

CIF and State Law Authority

For

Chiropractors to Perform Athletic Physicals and Serve as Team Doctors

Submitted by

The California Chiropractic Association

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INTRODUCTION

This legal brief demonstrates that chiropractors are duly authorized and well qualified to perform athletic physicals and serve as team doctors, and that school districts face no meaningful exposure to legal liability for utilizing chiropractors to perform these functions in the high schools.

1. Part One

Part one makes the case that CIF Rule 307 provides authority for chiropractors to screen students for participation in athletic competition and that CIF has tacitly authorized chiropractors to serve as team doctors.

Rule 307 authorizes “medical practitioners” to perform athletic physicals. When the CIF adopted the term in 1979, chiropractors were specifically enumerated in state statutes defining “medical practitioner” and were otherwise commonly understood to be included in the definition under state law. The operative legal definition of “medical practitioner” under Rule 307 revolves around the definition at or about the time the CIF rule was adopted. Since chiropractors were clearly included in that contemporaneous definition and because the provision has not changed in the intervening years, chiropractors continue to be authorized to perform preparticipation evaluations to this day. Furthermore, CIF’s course of conduct in permitting chiropractors to perform athletic physicals consistently for more than thirty years amounts to tacit approval as well.

CIF has also tacitly authorized chiropractors to serve as team doctors. CIF’s course of conduct in acquiescing to the locals’ practice of authorizing chiropractors to serve as team doctors without interruption for more than thirty years constitutes tacit approval.

2. Part Two

Part two sets forth the authority under state law for chiropractors to perform preparticipation evaluations and to serve as team doctors.

The authority for chiropractors to perform examinations resides in the authority for chiropractors to diagnose conditions, the Chiropractic Initiative Act, and various regulatory requirements. The California Board of Chiropractic Examiners issued an interpretive letter specifying that a chiropractor’s authority to diagnose includes the ability to perform examinations and is circumscribed only by the condition of compliance with chiropractic methods and techniques. The Chiropractic Initiative Act authorizes chiropractors to practice what is taught in chiropractic colleges. Physical examinations are not only taught in chiropractic school, proficiency in examinations is a minimum graduation requirement. Multiple regulatory provisions enshrine the authority of chiropractors to perform examinations as well. Preparticipation evaluations are but a sub-set of physical examinations and are therefore authorized as well.

Similarly, the functions of a team doctor are taught in chiropractic colleges and chiropractors are thus authorized to serve as team doctors as well. The brief specifically lists the core functions of a team doctor according to a definitive consensus statement and identifies the corresponding training that chiropractic colleges require applicants to complete for licensure.

3. Part Three

Part three demonstrates that chiropractors are qualified by virtue of their comprehensive education and training to perform athletic physicals and serve as team doctors.

The analysis shows in specific detail how chiropractic training prepares chiropractors to diagnose, evaluate, and manage the conditions and injuries that commonly occur with high school athletes, including cardiac abnormalities, head trauma, asthma, broken bones and soft tissue injuries, nerve damage, pathology, and eye injuries. Moreover, chiropractors have been performing more rigorous physicals for decades for commercial drivers to operate heavy vehicles, for injured workers under the workers' compensation system, and for insurance companies to certify disabilities of claimants. A majority of states and numerous elite sports organizations across the nation utilize chiropractors. This section concludes that chiropractors are surely qualified to perform examinations and serve as team doctors in the high schools since they are qualified to perform these functions by training and in these other more challenging contexts.

4. Part Four

Part four substantiates that there is no real basis for school districts to harbor concerns about legal liability for using chiropractors to perform physicals and serve as team doctors. First of all, liability concerns in connection with athletic physicals and service as a team doctor in California are simply unfounded because there is no evidence whatsoever that any chiropractic malpractice has ever precipitated a disciplinary action or an insurance claim, much less a lawsuit with an adverse judgment. Even if there were instances of malpractice, in purely legal terms, the school districts' exposure to legal liability is extremely low in any event. In virtually every case, chiropractors serve as volunteers or independent contractors in the schools, and school districts enjoy legal immunity for any malpractice they may commit. While courts may find that school districts owe a duty of reasonable care in selecting chiropractors, courts have not done so yet. Regardless, any lingering liability concerns can be alleviated by school districts if they institute a few simple preventative measures.

Overall, this brief concludes that chiropractors are not only authorized but qualified to perform athletic physicals and serve as team doctors in the high schools and concerns of legal liability on the part of school districts are unfounded.

I. CIF AUTHORIZES CHIROPRACTORS TO PERFORM PREPARTICIPATION EVALUATIONS AND SERVE AS TEAM DOCTORS

The CIF rules provide specific authority for practitioners to screen students for participation in athletic competition and general authority under which CIF is authorized to approve practitioners to serve as team doctors.

CIF is a self-governing body. The CIF Federated Council enacts statewide rules after input from the schools, the local leagues, and the regional sections. The rules are contained in the State CIF Constitution and Bylaws. In pertinent part, the Constitution authorizes the CIF to adopt rules and to promote the health, safety and general welfare of the students participating in interscholastic athletics. The Bylaws specify, among other things, the conditions of school district membership, including the requirement to screen students for participation in athletic competition. As discussed below, pursuant to these provisions and the course of conduct of the CIF, the CIF authorizes chiropractors to perform preparticipation evaluations (“PPEs”) and to serve as team doctors.

A. CIF authorizes chiropractors to perform preparticipation evaluations.

1. CIF Rule 307 authorizes chiropractors to perform preparticipation evaluations.

Rule 307 of Article 3 (“School Regulations”) of the CIF Bylaws authorizes a “medical practitioner” to screen students for participation in athletic competition. Rule 307 provides as follows:

307. Physical Examination

As a condition of membership, schools will require an annual physical examination on a school board approved form which includes a health history, **or a statement by a medical practitioner on a school board approved form certifying that the student is physically fit to participate in athletics**, before a student may try out, practice or participate in interscholastic athletic competition. A student will be excused from this physical examination provided there is a compliance with the Education Code provisions concerning Parents’ Refusal to Consent. The CIF Health and Safety Committee strongly recommends that districts use the Pre-Participation Physical Examination form that has been endorsed by the following five major medical societies: American Academy of Family Physicians; American Academy of Pediatrics; American Medical Society for Sports Medicine; American Orthopedic Sports Medicine; and the American Osteopathic Academy of Sports Medicine. All CIF schools must use Board Approved forms by the 2004-

2005 school year. (Revised May 2003 Federated Council). **NOTE:** Bylaw number changed from 306 to 307 May 2003.¹ (Emphasis added.)

Rule 307 does not expressly define medical practitioner nor does it specifically enumerate the practitioners that are included within the term. However, the key indicia of CIF's intent -- the contemporaneous definition of medical practitioner, the rule-making history, and CIF's course of conduct since the provision was adopted -- all underscore the fact that chiropractors were meant to be covered by the term medical practitioner and are therefore authorized to perform preparticipation evaluations.²

(a) The contemporaneous definition of medical practitioner included chiropractors and thus demonstrates CIF's clear intent to authorize chiropractors to perform PPEs.

Chiropractors were commonly understood to be included in the definition of "medical practitioner" when the CIF adopted the term in 1979.

A chiropractor was at the time (and still is, for that matter) considered a medical practitioner under the medical malpractice laws.³ Since a chiropractor is subject to medical malpractice, a chiropractor must logically be considered a medical practitioner in the first place.

Chiropractors were specifically defined as medical practitioners in other statutes as well in the era when the CIF adopted the term. For example, the elder abuse statutes specifically enumerated chiropractors as one of the "medical practitioners" charged with responsibility for reporting elder abuse. Under California Welfare and Institutions Code Section 9380(h) as enacted in 1983, a "medical practitioner" was defined as "a physician and surgeon, psychiatrist, psychologist, dentist, osteopath, podiatrist, **chiropractor**, resident, intern, nurse, pharmacist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code." (Emphasis added.)

¹ Unless otherwise stated, all references herein to Rule 307 will incorporate all previous versions of the rule, including its prior incarnation as Rule 306.

² While Rule 307 is not a statute per se, the following analysis of the meaning of its terms comports with legal standards of statutory construction. Standards of statutory construction provide a reliable framework of analysis to elucidate the meaning and intent of provisions adopted by any rule-making body irrespective of how the rules are ultimately codified, be it in statute or bylaws or some other form.

³ See *Richard Frank Kleefeld v. The Superior Court of Solano County*, 25 Cal. App. 4th (1994) holding that the medical malpractice laws apply to chiropractors, including the same statute of limitations laws as apply to physicians and surgeons. An official Deering's headnote in this case classifies chiropractors as medical practitioners, referring to the above point of law on "Malpractice Actions" as applying to "Physicians, Surgeons, and Other Medical Practitioners." See also *Cartwright v. Board of Chiropractic Examiners*, 16 Cal.3d 762 (1976) similarly referring to a chiropractor as a medical practitioner in the context of the revocation of the chiropractor's "medical" license. See also *A.Z. Howe v. Frank McCoy*, 113 Cal.App. 468 (1931) where a chiropractor was judged under the negligence standard for a "practitioner of the medical profession."

Similarly, the child abuse statutes enacted in 1980 enumerated chiropractors as one of the “medical practitioners” charged with the responsibility for reporting child abuse. Under California Penal Code Section 11166, a “medical practitioner” was defined even more broadly to include “physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, **chiropractors**, licensed nurses, dental hygienists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code or emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or psychological assistants registered pursuant to Section 2913 of the Business and Professions Code.” (Emphasis added.)

By about 1987, however, the term “medical practitioner” went out of vogue and was largely replaced by the term “health practitioner.” For example, the elder abuse statute collapsed the terms “medical practitioner” and “non-medical practitioner” into “health practitioner in 1987.⁴ The child abuse statute underwent the same change in 1987 as well.⁵ A chiropractor has been predominantly considered a health care practitioner ever since.

Understood in this historical context, the fact that chiropractors are not defined as medical practitioners in current law is not surprising in the least. More to the point, the degree to which chiropractors are defined as medical practitioners under current law is irrelevant to the question of whether chiropractors are authorized to perform preparticipation evaluations under the CIF rules. The relevant inquiry revolves around the definition of medical practitioner at or about the time the CIF rule was adopted. Chiropractors were clearly included in that contemporaneous definition as outlined above and, since the provision has not changed in the intervening years, chiropractors continue to be authorized to perform preparticipation evaluations to this day.

