Manager

### Commission Members

Harold Rasmussen, DC  
Chair

Gary "Gabe" Smith, DC  
Vice-Chair

Aaron Chan, DC

Patrick Espana, JD  
Public Member

Winfield Hobbs, DC

Bryson Langel, DC

Douglas Long, DC

Ronwynn Pratt, DC

Ronald Rogers, DC

Robert Schmitt, DC

James Slake,  
Public Member

Louise Stephens  
Public Member

Matthew Waldron, DC

Vacant, DC

As the result of the many things that were put into place before I became chair, and with the outstanding support of our hard-working commissioners, I am very proud of all the accomplishments that have become a reality in the past two years.

I am going to cover only a few of these accomplishments that I consider the most outstanding, as follows:

- Received the Dr. Earl L. Wiley Award for the licensing board of the year.
  - Recognized by the Federation of Chiropractic Licensing Boards.
- Adopted an Interpretive Statement (IS) regarding [Independent Chiropractic Examinations \(ICE\)](#).
  - Given the purpose of the statute and the scope of practice stated in [RCW 18.25.005](#), the Commission interprets the definition of chiropractic to include activities that involve diagnosis or analysis, as well as activities that include care or treatment. It is not necessary that both diagnosis or analysis and care or treatment occur together to be considered the practice of chiropractic.
  - This does allow the commission oversight on whether ICE doctors are fulfilling the needs of protecting public safety with examinations that are sufficient to support their opinions.
- Entered into a five-year pilot project as a result of [2SHB 1518](#).
  - The commission unanimously decided to move forward with the pilot project. This will allow the commission greater independence from the Department of Health. Undoubtedly, this will create an immense amount of work over the next year or two. However, I am confident that we will have the ability to control costs while still protecting the public safety.

Dr. Gary “Gabe” Smith took over on June 7 as the commission’s chair. Dr. Matthew Waldron is the new vice-chair. I am confident that Dr. Smith will efficiently carry this project forward. He has gained knowledge and insight in working with this type of project before. It is very comforting to know that I am leaving this chair position in the hands of someone who has a greater understanding and the ability to move forward and accomplish even more than what has been accomplished over the past few years.

I would also like to extend a thank you to all the commissioners who helped me through my terms as both vice-chair and chair. We could not have accomplished this without the support of the entire commission. These commissioners have been great! It has been an honor to have served as both vice-chair and chair of this commission – thank you.

## **Use of Groupon**

The commission has been contacted numerous times by healthcare providers questioning the use of Groupon, AmazonLocal, Living Social, and similar sales sites for offering chiropractic or other healthcare services. The commission considered this issue at a recent meeting and noted:

“The Commission has received inquiries regarding the advisability of chiropractors offering their services through Groupon or other deal-of-the-day coupon websites. It is the commission’s understanding that the discounted fee the customer pays for Groupon coupons is split between the retailers and Groupon. The Commission advises that use of the Groupon site, or other similar websites that involve fee splitting, may violate the [state] anti-rebating statute, [RCW19.68](#). It may also raise questions under federal law and federal healthcare programs. Chiropractors should proceed with caution and seek legal counsel on this issue.”

The federal anti-kickback laws pertain primarily to Medicare, Medicaid, TriCare and other federal healthcare programs. The Office of the Inspector General for the U.S. Department of Health and Human Services recently addressed an issue regarding using a website to post coupons for health care providers or services. Its Advisory Opinion 12-02 can be found at: <http://oig.hhs.gov/fraud/docs/advisoryopinions/2012/AdvOpn12-02.pdf>. It should be noted, however, that the Advisory Opinion is limited to the specific situation addressed in the opinion, and that it addresses only federal law and not state law.

We note that Groupon and Living Social have apparently revised their business models in Oregon to help dentists avoid state fee-splitting laws. According to the American Dental Association News, September 17, 2012, under the new model, all fees paid by the dentist are passed through to the practitioner who then pays the Groupon or Living Social fee. <http://www.ada.org/news/7587.aspx>. As stated in the article, the ADA legal department cautions dentists that even under the new fee arrangement, there are other legal and ethical issues that a dentist must consider before using social coupons to promote his or her practice. We do not know whether Groupon or Living Social plan to revise their business models further.

In view of the above, we continue to recommend that chiropractors be alerted to the potential dangers of participating in referral/split fee coupon/vouchers and research the legality of the offer presented.

