

## Court Permits Licensed Chiropractors to Delegate Certain Adjunctive Procedures to Unlicensed Support Personnel

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Many insurers and insurance plans in Pennsylvania require covered services to be performed by an eligible professional provider (i.e. chiropractor) or performed under that provider's supervision in accordance with the licensure, certification and/or employment criteria for reimbursement. The Pennsylvania Chiropractic Practice Act (63 P.S. § 625.101 et seq.) allows for a licensed chiropractor to utilize the assistance of unlicensed supportive personnel performing under the direct on-premises supervision of a licensed chiropractor, so long as no activity or duty is delegated which requires **the formal education or training in the practice of chiropractic or the knowledge and skill of a licensed chiropractor**. (*emphasis added*) 63 P.S. § 625.601. The insurance industry attempts to avoid paying doctors of chiropractic who properly delegate adjunctive procedures to support personnel. Adjunctive procedures are defined as "physical measures such as mechanical stimulation, heat, cold, light, air, water, electricity, sound, massage and mobilization". 63 P.S. § 625.102. This begs the question – which aspects of adjunctive procedures may be properly delegated to unlicensed support personnel under the Chiropractic Practice Act?

In the recent case of *State Farm Mutual Automobile Insurance Company, et al. v. Robert J. Cavoto, Jr., et al.*, 2011 WL 5831375 (Pa.Super.), 2011 PA Super 250, the Pennsylvania Superior Court addressed this issue and concluded that the Chiropractic Practice Act and the Motor Vehicle Financial Responsibility Law permit licensed chiropractors to delegate certain adjunctive procedures to unlicensed support personnel and seek reimbursement from insurers, as long as such procedures are performed under the direct supervision of a licensed chiropractor. The Superior Court was careful to note, however, that "such determinations must be made on a case-by-case basis". *Id.* In the Cavoto case, the court focused on whether chiropractors are the only individuals who may apply hot and cold packs; turn on and off a mechanical, inter-segmental, traction machine; assist in therapeutic exercise; provide electrical muscle stimulation; utilize the ultrasound machine, and administer hydrotherapy and paraffin. The court's opinion noted that State Farm conceded that chiropractors can delegate non-specialized duties such as turning a heating pad on or off. The Superior Court followed this logic and concluded that turning a traction machine on or off clearly falls in the same category and concluded that the other tasks at issue in that case largely fall in the same, non-specialized category. However, the Court stated,

in regard to hot or cold packs, only the chiropractor may determine whether such packs should be applied, where, and how long. However, it requires no formal education or training to apply hot or cold packs according to the chiropractor's specific instructions. Similarly, most elements of applying electrical muscle stimulation, ultrasound, hydrotherapy, or paraffin do not require particularly specialized skills, as long as it is the chiropractor making the diagnosis, determining the location on the patient's body where such therapies should be applied, and the intensity of the therapy. . .[for therapeutic exercise] while some

forms of assistance, such as supplying equipment or monitoring repetitions would be innocuous, other forms of assistance, such as monitoring form or recommending equipment, may require formal education or training.” *Id.*

In conclusion, the Cavoto case provides some guidance, but the case does not resolve the issue entirely. The State Board of Chiropractic, the agency tasked with enforcement of the Chiropractic Practice Act prepared and circulated a proposed regulation to be added under the regulations in the Pennsylvania Code. If added, the regulations would identify what can be delegated and what cannot; however, the proposed regulations are a few years away from being added. In the meantime, Pennsylvania chiropractors who want to delegate certain adjunctive procedures should always seek the advice of health care attorneys and coding specialists when it comes to delegation, documentation and billing for said services.



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