⁴ Welfare and Institutions Section 15610(i): ““Health practitioner” means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, **chiropractor**, licensed nurse, dental hygienist, licensed clinical social worker, marriage, family, and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, a person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family and child counselor intern registered under Section 4980.44 of the Business and Professions Code, state or county public health or social service employee who treats an elder or a dependent adult for any condition, a coroner, or a religious practitioner who diagnoses, examines or treats elders or dependent adults.” (Emphasis added.)

⁵ The amendment to Penal Code Section 11166.5 substituted “health practitioner” for “medical practitioner, nonmedical practitioner” after “child care custodian” in the first sentence of subdivision (a).

(b) The rule-making history shows CIF's intent to authorize chiropractors to perform PPEs.

(1) The wording of the rule indicates CIF's intent to authorize chiropractors.

Rule 307 on its face distinguishes between two alternative ways for a school to fulfill its requirement to have students cleared for athletic competition. One way for schools to clear students is to require an annual physical examination. This method was contained in the original version of the rule and has been included in all subsequent versions. At the time then-Rule 306 was adopted, a medical doctor was authorized to perform the physical examination but a chiropractor was not so authorized.⁶ The other way for schools to clear a student is to require a statement by a medical practitioner that the student is physically fit to participate in athletics. This statement is commonly referred to as a preparticipation evaluation. This method was added to the rule in 1979. Rule 307 specifies that the preparticipation evaluation can be performed by a "medical practitioner."

It stands to reason that the CIF added this alternative method to clear students in order to authorize additional practitioners to perform the screening. Medical doctors were already authorized to screen student athletes by virtue of their authority to perform physical examinations under the Education Code. The wording of the provision suggests that the alternative method was added in order to authorize chiropractors and other practitioners to perform preparticipation evaluations because they were not authorized to perform annual physical examinations for children in the schools under the state education code at the time.

(2) CIF's own statements demonstrate an intent to authorize chiropractors to perform PPEs.

Robert Packer, the CIF President at the time the term medical practitioner was adopted, has testified in writing that the CIF intended to include chiropractors under the definition of "medical practitioner."⁷

⁶ See Education Code Sections 49452 and 49455.

⁷ "I recall that it was taken up at the CIF Federation Council and that the term Medical Practitioner was developed to cover this concern. As I remember, it was decided that the local districts were to decide on the definition of Medical Practitioner. Chiropractors, Registered Nurses, EMC techs could all fall under this definition." Correspondence from Robert Packer, Past President State CIF, to Roger Blake, State CIF Assistant Director, dated January 28, 2003. While Mr. Packer mistakenly recalled that the definition applied to sideline doctors and not to physical examinations (when the CIF rules only use the term medical practitioner with reference to physical examinations), his statement is nevertheless evidence of CIF's intent to include chiropractors in the definition of medical practitioner.

(c) CIF’s course of conduct supports both an intent to authorize and a finding that chiropractors are in fact authorized to perform PPEs.

CIF’s course of conduct in permitting chiropractors to perform PPEs consistently for upwards of 33 years not only supports a showing of intent but also supports a finding that chiropractors are in fact authorized to perform PPEs.

The CIF has been permitting chiropractors to perform PPEs for its member schools since before Rule 307 was even adopted. According to the California Chiropractic Association’s records, in the 1970’s the Los Angeles College of Chiropractic, the Cleveland College of Chiropractic Los Angeles, and the Pasadena Chiropractic College provided licensed chiropractors and supervised interns to perform mass screenings for school districts in Southern California. The fact that the CIF was permitting chiropractors to perform PPEs before the rule was adopted supports the view that the CIF adopted Rule 307 to confer formal legal authority on the practice.

Furthermore, not only has CIF been permitting chiropractors to perform PPEs for more than 30 years, the CIF reaffirmed in rulemaking proceedings in 1986 its view that Rule 307 includes chiropractors. In January of 1986, the CIF proposed an amendment to then-Rule 306 to require the preparticipation evaluation to be conducted only by a physician or a surgeon. However, in May of 1986, after a public hearing in which doctors of chiropractic presented the case for continuing the authorization for chiropractors, the CIF dropped the amendment thus reaffirming its position that chiropractors are authorized to perform preparticipation evaluations.

Notwithstanding CIF’s declarations that it takes no position on the interpretation of the definition of medical practitioner,⁸ the CIF has through its actions, if not by its words, defined the term “medical practitioner” to include chiropractors. Its course of conduct in permitting chiropractors to perform physical examinations amounts to tacit approval. That CIF has sanctioned the practice of chiropractors providing preparticipation evaluations for more than 30 years and specifically reaffirmed that authority in 1986 show that CIF has taken the position that chiropractors are in fact authorized to perform preparticipation evaluations. Actions speak louder than words.

⁸ “Please be advised that the California Interscholastic Federation has taken the position not to interpret the term of “medical practitioner” as found in Rule 306 of the State CIF Constitution and By-Laws.” Correspondence from Thomas E. Byrnes, CIF Commissioner of Athletics, to Dr. Jerilynn Kaibel, President of the California Chiropractic Association, dated October 24, 1988.

2. CIF Rule 307 authorizes chiropractors to perform preparticipation physicals but does not require local sections or school districts to use chiropractors.

While Rule 307 authorizes chiropractors and other medical practitioners to screen student athletes, the CIF rules also allow local sections and school districts to adopt local rules that may be stricter as long as they do not conflict with the CIF rules.⁹

Only one such section rule, albeit of extraordinary limited application, has been adopted with respect to preparticipation evaluations. In May 2000, the CIF Southern Section adopted a rule requiring fourteen year-old student athletes to obtain clearance to play varsity football by a licensed medical doctor as a condition of participation.¹⁰ A minority of local districts have issued local rules limiting preparticipation evaluations to medical doctors, such as the Los Angeles Unified School District.

Nevertheless, the fact that a local section or district may enact a narrower rule under the CIF bylaws does not in any way detract from the main premise that the state CIF bylaws authorize chiropractors to perform preparticipation physicals in the first place.

B. CIF authorizes chiropractors to serve as team doctors.

CIF is empowered to authorize practitioners to serve as team doctors. The CIF Constitution authorizes the Federated Council, the CIF rulemaking body, to “establish policy”¹¹ and to “exercise jurisdiction over all interscholastic athletic games, events, and meets involving CIF member schools.”¹² Furthermore, the CIF Constitution authorizes the CIF to promote the health, safety and general welfare of the students participating in interscholastic athletics.¹³

⁹ “This Constitution and Bylaws are binding on all schools, leagues and Sections. The order of descending jurisdiction is as follows: Federated Council, Section, league and school. The school, the league or the Section may enact regulations which are more stringent than those adopted by higher authority. The Federated Council is the governing body of the CIF and shall establish policy. Within the framework of that policy, local Sections may establish local rules and regulations as long as they are no less stringent and do not violate state policy rules or intent.” CIF Constitution, Article 2 “Jurisdiction,” Rule 23 “Order of Jurisdiction.”

¹⁰ CIF Southern Section Bylaws, Article 19 (“Football”), Section 1900 A, requiring 14 year-old student athletes as a condition of participation in varsity level interscholastic competition to have “a letter on file from a licensed medical doctor that the student is able to compete at the varsity level,” among other requirements.

¹¹ CIF Constitution, Article 2 “Jurisdiction,” Rule 23.

¹² CIF Constitution, Article 3 “The Federated Council,” Rule 34 B.

¹³ CIF Constitution, Article 1 “Name and Purpose,” Rule 11 A: “To serve as an organization through which member high schools may mutually adopt rules and regulations relating to interscholastic athletics (grades 9 through 12), and establish agreed upon minimum standards for certain aspects of the interscholastic athletic program; to guide schools and school districts in the discharge of their responsibilities for, among other considerations, the health, safety, general welfare and educational opportunities of the students taking part in interscholastic athletics.”

1. The CIF has given tacit approval for chiropractors to serve as team doctors.

The CIF does not have an express rule authorizing any practitioner to serve as a team doctor, including chiropractors. Rather, the CIF leaves the decision to the local districts to determine.¹⁴ However, the CIF's course of conduct in acquiescing to the locals' practice of authorizing chiropractors to serve as team doctors amounts to tacit approval.

According to the California Chiropractic Association's records, since the 1970's, chiropractors have been serving as team doctors at the request of CIF member schools. On a de facto basis, the CIF has thus been permitting chiropractors to serve as team doctors for its member schools for more than 30 years. CIF's course of conduct over the years in permitting chiropractors to serve as team doctors belies any claim that CIF has not authorized chiropractors to perform this role.

2. A CIF southern section rule and associated resolution supports a finding of legislative intent to authorize chiropractors to serve as team doctors.

Only one CIF rule bears on team doctor service. A Southern Section rule had authorized only a licensed medical doctor to serve as team physician for the football team during the playoffs.¹⁵ In 1999, the Southern Section amended its by-laws to authorize "the primary health provider designated by the home team" to serve as the team doctor.¹⁶ This amendment was enacted pursuant to a resolution offered at the behest of the California Chiropractic Association and approved by the board to "allow existing personnel to serve during CIF playoff games in continuance of their duties provided during the regular season" and in recognition of the fact that "many leagues are utilizing non-M.D. personnel, including doctors of chiropractic."¹⁷ This rule and resolution ratifies the practice of chiropractors serving as team doctors and corroborates CIF's intent to authorize chiropractors to serve as team doctors.

¹⁴ "The CIF position on this has not changed. As Tom Byrnes stated in 1988, it is the position of the CIF that schools should look to their own legal counsel for this purpose and that they need to be consistent with the laws of California. It is a local choice for sidelines." Email from Roger Blake, State CIF Assistant Director, to Dr. Kenneth Martin, D.C.

¹⁵ Southern Section By-laws, Article 19 "Football," Rule 1931.2.

¹⁶ Id. as amended in 1999.

¹⁷ Resolution approved by the Southern Section CIF Board, 1999.

II. CALIFORNIA LAW AUTHORIZES CHIROPRACTORS TO PERFORM PHYSICAL EXAMINATIONS AND SERVE AS TEAM DOCTORS.

A. Chiropractors are authorized under state law to perform physical examinations.

The authority for chiropractors to perform examinations resides in the authority for chiropractors to diagnose conditions, the Chiropractic Initiative Act, and various regulatory requirements.