## Use of Auxiliary Staff

Many different people work in a chiropractic office. When talking to colleagues, or at a seminar, many of these people may be referred to as auxiliary staff. The Washington State chiropractic practice act and rules allow auxiliary staff to perform certain auxiliary services and describe the services that other people may perform. The type of service a person may perform depends primarily on the training the person has had.

Under WAC 246-808-510 “auxiliary staff” are defined as personnel, except regular senior students (RSS) and clinical postgraduate trainees (CPT), who receive ongoing on-the-job training and who work for or at the direction of a licensed doctor of chiropractic.

Because of the higher level of training that CPTs and RSSs receive, they are excluded from the definition of “auxiliary staff” and are allowed to perform more services than auxiliary staff can provide.

WAC 246-808-510 defines CPT and (RSS as follows:

- **"Clinical postgraduate trainee"** means a graduate doctor of chiropractic serving a period of postgraduate chiropractic training in a program of clinical chiropractic training sponsored by an accredited school of chiropractic approved by this state. The clinical postgraduate trainee works under the direct supervision and control of a commission-approved preceptor as described in WAC 246-808-190 and 246-808-535. Clinical postgraduate trainees who have had their chiropractic license suspended, revoked, or otherwise conditioned or restricted under authority of any competent jurisdiction shall not perform any delegated tasks listed in WAC 246-808-535(4).
- **"Regular senior student"** means a student in his or her last term (quarter or semester) at an accredited school approved by the commission who has met all clinical and graduation requirements except clinical training hours.

By now you are probably wondering what are considered “auxiliary services.” An auxiliary service is defined in WAC 246-808-510 as services, excluding those practices restricted to licensed chiropractors, which may be needed for the support of chiropractic care.

WAC 246-808-535 states that the auxiliary services that auxiliary staff (as well as RSSs and CPTs) may perform are “preliminary patient history, height, weight, temperature, blood pressure, pulse rate, gross postural observation, active spinal range of motion utilizing a generally accepted measuring device, and oversight of patients during approved therapeutic procedures, rehabilitation exercises or use of therapeutic or rehabilitation equipment as incident to chiropractic services.”

The WAC also lists services that auxiliary staff cannot perform such as detection of subluxation, adjustment or manipulation of the articulations of the body, interpretation or analysis of radiographs, determining the necessity for chiropractic care, and orthopedic or neurological examinations.

However, a RSS may perform the following services under the direct supervision and control of an approved preceptor:

- Detection of subluxation,
- Expose, interpret or analyze radiographs,
- Determine the necessity for chiropractic care, and,
- Orthopedic or neurological examinations.

CPTs may perform the following services under the direct supervision and control of an approved preceptor:

- Detection of subluxation,
- Adjustment or manipulation of the articulations of the body,
- Expose, interpret or analyze radiographs,
- Determine the necessity for chiropractic care, and,
- Orthopedic or neurological examinations.

The only difference between the two is that a CPT may adjust or manipulate the articulations of the body and a RSS may not.

Also notice that an approved preceptor is required. RSSs and CPTs can perform services only under supervision of a preceptor who has been approved by the commission. The requirements fall under WAC 246-808-190.

As per WAC 246-808-535, the preceptor must provide direct supervision and control by being on the premises any time the CPT or RSS treats a patient. The preceptor must also meet with the patient before chiropractic care begins, and inform the patient in writing of the unlicensed status of the person from whom care is being received.

Another person often employed in a chiropractor’s office is a registered chiropractic X-ray technician. Under WAC 246-808-215, a chiropractor may employ commission-registered technicians to operate X-ray equipment. The rules do not preclude these people from acting as auxiliary staff and performing auxiliary services.

I hope this article has brought some clarity to the roles that different members of a chiropractic office’s staff can perform.

Regulations pertaining to auxiliary staff are:

- [WAC 246-808-510](#) – Definitions
- [WAC 246-808-535](#) - Delegation of services to auxiliary staff, regular senior students, and clinical postgraduate trainees
- [WAC 246-808-190](#) - Preceptor or direct supervisory doctor
- [WAC 246-808-215](#) - Registration of certified chiropractic X-ray technicians

As always, the foregoing is not legal advice and should not be considered as such. For legal questions, please consult an attorney.

## **Interpretive Statement**

### **Practice of Chiropractic – Independent Chiropractic Examinations**

*Filed on 3/20/13 under WSR # 13-07-072*

The practice of chiropractic, as defined in RCW 18.25.005, includes the performance of independent chiropractic examinations.