1. The authority for chiropractors to diagnose conditions includes the authority to perform physical examinations.

There is settled authority under California law for chiropractors to diagnose any condition, disease, or injury, including those ailments outside the scope of chiropractic practice. The authority to diagnose conditions necessarily subsumes the authority for a chiropractor to perform an examination to detect abnormalities on any patient because an examination is strictly a facet of diagnosis.

(a) California law authorizes chiropractors to diagnose conditions, diseases, or injuries.

The Chiropractic Act, adopted in 1922, authorizes chiropractors to diagnose all conditions or diseases of the human body. The Chiropractic Act specifically provides that “diagnosis” is one of the minimum education requirements to qualify candidates to practice chiropractic in California.¹⁸ State law also requires chiropractors to complete a course of instruction specifically in diagnosis consisting of at least 792 total hours, representing 18% of the total required curriculum hours.¹⁹

The California Supreme Court has confirmed the authority of chiropractors to diagnose as early as 1916. *People v. Jordan*, 172 Cal.3d 911 (1916). California decisional law has interpreted the chiropractor’s authority to diagnose broadly. For example, the court of appeal in *People v. Cabral*, 141 Cal.App.3d 148 (1983), specifically held that chiropractors were not limited by the conditions, diseases, or injuries on which they could work but rather were limited by the methods they could employ. See also *People v.*

¹⁸ “The schedule of minimum educational requirements to enable any person to practice chiropractic in this state is as follows, except as herein otherwise provided: Group 1: Anatomy, including embryology and histology (14%); Group 2: Physiology (6%); Group 3: Biochemistry and clinical nutrition (6%); Group 4: Pathology and bacteriology (10%); Group 5: Public health, hygiene and sanitation (3%); Group 6: **Diagnosis**, dermatology, syphilology and geriatrics, and radiological technology, safety, and interpretation (18%); Group 7: Obstetrics and gynecology and pediatrics (3%); Group 8: Principles and practice of chiropractic, physical therapy, psychiatry, and office procedure (25%); Electives (15%).” (Emphasis added.) Business & Professions, Appendix I, Section 5.

¹⁹ “All applicants for licensure shall be required to comply with this section in order to qualify for a California chiropractic license. . . . The course of instruction completed by the applicant shall consist of no less than the following minimum hours, except as otherwise provided: . . . Group VI: Diagnosis, including E.E.N.T. and serology, dermatology and sexually transmitted diseases, geriatrics, X-ray interpretation, and neurology (792 hours).” 17 CCR 331.12.2.

Willis, 62 Cal.App. 717 (1923) (“Manifestly, there are no fixed limits to diagnosis”); *People v. Cochran*, 56 Cal.App. 394 (1922) (“It is impossible to disassociate diagnosis from the practice of the art of healing by any physical, medical, mechanical, hygienic, or surgical means.”). Additionally, the California Attorney General has twice issued opinions finding unequivocally that chiropractors are legally authorized to diagnose conditions.²⁰ Importantly, the Attorney General has held that a chiropractor can diagnose conditions outside the chiropractor’s scope of practice because “in many instances it is necessary for a chiropractor to determine that a patient’s difficulty or ailment is outside the permissible scope of his own practice. (See e.g., 19 Ops. Cal. Atty. Gen. 201, 203 (1952).”²¹

The State Board of Chiropractic Examiners, the state agency charged with regulating the scope of practice of chiropractors, relied on this authority when it promulgated a formal regulation that authorizes chiropractors to “treat” or “diagnose” . . . “any condition, disease, or injury in any patient” consistent with chiropractic methods and within the legal scope of chiropractic practice.²² The Board has issued an interpretive letter specifying that a chiropractor’s authority to diagnose is circumscribed only by the condition that it is “done in a manner consistent with chiropractic methods and techniques.”²³ This is consistent with the Attorney General’s opinion that chiropractors can diagnose conditions outside of the permissible scope of their own practice.

(b) California law provides that a physical examination is a facet of diagnosis.

The Board of Chiropractic Examiners issued a bulletin in 1989 to declare that the statutory basis for a chiropractor to conduct physical examinations is rooted in a chiropractor’s authority to diagnose conditions. Specifically, the Board determined that “a chiropractor’s ability to perform physical examinations is established by statutory authority since diagnosis is specifically one of the educational requirements established to minimally qualify a chiropractor to practice in California. Additionally, case law and Attorney General Opinion[s] have confirmed the doctor of chiropractic’s obligation to

²⁰ See 59 Ops. Cal. Atty. Gen. 420, 422 (1976) (“the practice of chiropractic includes diagnosis”; See also 9 Ops. Cal. Atty. Gen. 309, 310 (1974).

²¹ 59 Ops. Cal. Atty. Gen. 420, 423 (1976).

²² “302. Practice of Chiropractic. (a) Scope of Practice. . . . (3) “Other than as explicitly set forth in section 10(b) of the Act, a duly licensed chiropractor may treat any condition, disease, or injury in any patient, including a pregnant woman, and may diagnose, so long as such treatment or diagnosis is done in a manner consistent with chiropractic methods and techniques and so long as such methods and treatment do not constitute the practice of medicine by exceeding the legal scope of chiropractic practice as set forth in this section.” 16 CCR 302(a)(3).

²³ “Under Section 10(b) of the California Chiropractic Act, “a duly licensed chiropractor may treat any condition, disease, or injury in any patient, including a pregnant woman, and may diagnose, so long as treatment or diagnosis is done in a manner consistent with chiropractic methods and techniques” Correspondence from M. Maggie Crow, consultant to the Board of Chiropractic Examiners, to Kenneth Martin, D.C., dated February 4, 2003.

diagnose.”²⁴ Accordingly, the Board has determined that chiropractors are statutorily authorized to perform physical examinations.

2. The Chiropractic Initiative Act authorizes chiropractors to perform examinations and preparticipation evaluations.

The Chiropractic Act specifies that chiropractic scope of practice is defined by what is taught in the chiropractic colleges. Since physical examinations are part of the core curriculum in California, chiropractors are authorized to perform physical examinations. The Board of Chiropractic Examiners has reached this precise conclusion. Preparticipation evaluations are but a sub-set of physical examinations and thus are also so authorized.

(a) Chiropractic scope of practice is defined by what is taught in the chiropractic colleges.

The Chiropractic Act authorizes licensed chiropractors to “practice chiropractic in the state of California as taught in chiropractic schools or colleges.”²⁵

(b) The study of physical examinations is part of the standard curriculum in chiropractic colleges.

The Board of Chiropractic Examiners has determined that physical examinations are a part of the core curriculum in chiropractic colleges and chiropractors are therefore authorized to perform physical examinations. The Board affirmed this view in an interpretive letter in response to a specific inquiry as to the training required of applicants for the California Chiropractic Board examination with regard to physical examinations.

In its interpretive letter, the Board identified coursework that prepares chiropractors to perform physical examinations, namely 4,400 hours of minimum education including “a specified number of hours of anatomy, physiology, pathology, and diagnosis.”²⁶ The Board pointed out the clinical training prepares chiropractors to perform physical examinations as well:

“Following the successful completion of these and other courses, the chiropractic student participates in multiple clinical diagnostic seminars and clinic rotations during which they are afforded the opportunity, under the supervision of licensed chiropractors, to perform routine and specialized physical examinations, formulate diagnostic impressions and

²⁴ Board of Chiropractic Examiners bulletin, issued by Vivian R. Davis, Executive Director, dated July 17, 1989.

²⁵ “One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated “License to practice chiropractic,” which license shall authorize the holder thereof to practice chiropractic in the state of California as taught in chiropractic schools or colleges . . .”.

Chiropractic Initiative Act, section 7 as codified in Business & Professions Code, Appendix I, Section 7.

²⁶ Correspondence from M. Maggie Crow, consultant to the Board of Chiropractic Examiners, to Kenneth Martin, D.C., dated February 4, 2003.

prognoses, treat patients and refer patients to medical specialists when clinically indicated.”²⁷

The Board concluded that physical examinations are a requisite component of chiropractors’ training (“we remain firm in our expectation of chiropractic colleges to graduate Doctor’s of Chiropractic possessing skills equal to the tasks.”²⁸).

Moreover, physical examinations are not only taught in the chiropractic colleges, competency in performing physical examinations is a minimum graduation requirement. The Board of Chiropractic Examiners issued a formal regulation back in 1980 to require students in all chiropractic colleges as minimum graduation requirement to complete “twenty-five (25) physical examinations of which at least ten (10) are of outside (not student) patients.”²⁹

Therefore, since physical examinations are a core part of the curriculum in chiropractic colleges as the Board has expressly found and as the minimum graduation requirements reveal, chiropractors are authorized to perform physical examinations under the Chiropractic Act.

(c) The components of a preparticipation evaluation are taught in chiropractic colleges so preparticipation evaluations are authorized under California law.

Chiropractic colleges teach students the components of a preparticipation patient history physical examination. After all, a preparticipation evaluation is but a limited version of the physical examination³⁰ that chiropractors are taught, as outlined above.

The CIF Health and Safety Committee recommends that schools and school districts use the history and physical examination forms that are found in Preparticipation Physical Evaluation, 2nd Edition.³¹ As part of the chiropractic curriculum, chiropractors are taught

²⁷ Id.

²⁸ Id.

²⁹ 16 CCR 331.12.2(e).

³⁰ See Albert C. Hergenroeder, *The Preparticipation Sports Examination*, Pediatric Clinics of North America, Vol. 44, No. 6, December 1997, at 1. “The preparticipation sports examination is not a comprehensive health maintenance visit because topics such as drug use, sexual activity, violence, mental health, and immunizations are not routinely addressed.” See also Pamela G. Rockwell, D.O. & David J. Alvarez, D.O., *Adolescent Sports Injuries and the Preparticipation Physical Examination*, Clinics in Family practice, Vol. 2, No. 4, December 2000, at fn 26. “The PPE is a screening tool emphasizing the areas of greatest concern in sports participation and areas identified as problems in the athlete’s history.”

³¹ “The CIF Health and Safety Committee strongly recommends that districts use the Pre-Participation Physical Examination form that has been endorsed by the following five major medical societies: American Academy of Family Physicians; American Academy of Pediatrics; American Medical Society for Family Physicians; American Orthopedic Sports Medicine; and the American Osteopathic Academy of Sports Medicine.” CIF Rule 307. Hunter S, Rich BSE, Smith DM, Tanner SM, Wilkerson L., *Pre-participation Physical Evaluation, 2nd Edition*, Minneapolis, MN, American Academy of Family Physicians, American Academy of Pediatrics, American Medical Society for Sports Medicine, American Orthopaedic Society for Sports Medicine, American Osteopathic Academy of Sports Medicine, 1997.

each of the components of both the history and the physical examination as called for in the Preparticipation Physical Evaluation protocol. Exhibit 1 provides a detailed analysis of the components of each of those examinations and the corresponding courses that are offered at a representative chiropractic college in California, namely the Southern California University of Health Sciences, to prepare students to perform those examinations. This analysis corroborates that fact that preparticipation evaluations are taught in chiropractic colleges. Therefore, chiropractors are authorized under the Chiropractic Act to perform preparticipation evaluations in California.

3. Various California regulations recognize the authority of chiropractors to perform examinations.

The Board of Chiropractic Examiners has promulgated a number of regulations that recognize the authority of chiropractors to perform physical examinations.

(a) Chiropractors routinely perform examinations on patients before treatment and regulations require a record of physical examinations they have performed.

Chiropractors routinely perform the limited history and physical examination of the type required by the CIF, including an orthopedic and neurological examination and a general health examination, on virtually all patients before commencing treatment. Furthermore, if whiplash or other neurological injuries are suspected, a visual appraisal is customary. State law requires chiropractors to record the health history and the results of the diagnosis in the chiropractic patient's chart.³²

(b) Chiropractors must refer patients to other health care providers if the examination reveals a condition beyond the chiropractor's scope of practice.

State law requires chiropractors to refer a "patient to a physician and surgeon or other licensed health care provider . . . if in the course of a diagnostic evaluation a chiropractor detects an abnormality that indicates that the patient has a physical or mental condition, or injury that is not subject or appropriate management by chiropractic methods or techniques."³³ Needless to say, a chiropractor is authorized to perform a physical

³² 16 CCR 318(a) provides: "Each licensed chiropractor is required to maintain all active and inactive chiropractic patient records for five years from the date of the doctor's last treatment of the patient . . . Active and inactive chiropractic patient records must include all of the following: . . . (3) **Patient history, complaint, diagnosis/analysis**, and treatment must be signed by the primary treating doctor. Thereafter, any treatment rendered by any other doctor must be signed or initialed by said doctor." (Emphasis added.)

³³ 16 CCR 317(w) declares it unprofessional conduct for a chiropractor to fail to refer "a patient to a physician and surgeon or other licensed health care provider who can provide the appropriate management of a patient's physical or mental condition, disease or injury within his or her scope of practice, if in the course of a diagnostic evaluation a chiropractor detects an abnormality that indicates that the patient has a physical or mental condition, disease, or injury that is not subject to appropriate management by chiropractic methods and techniques. This subsection shall not apply where the patient states that he or she is already under the care of such other physician and surgeon or other licensed health care provider who is

evaluation if he or she can be held accountable for failing to refer out a patient based on its results.

In an interpretive letter, the Board of Chiropractic Examiners has concluded that the chiropractor's authority to diagnose and obligation to refer patients out whose conditions are beyond the scope of chiropractic practice demonstrate that chiropractors are authorized to perform physicals under California law. The Board declared as follows: "It is the Board's position that these privileges and concomitant responsibilities require of chiropractors the ability to formulate precise diagnostic and prognostic conclusions. It is also the Board's position that the formulation of said conclusions is possible only after a thorough physical examination has been conducted and, when necessary, diagnostic tests have been performed and their results considered."³⁴

Thus, California law and the agency charged with regulating chiropractors' scope of practice recognize the authority of chiropractors to perform physical examinations.

B. Chiropractors are authorized under state law to serve as team doctors.

The authority for chiropractors to serve as team doctors stems from the Chiropractic Act. Just as for medical doctors and other health practitioners, there is no express statutory authorization for chiropractors to serve as team doctors. Rather, practitioners are authorized to serve as a team doctor if their legal scope of practice permits them to perform the individual functions of a team doctor. As outlined below, chiropractors are taught the individual functions of a team doctor in chiropractic colleges so they are authorized to serve as team doctors under the aegis of the Chiropractic Act.

1. The Chiropractic Initiative Act authorizes chiropractors to serve as team doctors.

The Chiropractic Act specifies that chiropractic scope of practice is defined by what is taught in the chiropractic colleges.³⁵ Since the core functions of a team doctor are part of the standard chiropractic curriculum in California, chiropractors are authorized to serve as team doctors.

providing the appropriate management for that physical or mental condition, disease, or injury within his or her scope of practice."

³⁴ Correspondence from M. Maggie Crow, consultant to the Board of Chiropractic Examiners, to Kenneth Martin, D.C., dated February 4, 2003.

³⁵ "One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated "License to practice chiropractic," which license shall authorize the holder thereof to practice chiropractic in the state of California as taught in chiropractic schools or colleges . . .". Chiropractic Initiative Act, section 7 as codified in Business & Professions Code, Appendix I, Section 7.

(a) The functions of a team doctor are part of the standard curriculum in chiropractic colleges.

In 2000, a consortium of six leading sports medicine organizations developed a consensus statement as to the functions of a team doctor.³⁶ The following analysis lists the functions of a team doctor from the statement³⁷ and identifies the corresponding training that chiropractic colleges require applicants to complete in order to qualify for a California chiropractic license.³⁸

1. Coordinate preparticipation screening, examination, and evaluation.

As outlined above, chiropractors are trained to perform physical examinations so they are all the more qualified simply to coordinate those services. In addition, coordinating management with other health care professionals is a standard component of chiropractic education.

2. Manage injuries on the field and provide for medical management of injury and illness.

Chiropractors are required to complete a broad range of courses and clinical training to prepare them to manage injuries on the field and off the field, including the following: emergency care (first aid, minor surgery, and prevention of disease); anatomy (gross anatomy, human dissection, embryology, and histology); differential and physical diagnosis (physical diagnosis including temperature, pulse, and blood pressure readings, otoscopic examinations, ophthalmic evaluations); principles and practice of chiropractic (orthopedics which typically involves examinations of extremities such as the knee, elbow, shoulder); physiology (examination of blood and lymph, circulation, respiration, excretion, digestion, metabolism, endocrines, special senses and nervous system); and pathology (general and special pathology including herpes and mononucleosis).

3. Coordinate rehabilitation and return to participation and provide for preparation for safe return to participation after an illness or injury.

In addition to the training chiropractors receive to manage injuries listed above, chiropractors are also required to complete 120 hours of physiotherapy course work and

³⁶ *Team Physician Consensus Statement* developed by the American Academy of Family Physicians, the American Academy of Orthopaedic Surgeons, the American College of Sports Medicine, the American Medical Society for Sports Medicine, the American Orthopaedic Society for Sports Medicine, and the American Osteopathic Academy of Sports Medicine © 2000.

³⁷ The CIF has not developed a statement of team doctor duties or qualifications. The consensus statement used herein is offered as a surrogate to provide a framework of analysis. The statement, however, is designed to provide guidance to medical doctors and doctors of osteopathic medicine so that while the concepts are applicable to other practitioners, the terminology may not be technically applicable. To the extent it is inconsistent with other practitioners' terminology, any inconsistencies should be discounted for that reason.

³⁸ The minimum education requirements for chiropractors are contained in 16 CCR 331.12.2.

additional clinical training in which the theory, principles and use of the standard recognized physiotherapy equipment and procedures were demonstrated to and used by the applicant. Patient education regarding the injury and treatment goals, coordinating management with other health care professionals, selecting and applying appropriate manual procedures (manipulation, mobilization, soft tissue massage, stretching procedures, etc), strength and endurance training through contemporary rehabilitation techniques, and nutritional support are part of chiropractic training and education.

4. Integrate medical expertise with other health care providers.

Chiropractors are taught to integrate their expertise with other providers. To facilitate this practice, chiropractors are required to take courses in other disciplines such as pediatrics, gynecology, orthopedics, public health, neurology, psychiatry, physical therapy, x-ray interpretation, and laboratory diagnosis, to name a number of disciplines. Additionally, chiropractors are obligated to refer patients with conditions outside the chiropractic scope of practice to other health practitioners and, accordingly, chiropractors have practical experience collaborating with other practitioners on a regular basis to treat shared patients.

5. Provide for appropriate education and counseling regarding nutrition, strength, and conditioning, ergogenic aids, substance abuse, and other medical problems that could affect the athlete.

Chiropractors are taught core elements of each of these functions, including patient counseling in curriculum subject matters; psychiatry (32 hours are required, a portion of which bears on substance and steroid abuse); biochemistry and nutrition (including the chemistry of foods, digestion, and metabolism, dietetics, and clinical nutrition in the prevention and treatment of illnesses which typically covers eating disorders); psychological counseling (clinical hours are required in psychological counseling and additional hours are recommended for elective subjects, such as counseling).

6. Provide for proper documentation and record-keeping.

Chiropractors receive education in the principles and practice of chiropractic, including case management and the writing and completion of reports and forms for insurance claims.

In conclusion, since the core functions of a team doctor are taught in the chiropractic colleges, chiropractors are authorized to serve as team doctors under the terms of the Chiropractic Act.³⁹

³⁹ For an analysis of specific courses that prepare chiropractors to serve as team doctors offered at a representative chiropractic college (i.e., the Southern California University of Health Sciences), see Exhibit two attached.

III. CHIROPRACTORS ARE QUALIFIED TO PERFORM PREPARTICIPATION EVALUATIONS AND SERVE AS TEAM DOCTORS.

By virtue of their comprehensive education and training, chiropractors are not only duly authorized to perform athletic physicals and serve as team doctors but are well qualified to do so as well. A vast number of agencies and organizations recognize the fact that chiropractors are qualified to perform these functions and, accordingly, have authorized chiropractors to perform them.

A. Chiropractic training prepares chiropractors to diagnose, evaluate, and manage the conditions and injuries that occur with high school athletes.

Chiropractors receive extensive training in chiropractic college that prepares them to handle the conditions and injuries that occur most commonly with high school athletes.