Chiropractors sometimes perform independent chiropractic examinations in which they physically examine a patient at the request of a third party in order to diagnose or analyze whether the patient requires further chiropractic treatment, but do not provide care or treatment of the patient. The chiropractor's decision or opinion in this regard may directly affect the patient's course of treatment, thereby potentially affecting the patient's health and well-being.

RCW 18.25.005(1) states: "*Chiropractic is the practice of health care that deals with the diagnosis or analysis and care or treatment of the vertebral subluxation complex and its effects, articular dysfunction, and musculoskeletal disorders, all for the restoration and maintenance of health and recognizing the recuperative powers of the body.*"

The purpose section of chapter 18.25 RCW provides, among other things, that the statute was enacted "[b]ecause the health and well-being of the people of this state are of paramount importance [and b]ecause the conduct of members of the chiropractic profession licensed to practice chiropractic in this state plays a vital role in preserving the health and well-being of the people of the state[.]" (RCW 18.25.002)

Given the purpose of the statute and the scope of practice stated in RCW 18.25.005, the commission interprets the definition of chiropractic to include activities which involve diagnosis or analysis, as well as activities that include care or treatment. It is not necessary that both diagnosis or analysis and care or treatment occur together to be considered the practice of chiropractic.

If a chiropractor provides diagnosis or analysis but stops short of providing care or treatment, the activities are considered the practice of chiropractic. Similarly, if a chiropractor provides care or treatment based on another chiropractor's diagnosis or analysis, the activities are considered the practice of chiropractic. Therefore, the actions of independent chiropractic examiners, who provide diagnosis or analysis but do not normally provide care or treatment, fall within the practice of chiropractic.

## Disciplinary Actions

The Washington State Department of Health revoked or suspended the licenses, certifications, or registrations of healthcare providers in our state. The department has also immediately suspended the credentials of people prohibited from practicing in other states.

The department's Health Systems Quality Assurance division works with boards, commissions, and advisory committees to set licensing standards for more than 80 health care professions (e.g., medical doctors, nurses, counselors).

Information about healthcare providers is on the agency's website. Select [Provider Credential Search](#) on the Department of Health home page ([www.doh.wa.gov](http://www.doh.wa.gov)). The site includes information about a healthcare provider's license status, the expiration and renewal date of his or her credential, disciplinary actions, and copies of legal documents issued after July 1998. You can also get this information by calling 360-236-4700. Consumers who think a healthcare provider acted unprofessionally are also encouraged to call and report their [complaint](#).

The Chiropractic Commission has taken the following disciplinary actions, or withdrawn charges, against Washington State licensed chiropractors.

### Benton County

**February 2013:** Entered an agreement with chiropractor **Perry E. Barnhill** (CH00033927) and placed his credential on probation for four years. Barnhill agreed to pay a \$3,000 fine and undergo a review of his insurance billing and patient accounts. He also pleaded guilty to third-degree theft in 2012.

**March 2012:** Sexual misconduct and substandard care have led to a license suspension of at least three years for Richland chiropractor **Russell Tagg** (CH00002726). The suspension was issued by the Chiropractic Quality Assurance Commission and the Department of Health.

Dr. Tagg's license was immediately suspended based on charges that he inappropriately touched his patient during treatment sessions and kissed her on the cheek at the end of several sessions. The three-year suspension completes the legal process.

Tagg must meet requirements designed to protect the public and ensure patient safety before he can seek license reinstatement.

### Clark County

**January 2013:** Released chiropractor **Melinda A. Maxwell** (CH00002064) from terms and conditions of a 2009 agreement.

### King County

**January 2013:** Modified an agreed order against chiropractor **Mark T. Dang** (CH00033803) and placed his license on probation until he has completely paid his \$10,000 fine.



**January 2013:** Suspended the credential of chiropractor **John M. Birkeland** (CH00002297) after he did not respond to the commission's order to undergo a mental/physical exam.

**February 2013:** Suspended the credential of chiropractor **David Mark Silverstein** (CH00002447) for at least two years and ordered him to pay a \$5,000 fine. In September 2012 Silverstein pleaded guilty and was convicted of theft of government funds. For several years, he fraudulently posed as the landlord for a woman he was in a romantic relationship with, allowing her to receive housing assistance she wasn't qualified for.