1. Cardiac Abnormalities

The most serious condition that presents the risk of death for young athletes is cardiac malformation. In athletes under 35 years of age, the vast majority of sudden deaths are due to several congenital cardiac malformations, including hypertrophic cardiomyopathy (“IHCM”),⁴⁰ Marfan’s syndrome, arrhythmias, or other cardiac conditions common to the adolescent.⁴¹ IHCM is the leading cause of sudden cardiac death in athletes under the age of 35 years, occurring in about one third of cases.⁴² Chiropractors complete a battery of courses and laboratory clinics designed to provide them with a broad base of knowledge of cardiac conditions, such as anatomy, physiology, and histology covering the dissection of the human heart and study of the human cardiovascular and respiratory systems. Techniques to detect an abnormal heart are a key component of the physical examination courses, including checking the patient’s heart for a systolic murmur (heart sound) during auscultation (listening with a stethoscope). Basic cardiac life support and first aid prepare chiropractors with the knowledge and skills to manage acute cardiac distress, including cardiac arrest, and to communicate with EMS personnel and other emergency care professionals.

2. Head Trauma

The most common injury causing death in sports-related activity is head trauma.⁴³ Twenty-one percent of all traumatic brain injuries are sports-related with the majority of

⁴⁰ Idiopathic hypertrophic cardiomyopathy is marked by a disproportionate thickening of the wall that separates the heart’s chambers. This disorder results from defective heart muscle cells that may be genetic in origin. This condition may go undetected for years and may lead to potentially fatal heart failure. Signs and symptoms occur when the thickened heart wall prevents the flow of blood in and out of the heart.

⁴¹ Barry J. Maron, *Cardiovascular Preparticipation Screening of Competitive Athletes*, *Medicine and Science in Sports and Exercise*, Volume 28, No. 12, December 1996, at 1446.

⁴² *Id.*

⁴³ Dr. Warren Bruhl, *Chiropractic Care of the Child Athlete*, *International Review of Chiropractic*, Fall/Winter 2002 44, 45.

head injuries coming from bicycling, skateboarding, and skating incidents.⁴⁴ Significant lecture and laboratory hours in neurology, physiology, anatomy, including dissection of the human brain, and pathology of head trauma conditions are routine components of chiropractic education. Chiropractic education stresses that the best way to identify concussions is to perform a mini-mental examination that consist of orientation (time, place, person, etc), concentration (digits backwards) and memory (short and long term memory recall). Emergency care courses cover return to play protocols and triage protocols, including administering pre-hospital life support (e.g., CPR, AED), monitoring the patient to detect if their health status is deteriorating, splinting, protecting patient from further harm, stabilizing the patient, and contacting advance life support.

3. Exercise-Induced Asthma

Exercise-induced asthma (“EIA”) is the most common clinical pulmonary syndrome related to exercise observed in athletes.⁴⁵ Studies have documented a 10-15% incidence of EIA in competitive athletes; the majority has no history of intrinsic asthma.⁴⁶ Chiropractic students are required to take courses and laboratory clinics in anatomy, physiology, and pathology of the pulmonary system, focusing on the study of the human cardiovascular and respiratory systems. Chiropractic training includes the same standard examination procedures (inspection, percussion, palpation and auscultation) that other health care professions are taught, including an investigation for historical clues such as severity of attack, persistence or progression of symptoms, family history of allergies, or known triggers that establish a high index of suspicion. Patient education, environmental control (identification of triggers), and pharmacologic therapy are the key components to asthma management. In the management of acute asthma attacks, chiropractic education includes standard emergency care training for respiratory and pulmonary emergencies.

4. Musculoskeletal Injuries

The abnormalities most commonly detected during the preparticipation exam are unrehabilitated musculoskeletal injuries.⁴⁷ Broken bones are extremely common among the acute injuries suffered in athletic competition.⁴⁸ Procedures to diagnose and treat injuries common to athletics such as sprains and strains, fractures, rotator cuff tears, shoulder impingement syndrome, ankle sprains, ligament and cartilage injuries of the knee, and other acute and overuse injuries are a standard part of chiropractic curricula. Chiropractors are trained to interpret the patient’s signs and symptoms relative to the history and select appropriate physical examination and other diagnostic procedures (x-ray, laboratory tests, etc.) to confirm suspicions. Doctors of chiropractic are taught standard examination strategies that include inspection, palpation, movement assessment

⁴⁴ Id.

⁴⁵ Michael P. Blackman, *Diagnosis and Management of Exercise-Induced Asthma: A Review of Literature*, *Sports Chiropractic & Rehabilitation*, Vol. 11, No. 4, 1997, at 143.

⁴⁶ Id.

⁴⁷ Pamela G. Rockwell, D.O. & David J. Alvarez, D.O., *Adolescent Sports Injuries and the Preparticipation Physical Examination*, *Clinics in Family practice*, Vol. 2, No. 4, December 2000, at fn 26.

⁴⁸ Dr. Warren Bruhl, *Chiropractic Care of the Child Athlete*, *International Review of Chiropractic*, Fall/Winter 2002 44, 46.

(active, passive, and resisted ranges of motion), orthopedic tests, neurological and vascular evaluations. Chiropractic education emphasizes the conservative management of musculoskeletal injuries of the spine and extremities. Patient education regarding the injury and treatment goals, coordinating management with other health care professionals, selecting and applying appropriate manual procedures (manipulation, mobilization, soft tissue massage, stretching procedures, etc.), strength and endurance training through contemporary rehabilitation techniques, and nutritional support are part of chiropractic training and education. Chiropractors are taught that compression, elevation, and ice therapy are effective in controlling pain and inflammation associated with traumatic, inflammatory and post-surgical disorders.

5. Nerve Damage

Common nerve injuries that occur in sporting events, such as in football most notably are often called stingers (a.k.a., burners or transient brachial plexopathy). Chiropractic students take courses and clinics bearing on the study of the human nervous system, including biochemistry, physiology, and microscopic, macroscopic and developmental anatomy of the nervous system. Chiropractors are taught to inspect the athlete for symmetry or gross abnormality or wasting of muscle, limitations of range of motion in extremities, and sensation and reflex response. Chiropractors are taught to comply with return to play protocols that require full range of motion, strength, and normal sensation and reflexes. Managing the injury may involve refusal to continue to play, rehabilitation, stabilization, soft-tissue treatment, or referring the patient for further evaluation.

6. Pathology

Common abnormalities or injuries also occur with respect to internal organs, dermatology, and female disorders. Students are taught to recognize abnormal conditions by history, signs and symptoms (visible bleeding, wounds, bruises, distention, rigid or tender abdomen, absent bowel sound, etc.) examination (palpation, auscultation, and or laboratory) of visceral, dermatological, and female conditions and make appropriate referral to medical doctors for treatment. The students are taught to first receive medical clearance for visceral, dermatological, and female conditions. If they pass, they are allowed to return to activity if not referred for further evaluation and or treatment. If the athlete sustains trauma to an internal organ, the chiropractor is trained by protocols to lay the patient on his/her back, assess ABC's, provide emergency care as needed (CPR, control bleeding, controlling shock, etc), monitor vitals, give nothing by mouth, and activate EMS.

7. Eye Injuries

The types of acute injuries most frequently seen in child athletes include loss of vision, impaired vision in one eye, diabetes, and detached retina.⁴⁹ In conjunction with the anatomy, physiology, and histology coursework, the Eyes, Ears, Nose, & Throat (EENT)

⁴⁹ Dr. Warren Bruhl, *Chiropractic Care of the Child Athlete*, International Review of Chiropractic, Fall/Winter 2002 44, 46.

course teaches students to recognize and diagnose common EENT conditions and to determine appropriate management and/or collaborative care. Chiropractors are taught to be to calm and stabilize the patient in the event of an emergency. The standard is to protect the eye from further movement by covering both eyes and initiating EMS. Referral to the MD or ophthalmologist may be required.

For a detailed analysis of the training that chiropractors receive to diagnose, evaluate, and manage the aforementioned common conditions that afflict high school athletes, refer to Exhibit 3: Chiropractic Training for Common Sports Injuries. Citations therein to coursework and clinical training refer to the curriculum offered by the Southern California University of Health Sciences, which is representative of courses offered at chiropractic colleges throughout California.

B. Chiropractors are authorized under state law to perform physicals more rigorous than athletic physicals to screen patients for a variety of other purposes.

Chiropractors perform physicals to qualify commercial truck drivers for licensure, to examine injured workers under the workers' compensation system, and to certify disabilities for insurance purposes. All of these examinations require more sophisticated diagnostic procedures than are required to render a history and physical for high school athletics.

1. Commercial driver physicals

In 1994, California amended the Vehicle Code to authorize chiropractors specifically to perform "medical examinations"⁵⁰ to screen commercial vehicle license applicants for fitness to operate heavy commercial vehicles, such as trucks over 26,000 pounds, a truck towing more than one vehicle, and vehicles transporting hazardous materials.⁵¹ The amendment conformed California law to newly-adopted federal regulations issued by the Federal Highway Administration ("FHWA").⁵²

The federal government, in its rulemaking proceedings, specifically determined that chiropractors are authorized under California law to perform physical examinations, as follows:

⁵⁰ Importantly, the legislature classified these screenings as "medical examinations." This represents evidence of legislative authorization for chiropractors to perform "medical examinations" despite the fact that chiropractors are not licensed under the Medical Practice Act.

⁵¹ Vehicle Code Section 12804.9 codifying Stats 1994 ch. 1220 (AB 3132, Katz). "Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and advanced practice nurses, or **doctors of chiropractic** who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration." (Emphasis added.) Prior to the adoption of the amendment medical doctors and, when supervised by a medical doctor, physician assistants and nurse practitioners were authorized to perform physicals for commercial vehicle drivers.

⁵² Senate Floor Analysis of AB 3132, August 8, 1994, at page 2.

“Based upon the information received in response to the NPRM (notice of proposed rulemaking), the FHWA (Federal Highway Administration) has decided that other health care professionals, including doctors of chiropractic, should be permitted to perform the driver physical. These health care professionals are licensed, registered, and/or certified under their state statutes to perform physical examinations. Chiropractors are also required to refer any patient, with any condition(s) outside their scope of practice, to M.D.s, D.O.s, and/or other medical specialists. This is consistent with what other medical practitioners do in this age of specialization.”⁵³

The FHWA based its decision in part on the fact that state law authorizes chiropractors to perform physicals for truck drivers: “Allowing a variety of health professionals to perform the required physical examinations is proper because it is currently authorized by existing State laws and such action will have no adverse effect on highway safety.”⁵⁴

The commercial driver examination is extremely rigorous, more comprehensive both in scope and detail than the athletic evaluation. First, the athletic evaluation is a screening, not a substitute for a comprehensive physical examination.⁵⁵ The commercial truck driver examination, by contrast, is a “medical examination,” and the California Department of Motor Vehicles (“DMV”) has deemed the process “comprehensive.”⁵⁶ Additionally, the commercial driver examination is governed by a comprehensive and extraordinarily detailed set of federal regulations that specify thirteen elaborate physical qualifications for drivers,⁵⁷ eighteen complex components of the examination,⁵⁸ and a voluminous health history.⁵⁹ The preparticipation evaluation for athletic participation in California schools, on the other hand, is governed by no established protocols or guidelines.

The DMV has declared that “the importance of ensuring the fitness of drivers can’t be overstated. They transport hazardous materials and wastes that can destroy a community or poison water supplies when an accident occurs. These drivers transport our school children on mountain roads and drive tankers carrying thousands of gallons of gasoline

⁵³ Federal Register, Vol. 57., No. 145, Tuesday, July 26, 1992.

⁵⁴ Id.

⁵⁵ See Albert C. Hergenroeder, *The Preparticipation Sports Examination*, Pediatric Clinics of North America, vol. 44, No. 6, December 1997, at 1. “The preparticipation sports examination is not a comprehensive health maintenance visit because topics such as drug use, sexual activity, violence, mental health, and immunizations are not routinely addressed.” See also Pamela G. Rockwell, D.O. & David J. Alvarez, D.O., *Adolescent Sports Injuries and the Preparticipation Physical Examination*, Clinics in Family Practice, Vol. 2, No. 4, December 2000, at fn 26. “The PPE is a screening tool emphasizing the areas of greatest concern in sports participation and areas identified as problems in the athlete’s history.”

⁵⁶ *The Medical Exam for Commercial Drivers*, Department of Motor Vehicles’ Guide for Physicians, July 1994, at preface. Note this publication was published just before chiropractors were authorized to perform the commercial driver physicals.

⁵⁷ 49 CFR 391.41.

⁵⁸ 49 CFR 391.43.

⁵⁹ Id.

on residential streets.”⁶⁰ When the legislature authorized chiropractors to perform these medical examinations, it is presumed that they took legislative notice of the DMV’s admonition that “the person who performs the exam must also be proficient in, and use, the medical protocols necessary to adequately perform the medical exam required by the regulations.”⁶¹

2. Workers’ Compensation Examinations

Chiropractors are statutorily authorized to function as independent medical examiners and disability evaluators in the workers’ compensation system.⁶² Both of these functions require far more sophisticated diagnostic skills than are required to render a history and physical for high school athletics.

3. Insurance Evaluations

Chiropractors are also statutorily authorized to perform physical examinations to certify the fact of disability in credit disability insurance proceedings.⁶³ Similarly, these examinations require more detailed diagnostic evaluations than the preparticipation athletic screenings.

C. A multitude of agencies and organizations deem chiropractors qualified to perform physicals and serve as team doctors.

1. A majority of states authorize chiropractors to perform these functions.

A 1993 academic study of chiropractic scope of practice based on survey responses from chiropractic licensing boards determined that more than fifty percent of state jurisdictions allow chiropractors to conduct physical examinations.⁶⁴ According to the South Dakota Chiropractor’s Association, fully thirty-two states authorize chiropractors to perform physical examinations.⁶⁵ South Dakota conducted a nationwide review in the course of ushering a provision through the South Dakota legislature in 2000 to authorize

⁶⁰ *The Medical Exam for Commercial Drivers*, Department of Motor Vehicles’ Guide for Physicians, July 1994, at preface.

⁶¹ *Id.*

⁶² See Labor Code Sections 3209.3, 4600-4601.5.

⁶³ Insurance Code 779.28. “For purposes of establishing the fact of disability in credit disability insurance, chiropractors’ certifications of disability when made within the scope of their licensure shall be acceptable as equally valid as physicians and surgeons’ certifications of disability when made within the scope of their license.”

⁶⁴ L.C. Lamm, E. Wegner, and D. Collord, *Chiropractic Scope of Practice: What the Law Allows*, Journal of Manipulative Physiological Therapeutics, Vol. 18, No. 1, 16-20 (January, 1995).

⁶⁵ Correspondence from South Dakota Chiropractor’s Association President Dr. Scott Munsterman to members, dated February 14, 2000 (copy on file with author): “According to testimony from opponents in regards to the 32 states that already allow chiropractic physicians to perform physical exams; no problems have been identified with chiropractors performing sports physicals – to our opponents knowledge as stated by Dean Krogman, lobbyist for the South Dakota Medical Association (House Health Committee testimony 1-28-00).”

chiropractors expressly to perform physical examinations for participation in high school or other athletics.⁶⁶ Exhibit four (attached) has a partial list of 17 states that authorize chiropractors to perform physical examinations, according to declarations from the various state Boards of Chiropractic Examiners.

2. Countless sports organizations authorize chiropractors to perform these functions.

Many professional athletic and sports organizations recognize the value of chiropractic care in diagnosing, preventing, evaluating, managing, and treating sports-related injuries.⁶⁷

- The Players Association of the National Football League has made chiropractic care an integral part of its sports medicine program;
- The United States Olympic Committee and several other nations’ committees selected chiropractors as attending physicians at the Olympic Games;
- Chiropractors have also been retained at many other sporting events including the Pan Am Games, Goodwill Games, National Sports Festivals, New York and Boston Marathons and Ironman Triathalons.

D. Chiropractic education contains more hours in basic science than the medical school curriculum in California.

Studies reflect that the average chiropractic curriculum contains more hours of instruction in basic science than the average medical school offers. A 1998 study of chiropractic and medical education analyzed three chiropractic and three medical programs in California, Iowa, and Texas.⁶⁸ The study found that chiropractic curricula actually includes more course hours in basic science than medical curricula does (i.e., Chiropractic = 4,822 hours and Medical = 4,667 hours). Additional findings hold that chiropractic education has more anatomy and physiology coursework hours but fewer hours in public health, and that during the first year of anatomy study, chiropractic education focuses more on the musculoskeletal and nervous systems than medical programs do (see Table 1).

Table 1: Comparison of Course Hours between Chiropractic and Medical Schools

	Chiropractic		Medical	
	Mean	Percentage	Mean	Percentage
Basic Science Hours	1416	29%	1200	26%
Clinical Science Hours	3406	71%	3467	74%
Total	4822	100%	4667	100%

⁶⁶ Id.

⁶⁷ The American Chiropractic Association Council on Sports Injuries and Physical Fitness website available at <http://www.acasc.org/indexFrame.htm>.

⁶⁸ Coulter I, Adams A, et al. *A Comparative Study of Chiropractic and Medical Education*, Alternative Therapeutics in Health Medicine, Vol. 4, 64-75, 1998.

Additional studies have reached the same conclusion.⁶⁹

In conclusion, chiropractors are qualified by training and experience to perform athletic physicals and serve as team doctors in the high schools. Chiropractors are trained to diagnose, evaluate, and manage the conditions and injuries that occur with high school athletes. They perform more rigorous physicals for other purposes under California law, such as commercial driver physicals, workers' compensation examinations, and insurance evaluations. Many organizations recognize chiropractors' proficiency in performing examinations and serving as team doctors, including most of the states in the nation and the top sports teams in the country. Since chiropractors are qualified to perform these functions in these contexts, chiropractors are surely qualified to perform them in the high schools.

⁶⁹ For example, an independent study commissioned by the South Dakota Chiropractor's Association determined that the total classroom instruction in basic science for chiropractors totaled 4,485 hours and for medical doctors totaled 4,248 hours. The classroom hours comparisons were compiled and averaged following a review of curricula of 18 chiropractic colleges and 22 medical schools based upon the 1988-89 Association of American Medical Colleges Curriculum (AAMC), Vicki Ahari, Editor, and the Chiropractic College Admissions and Curriculum Directory 1988-89, K. Magarian and K. McNamee, editors. (Study on file with author.)

IV. UTILIZING CHIROPRACTORS TO PERFORM EVALUATIONS AND SERVE AS TEAM DOCTORS DOES NOT PRESENT AN ADDITIONAL RISK OF LIABILITY TO THE SCHOOL DISTRICTS.

There is no real basis for school districts to harbor concerns about legal liability for using chiropractors to perform physicals and serve as team doctors. This practice does not present any meaningful risk of legal liability to school districts. First of all, there is no documented evidence of any chiropractic malpractice having been committed along these lines in California or in the rest of the states across the nation for as far back as records have been maintained. Even if there were instances of malpractice, in purely legal terms, the school districts' exposure to legal liability is extremely low in any event, and can be limited further yet by instituting a few preventative measures.

A. There is no evidence that a chiropractor has caused injury or committed malpractice in performing these functions at any level of athletic competition.

By all appearances, liability concerns in connection with athletic physicals and service as a team doctor in California are simply unfounded because there is no evidence that any chiropractic malpractice has ever precipitated a disciplinary action or an insurance claim, much less a lawsuit with an adverse judgment.

1. There is no record of any disciplinary action taken against chiropractors for athletic physicals or service as a team doctor.

The Director of Enforcement of the California Board of Chiropractic Examiners is not aware of any disciplinary action taken against a chiropractor for the performance of athletic physicals or service as a team doctor during her tenure over the last seven years.⁷⁰ More specific data is not available because the Board database is not searchable by disciplinary action. Currently there are approximately 16,000 California-licensed chiropractors.⁷¹

2. There is no record of insurance claims having been filed against chiropractors for athletic physicals or service as a team doctor.

Two major insurance companies that collectively underwrite malpractice insurance for more than one-half of the chiropractors practicing in California today have issued declarations stating that no insurance claims have been filed with them against chiropractors in California for the performance of preparticipation physical examinations or for service as a team doctor for as far back as their records go. The declarations are attached as Exhibit 5.

⁷⁰ Interview with Kim Smith, Executive Director of the California Board of Chiropractic Examiners, September 25, 2003.