**April 2013:** Withdrew a statement of charges issued on chiropractor **Steve C. Baek** (CH00034360) in October 2012. Based on further review of the matter, the commission decided to withdraw the charges.

**April 2013:** Placed the credential of chiropractor **Shawn Gabriel Jonas** (CH00003146) on probation for two years. Jonas kept inadequate records of patient treatment and billing.

**April 2013:** Entered an agreement with chiropractor **Vivian M. Ledesma** (CH00002609). She must take continuing education in documentation of care, write a report about the importance of documentation of care, pass a jurisprudence exam, and pay a \$1,000 fine. Ledesma didn't adequately document two patients' treatment.

## **Pierce County**

**February 2013:** Entered an agreement with chiropractor **Edward L. West** (CH00001640) and will monitor his credential for three years. West agreed to pay a \$5,000 fine, undergo unannounced audits, receive continuing education in record-keeping and coding, and pass a jurisprudence exam. West kept inadequate records in cases involving 12 patients.

## **Skagit County**

**May 2013:** Entered an agreement vacating the denial of a chiropractor credential to **Aaron Farleigh Theriot** (CH60331405). The commission granted Theriot a credential, put him on probation, and ordered him to be monitored for at least three years. Theriot voluntarily surrendered his Louisiana registered nursing credential. His Florida registered nursing credential was suspended.

## **Spokane County**

**May 2013:** The Chiropractic Commission indefinitely suspended the credential of chiropractor **Stephen F. Renner** (CH00001206). Renner didn't comply with an order entered in August 2011.

## **Thurston County**

**January 2013:** Withdrew charges against chiropractor **Jeffrey A. Finnigan** (CH00001437).

## **Out of State – California**

**February 2013:** Entered an agreement with chiropractor **James W. McCluskey** (CH00033686). His credential is reinstated provided he meets conditions outlined when it was revoked in 2004. McCluskey treated a patient while his license was expired, and didn't maintain or release patient records as required.

## **Department News**

### **New Department of Health Secretary – John Wiesman, DrPH, MPH**

**John Wiesman, DrPH, MPH** was appointed Secretary of Health by Governor Jay Inslee and joined the Department of Health in April 2013. He’s an accomplished transformational leader with more than 22 years of local public health experience.

John has been passionate about public health since reading a 1983 Time magazine article about disease detectives tracking Legionnaires ‘ disease, toxic shock syndrome, and HIV. It was the impetus for him to enter the profession.

He has worked in four local public health departments in Washington and Connecticut. He started his public health career in Connecticut in 1986 and was in its first group trained to provide HIV counseling and testing. During his career John has:

- Transformed health departments from providing individual clinical services to implementing policies, systems and environmental changes that make healthy choices easier and less expensive.
- Partnered with a community clinic to provide integrated primary care and behavioral health.
- Transformed Clark County Public Health into a first responder organization.

John also worked at the University of Washington School of Public Health as a project director on a back pain outcome assessment team grant.

He earned his doctor of public health (DrPH) in public health executive leadership from the University of North Carolina-Chapel Hill in 2012. He received his master of public health (MPH) in chronic disease epidemiology from Yale University in 1987 and his bachelor of arts (BA) in biology from Lawrence University in Wisconsin in 1983.

John was born and raised in Wisconsin. He and his husband have lived in Washington State since 1989.

### **Commission Composition**

The commission is made up of 11 chiropractors and three public members all appointed by the Governor. Commissioners may serve two four-year terms. If you are interested in applying for a position on the commission, or in learning more about commissioner duties, please read the information on the website <http://www.doh.wa.gov/hsqa/Professions/Chiropractic/default.htm> or contact the Program Manager at 360-236-4856 or [leann.yount@doh.wa.gov](mailto:leann.yount@doh.wa.gov).



## 2013 Commission Meeting Dates and Locations

August 8, 2013	Department of Health - Point Plaza East Room 152 and 153 310 Israel Road Tumwater, WA 98501
October 10, 2013	Department of Health – Creekside Two 20425 72 <sup>nd</sup> Ave. S., Room 307 Kent, WA 98032
December 12, 2013	Department of Health – Creekside Two 20425 72 <sup>nd</sup> Ave. S., Room 307 Kent, WA 98032

Do you have ideas or suggestions for future commission newsletters? Is there something specific that you think we should address or include? Please submit suggestions to [leann.yount@doh.wa.gov](mailto:leann.yount@doh.wa.gov).