⁷¹ Id.

The National Chiropractic Mutual Insurance Company confirms that its database of claims from 1991 to present registers no claims against chiropractors providing pre-athletic examinations to athletes at any level of competition nationwide. The database registers one claim for service as a team doctor in New York State, but that claim was settled for “nuisance value.” NCMIC insures more than 34,000 doctors of chiropractic, which represents more than half of all licensed chiropractors in the United States.

The National Chiropractic Council testifies that it has received no claims against chiropractors for the performance of preparticipation physical examinations and for service as a team doctor at any level of competition according to its database covering the period 1986 to present. The National Chiropractic Council has been operating as an insurance provider to chiropractors since 1986, currently insuring more than 1,200 chiropractors in California alone.

3. There is no record of any lawsuits finding chiropractors liable for athletic physicals or service as a team doctor.

As it appears from an exhaustive review, no cases alleging chiropractic malpractice in connection with athletic physicals or team doctor service have been adjudicated by the California courts, or at least no such cases have ever been published by the California courts. Furthermore, a comprehensive review of case law in the other forty-nine states and at the federal level similarly turns up no cases adjudicating a chiropractor’s liability for negligence as an examiner or as a team doctor, much less a case implicating a school district’s liability in that area.

B. School districts’ exposure to legal liability is extremely low.

The legal analysis of school districts’ liability for negligence on the part of a chiropractor or on the part of a school reveals that school districts’ exposure to legal liability is extremely low.

That fact that no cases adjudicating chiropractic malpractice in connection with athletic physicals and team doctor service appear to exist strongly suggests that school districts’ legal liability is extremely low. Strictly as a legal proposition, however, the precise question of a school district’s liability as to a chiropractor’s or any other health care practitioner’s performance of a physical examination or service as a team doctor would appear to be a case of first impression.

Nonetheless, tort law principles applicable to health care providers in the schools bear on this issue and reveal that the legal liability for school districts in this regard is indeed very low. California law indicates that school districts face no meaningful exposure under theories of vicarious liability or negligence per se. Furthermore, any exposure that may arise, particularly for direct negligence, can be protected against by taking a few preventative measures to limit legal liability.

1. No vicarious liability

The theory of vicarious liability posits that a person or entity is legally responsible for the negligence committed by a person under their control or employ. California law gives school districts broad immunity from lawsuits based on the negligence of volunteers and independent contractors. While California law does hold school districts liable for the negligence of an employee, this is not a real concern here as chiropractors rarely, if ever, serve in the schools under an employment relationship.

Furthermore, it should be noted in any event that vicarious liability only attaches if the chiropractor is found negligent in the first place. It is difficult to prove the four elements of negligence: a duty of care, breach of that duty, the breach caused harm, and the patient suffered damages.⁷²

It is particularly difficult to prove breach of the standard of care. A chiropractor is required by law to use the same degree of care, diligence, and skill in the treatment of his or her patients as is possessed and used by prudent, skillful and careful practitioners of the same school practicing in the same community.⁷³ Because the standard of care applicable to chiropractors is established in reference to its own system, a chiropractor must employ the same methods recognized and approved by practitioners of chiropractic medicine.⁷⁴ A chiropractor who uses skills commensurate with those used by other chiropractors is not liable, regardless of the outcome of the treatment.⁷⁵

(a) School districts are immune from tort lawsuits for malpractice committed by a volunteer chiropractor.

As a matter of law, unpaid volunteers for public agencies such as schools are not considered employees and hence liability for their tortious conduct cannot be vicariously imposed on public agencies.

The California Tort Claims Act insulates a public entity from liability for any injury caused by an act or omission of the public entity, or a public employee, or any other person unless a statute provides otherwise.⁷⁶ Liability must be based on a specific statute,

⁷² “If any one of these four elements is not there,” Dr. Pelton continues, “the malpractice action fails. When we talk to doctors (of chiropractic) about this, their comfort level tends to go up because they realize there is more to malpractice than just something bad happening,” *Journal of the American Chiropractic Association, Malpractice: Without Conscientious Care and Record Keeping, You Could Lose It All*, September 1999, 7-15, 8.

⁷³ *Abos v. Martyn*, 31 Cal. App. 2d 705, 713, (1939); *Ellinwood v. McCoy*, 8 Cal. App. 2d 590, 593, (1935); *Howe v. McCoy*, 113 Cal. App. 468 (1931).

⁷⁴ *Ellinwood v. McCoy*, 8 Cal. App. 2d 590, 594, (1935).

⁷⁵ *Ellinwood v. McCoy*, 8 Cal. App. 2d 590, 594, (1935).

⁷⁶ Government Code Section 815: ““Except as otherwise provided by statute: (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.”

rather than on common law.⁷⁷ Government Code Section 815.2 does provide statutory authority for liability of a public entity for acts or omissions of a public employee.⁷⁸

However, in *Aurora Munoz v. City of Palmdale*, 75 Cal.App.4th 367 (1999), the court of appeal held that an unpaid volunteer is not an employee as a matter of law. The court found a municipal senior center immune from vicarious liability for the actions of an unpaid volunteer who negligently placed a hot pot of coffee on a shelf which injured an employee when it spilled on her. Citing clear legislative intent to provide tort immunity for actions of volunteers categorically, the court refused to enter into an analysis as to whether the unpaid volunteer was acting as an employee under the direction and control of the City in preparation and service of refreshments at the senior center.⁷⁹

Thus, school districts are immune from tort on a theory of vicarious liability for chiropractors who perform physical examinations and serve as team doctors on a volunteer basis, which is the arrangement in the overwhelming majority of cases.

(b) School districts are immune from tort lawsuits for malpractice committed by an independent contractor chiropractor.

Independent contractors working for public agencies such as schools are excluded from the definition of employee by statute and therefore liability for their tortious conduct cannot be imposed on a vicarious basis.

The term employee as defined in the Government Code includes an “officer, judicial officer, employee, or servant, whether or not compensated, **but does not include an independent contractor.**”⁸⁰ (Emphasis added.)

Whether a chiropractor is considered an independent contractor, on the one hand, or an employee or servant, on the other hand, depends on the nature of the relationship between the chiropractor and the school.⁸¹

⁷⁷ See *Townsend v. State of California*, 191 Cal. App. 3d 1530, 1533 (1987). “The legislative committee comment to that section states in part: ‘This section abolishes all common law or judicially declared forms of liability for public entities . . . public entities may be held liable only if a statute . . . is found declaring them to be liable. . . . [The] practical effect of this section is to eliminate any common law governmental liability for damages arising out of torts.’”

⁷⁸ Government Code Section 815.2(a): “A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.”

⁷⁹ *Aurora Munoz v. City of Palmdale*, 75 Cal.App.4th 367, 370 (1999). “The Legislature intentionally omitted right of control as a component of the volunteer exclusion in section 3352, subdivision (i). Instead, the Legislature drew a bright line between unpaid volunteers at public agencies and private, nonprofit organizations on the one hand, and unpaid volunteers at private, profit-making organizations on the other.”

⁸⁰ Government Code Section 810.2.

⁸¹ *Townsend v. State of California*, 191 Cal. App. 3d 1530, 1534 (1987). “Applicability of the doctrine [of vicarious liability] in any given case, however, still requires an individualized determination of whether a

In *Townsend v. State of California*, 191 Cal. App. 3d 1530 (1987), the court of appeal found that a scholarship student athlete was not an employee of a school and thus San Jose State University was not liable for his attack on another player in a basketball game. The court cited a number of factors which are to be applied in making this determination.⁸² The court identified two factors of greatest significance. One is the degree of control the master may exercise over the details of the work.⁸³ The other is whether or not the work is in the regular business of the putative employer.

The court based its decision in large part on the fact that the University was not in the business of basketball, as follows: “Thus, conceptually, the colleges and universities maintaining these athletic programs are not in the “business” of playing football or basketball any more than they are in the “business” of golf, tennis or swimming. Football and basketball are simply part of an integrated multi-sport program which is part of the education process. Whether on scholarship or not, the athlete is not “hired” by the school to participate in interscholastic competition.”⁸⁴

Applying the factors to the case of chiropractors performing examinations and serving as team doctors demonstrates that only in rare circumstances would a master-servant relationship pertain. First of all, chiropractors are specialists and thus are not subject to control or direction from school personnel. Second, high schools are not in the business of providing health care, even less so than Universities are in the business of basketball. And, public policy considerations militate against a finding because, as the *Townsend* court reasoned, education institutions should not be exposed “to vicarious liability for torts committed in athletic competition” as it would “create a severe financial drain on the State’s precious educational resources.”⁸⁵

master-servant relationship exists between the tortfeasor and the defendant on which plaintiff seeks to impose vicarious liability.”

⁸² Id. The Restatement Second of Agency Section 220, subdivision (2)(a) sets forth criteria or factors to be considered in making this latter determination as follows: “. . . the extent of control which, by the agreement, the master may exercise over the details of the work; (b) whether or not the one employed is engaged in a distinct occupation or business; (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; (d) the skill required in the particular occupation; (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (f) the length of time for which the person is employed; (g) the method of payment, whether by the time or by the job; (h) whether or not the work is a part of the regular business of the employer; (i) whether or not the parties believe they are creating the relation of master and servant; and (j) whether the principal is or is not in business.”

⁸³ Id. “The Restatement ultimately defines servant as ‘. . . [a] person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other’s control or right to control.’ (Rest.2d. Agency, § 220, subd. (1).)”

⁸⁴ *Townsend v. State of California*, 191 Cal. App. 3d 1530, 1536 (1987).

⁸⁵ Id. at 1537.

(c) School districts are liable for malpractice of an employee chiropractor but that is rarely, if ever, the arrangement under which chiropractors serve the schools.

Governmental immunity does not bar the imposition of legal liability against school districts or other public agencies for the tortious conduct of their employees.

Government Code Section 815.2 provides statutory authority for liability of a public entity for acts or omissions of a public employee.⁸⁶ Additionally, the Education Code provides that the governing board of a school district is liable in the name of the district for any judgment against the district on account of injury to person or property arising because of the negligence of the district, its officers, or employees.⁸⁷

However, it is hard to imagine a scenario under which chiropractors would be deemed employees of the school under the established criteria governing that determination. It is rarely, if ever, the arrangement that chiropractors would by agreement take direction from school personnel on the details of their work, seek remuneration, and use equipment and materials provided by the schools. Therefore, it is exceedingly unlikely that a chiropractor would be considered an employee within the purview of the liability statute. Accordingly, school districts would rarely, if ever, be exposed to liability on a theory of vicarious liability.

2. No “negligence per se”

Contrary to the opinion of the San Bernardino County Counsel, school districts do not face exposure to liability based on a theory of negligence per se.

Counsel’s argument can be condensed as follows.⁸⁸ Negligence per se arises when a violation of a statute or other rule promulgated to protect a class of persons is violated by a defendant sued for negligence. If a plaintiff can demonstrate such a violation of a statute or rule, the law raises a presumption of negligence and the burden of proof shifts to the defendant to show affirmatively that he is not negligent. Suppose a student athlete dies of an undiagnosed heart condition. The violation in this case would be that the district is negligent in conducting the physical examination and not discovering the condition because it used a chiropractor instead of a medical doctor. If a plaintiff’s lawyer were able to convince the judge that the CIF rule or some statute required the district to utilize a medical doctor to perform the examination and in not doing so the district violated the rule or statute, the burden of proof would be shifted to the district to demonstrate that a medical doctor would not have discovered the condition either – a very difficult burden for the defendant school district. The conservative interpretation is that the CIF rule requires a medical doctor to perform the examination.

⁸⁶ Government Code Section 815.2(a): “A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.”

⁸⁷ Education Code Section 903.

⁸⁸ Correspondence from Chief Deputy Counsel Daniel B. Haueter to Dr. Jerilynn S. Kaibel, May 10, 1996.

Putting aside counsel's analysis of the legal standards of negligence per se, counsel's opinion is fatally flawed from the start because it is based on the erroneous interpretation that CIF "requires" the use of a medical doctor to perform a physical examination. Under no plausible construction of Rule 307 can it be said that the CIF "requires" the use of a medical doctor. The CIF itself has repeatedly stated that it takes no position on which medical practitioners can perform athletic physicals.⁸⁹ In fact, the CIF has specifically declined to interpret whether a chiropractor itself is included in the definition.⁹⁰ If the CIF affirmatively disallowed chiropractors, then it would have said as much. The most one can even arguably claim is that CIF is agnostic on the issue. The contention that CIF "requires" medical doctors is therefore specious on its face. Moreover, the claim is flatly contradicted by the fact that chiropractors have been performing physicals in the schools for more than 30 years. If the CIF actually required the use of medical doctors, the CIF would have undertaken to stop chiropractors from performing physicals. Of course, the CIF has not done so.

The opposite is actually true. The CIF authorizes chiropractors to perform physicals by its course of conduct in permitting chiropractors to perform physicals in the high schools continuously and without interruption over numerous decades.

Finally, counsel opines that if Rule 307 "were to use the term 'health practitioner' rather than 'medical practitioner,' we would have little trouble concluding that chiropractors were included."⁹¹ The linchpin of counsel's argument is that the child abuse reporting statute uses the term "health practitioner" specifically to include a chiropractor. However, in point of fact, as explained in part one, that very child abuse statute offers proof that a chiropractor is defined as a "medical practitioner" under Rule 307 and is thus authorized to perform physicals. At or about the time the CIF adopted the term medical practitioner, that same child abuse reporting law used the term "medical practitioner" specifically to include a chiropractor. The operative legal definition of medical practitioner revolves around the understanding of the term contemporaneous with the adoption of the rule. Therefore, by counsel's own logic, there should be "little trouble concluding that chiropractors were included" and are legally authorized to perform physical examinations.

⁸⁹ Correspondence from John J. Hayes, Executive Director of the California Interscholastic Federation, to Dr. Michael Pedigo, dated August 14, 1996. "The interpretation of "medical practitioner" in Bylaw 306 is left to Board policies and legal advisors of school districts throughout the state. There is no one interpretation acceptable to all districts. We know this from many, many discussions over the past decade."

⁹⁰ Correspondence from Thomas E. Byrnes, Commissioner of Athletics of the California Interscholastic Foundation, to Dr. Jerilynn S. Kaibel, President of the California Chiropractic Association, October 24, 1988. "We are in receipt of your correspondence of October 17, 1988. Please be advised that the California Interscholastic Foundation has taken the position not to interpret the term "medical practitioner" as found in Rule 306 of the State CIF Constitution and By-Laws. It has been the position of the CIF that school districts, be they public or private, should look to their own legal counsel for purposes of interpreting what functions can or cannot be performed by a medical practitioner, consistent with what they are entitled to do, consistent with the laws of the state of California."

⁹¹ Opinion of the San Bernardino County Counsel, *Permissibility of Using a Chiropractor for Annual Student Physical Examination*, by Chief Deputy County Counsel Daniel B. Haueter, May 1, 1992.

A theory of negligence per se based on the claim that CIF requires medical doctors to perform physical examinations is therefore without foundation.

3. Liability is possible for direct negligence for failure to screen chiropractors but that is no different than the liability with respect to medical doctors.

While school districts do not have a duty to provide medical care to student athletes,⁹² it is possible that courts will find that school districts owe a duty to exercise reasonable care when school districts do authorize health care providers to work on student athletes.

General law principles hold that a person is liable for injuries caused by his or her failure to exercise reasonable care in the circumstances.⁹³ Apparently there is no specific authority on point finding school districts liable for the failure to exercise reasonable care in authorizing health care providers. However, a duty could be imposed depending on many factors such as foreseeability of any harm and the closeness of the connection between the school district and the chiropractor.⁹⁴

In any event, an analysis of the factors as to chiropractors militates against a finding of a duty. First, as detailed above, there is no evidence that a chiropractor has caused injury or committed malpractice in performing examinations or serving as a team doctor in California. This clean record counts against a finding of foreseeability of the harm. Also, the connection between chiropractors and school district is attenuated; chiropractors work as self-directed specialists and almost always serve as volunteers or independent contractors in the schools.

Moreover, any duty that a court may find applicable to school districts with regard to chiropractors will certainly apply equally to school districts with respect to medical doctors and other health care practitioners.

4. School districts can take measures to help alleviate liability exposure.

Although the risk of liability is low in the first place, school districts may institute a number of preventative measures to protect against exposure to liability. These practices can help alleviate liability exposure.

⁹² Education Code Section 49471. “If the governing board of any school district maintaining junior high schools or high schools does not provide or make available medical and hospital services for pupils of the district injured while participating in athletic activities, in accordance with Section 49470, the board shall notify, in writing, the parent or guardian of each pupil of the district participating in such athletic activities that the services are not provided or made available by the governing board.”

⁹³ See *Rowland v. Christian*, 69 Cal.2d. 108 (1968); see also Civil Code Section 1714.

⁹⁴ *Rowland v. Christian*, 69 Cal.2d. 108, 112-113 (1968).

(a) Ensure that practitioner is in good standing.

As part of the selection process of practitioners, school districts should require practitioners to submit to the district a certificate of good standing issued by the appropriate oversight board. The State Board of Chiropractors issues certificates for chiropractors. Also, school districts should review the practitioner's file for disciplinary action; the State Board of Chiropractors maintains an on-line directory. These actions will alleviate exposure for negligent screening of chiropractors.

(b) Use volunteers and/or independent contractors, not employees.

To mitigate exposure for vicarious liability, school districts should use volunteers and/or independent contractors to perform the physicals and serve as team doctors. Also, school districts should execute agreements with practitioners stating that there is neither an employment relationship nor an agency relationship between the school and the practitioner.

(c) Have parents sign a consent form.

School districts should have parents sign a consent form signifying their assent to their child's participation in athletic competition and to the evaluation and treatment by the designated practitioner. This would help defeat liability on the basis of the school district's "apparent authority."

(d) Have parents sign a hold harmless agreement.

School districts may also seek to have parents sign a hold harmless and indemnification agreement, although in practice that may prove difficult to obtain.

(e) Require practitioners to submit a certificate of insurance.

Insurance carriers cover negligence in the performance of physicals and team doctor service.⁹⁵ School districts should require practitioners to provide schools with a certificate of insurance to prove coverage.

⁹⁵ See NCMIC Insurance Company Professional Liability Insurance Policy which defines covered professional services to include "the rendition of chiropractic services to a sports team, but only if the sports team is accredited by an academic or other sanctioning organization," at Definitions 6(f). See also correspondence from Kent Forney, General Counsel of NCMIC, to Garrett Cuneo, Executive Director of the California Chiropractic Association, dated August 24, 1989: "NCMIC's policy provides coverage for the rendering or failure to render professional services to the patient. Such a pre-athletic physical would be considered to be the rendering of professional services to a patient."

CONCLUSION

As this brief sets forth, chiropractors are duly authorized to perform athletic physicals and to serve as team doctors by both CIF rules and its course of conduct as well as by state law and precedent. When the CIF authorized “medical practitioners” to perform physicals nearly 25 years ago, chiropractors were considered “medical practitioners” under state law and the CIF had chiropractors specifically in mind. Chiropractors have been performing physicals and serving as team doctors in the high schools consistently for decades, and the authority to do so persists today.

Chiropractors are not only authorized to perform these functions, they are well qualified by virtue of their comprehensive education and training. A vast number of agencies and organizations recognize this fact, including multiple California regulatory agencies who utilize chiropractors to conduct more rigorous physicals, a majority of the states in the nation, and countless elite sports organizations from the United States Olympic team to the National Football League.

Moreover, there is absolutely no reason for the CIF or the individual school districts to discontinue using chiropractors. Concerns of legal liability are unfounded. Chiropractors do not expose school districts to additional legal liability. There has not been one disciplinary action, not one insurance claim, and not one adjudicated case in California for chiropractic malpractice in the performance of an athletic physical or service as a team doctor. School districts have immunity anyway for the malpractice of chiropractors who serve as volunteers or independent contractors, the capacity in which chiropractors serve in the schools in virtually every case on record. Even still, school districts can adopt a few simple preventative steps to alleviate any lingering concerns of liability.

Chiropractors are the preferred choice of many school districts up and down the state to perform physicals and to serve as team doctors. It would be a shame in the name of the law to deny school districts their freedom to exercise that prerogative and to terminate the decades-long partnership they enjoy with chiropractors when there is positively no legal reason to do so.