

## Questions and Answers Regarding SCASA Memo

Editorial Staff

Questions Regarding Florida Attorney General's SCASA Memorandum:

1. Is the Florida Attorney General's office correct in concluding that "straight chiropractic," as taught in SCASA colleges, does not involve physical diagnosis?
  2. Was the Attorney General's office correct in determining that a lack of physical diagnosis would "submit the public to unwarranted and perhaps life-threatening conditons?"
  3. Is the recognition of SCASA by the U.S. Department of Education equivalent to the U.S. Department of Education's recognition of the CCE?
  4. Was the Florida Board of correct in not recognizing SCASA graduates?
  5. Should a state with a primary care scope of practice, which requires physical diagnosis, approve colleges that are accredited by SCASA?
  6. How will Florida's decision affect the chiropractic profession throughout the rest of the country?
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Fred Barge, D.C.

Answer to Question #1:

The conclusion reached by the Florida Attorney General's office, I presume, was arrived at after a review of materials, documents and statements from appropriate sources. It would be reasonable to assume that the attorney general interviewed some individuals as well. Not being privileged to the same information, it is impossible to comment on the correctness of his conclusion.

Answer to Question #2:

In judicial or legal language, this is what is called a "parade of imaginary horrors." It is always possible to imagine situations where this could happen. I would be very interested in seeing any data on public safety from states that accept SCASA graduates. It is important to recognize, however, that accreditation of educational institutions is only one link in a rather long chain of certification that runs through the National Board of Chiropractic Examiners and ends in the hands of state examining, licensing and disciplinary authorities. In the final analysis, these bodies hold the responsibility for assuring that licensure candidates are responsible to the public welfare and safety, regardless of where a DC earns his degree.

Answer to Question #3:

The question of equivalent recognition by the U.S. Department of Education is a truly complex one. At first blush, one might conclude that because the CCE and SCASA are both recognized as specialized accrediting agencies, they are indeed equivalent. However, a deeper look into the

questions as to how and what the Department of Education recognizes is in order.

Specialized accreditation is program accreditation and where an institution conducts one or a limited number of degree offerings, program accreditation becomes synonymous with institutional accreditation. Regional accreditation, in contrast, is institutionally oriented and not programmatically oriented.

The CCE has been accepted as an authority for "programs leading to a D.C. degree." SCASA has been recognized for programs "in straight chiropractic education." At this point, the notion of equivalence begins to break down.

In addition, when recognizing SCASA as an acceptable authority, the Assistant Secretary for Post-Secondary Education, Kenneth D. Whitehead, advised then Secretary William Bennet that "straight chiropractic education represents a separate field of study." Arguments could be made that a separate field of study (straight chiropractic) does not imply equivalence within another, albeit a similar field of study (chiropractic).

In my opinion, therefore, the answer to your question about equivalence is both yes and no, depending on how deeply you wish to look into the issue.

Finally it is important to note that apart from bureaucratic similarities or differences between CCE and SCASA, there are vast differences in terms of scale.

The CCE is the framework within which the vast majority of chiropractors in the U.S. receive their education. Approximately 10,000 students attend CCE colleges, whereas SCASA school enrollment stands at around 300. Indeed, we are talking about the status of a tiny minority, three percent of the chiropractic educational system.

Answer to Question #4:

Whether or not the Florida board was correct in not recognizing SCASA graduates is impossible to answer unless we were to have access to all of the opinions and documents that the Florida board was privileged to. As we were not, the question is moot.

Answer to Question #5:

Each state has established standards of performance and responsibility for candidates for licensure. Only the licensing authority in the jurisdiction involved can answer this question. We have national and state board examinations to judge the fitness of graduates, and I personally feel that this is the point at which such determinations ought to be made.

Answer to Question #6:

Because of the small numbers of SCASA graduates, it is not likely to have an enormous impact on the profession at large. However, I hope it will help the profession to once and for all focus upon what realm of diagnostic responsibility chiropractic should assume. All specialty fields, including dentistry and podiatry, are faced with this question. Chiropractors must be responsible to the patient's welfare, to the patient's safety, and to the public's safety. This requires not only a sound understanding of our diagnostic responsibilities, but a responsible policy on referral. In this process, the basic issue of the patient's need for and the potential benefits from the chiropractic adjustment must not be eclipsed. From my perspective, the appropriate diagnostic level of the chiropractic practitioner is that which is necessary to determine the need for chiropractic care, contraindications to chiropractic care, the need for concurrent care or frank patient referral.

In the final analysis, all specialty care, portal of entry practitioners rely on referrals to the medical specialties and their attendant facilities for complete and comprehensive diagnosis. The utility of duplicating their capacities is limited by the specialized and unique nature of chiropractic care.

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James W. Healey, D.C.

Answer to Question #1:

No. In providing physical health care services to the patient, any health care provider, whether straight or mixing chiropractor or even non-chiropractor, must first be able to identify the abnormal physical condition which they are authorized to address. SCASA does not advocate taking care of abnormal physical conditions without first identifying them or without legal authority to address them.

SCASA accredited colleges have within their programs the courses necessary to prepare the student to identify and classify the abnormal physical conditions which they address. Apparently, the Florida board counsel did not examine the catalogue of these colleges or chose to ignore the actual course listings involved. In addition, to my knowledge, there were no inquiries made to SCASA or these colleges regarding this issue prior to arriving at this conclusion. It is a wrong conclusion which was reached without thorough investigation.

Answer to Question #2:

Yes. As I noted previously, providing physical care to a patient without first identifying the abnormal physical condition addressed, is not possible. In terms of patient safety, certain specific procedures or care may even be contraindicated or harmful.

SCASA's position on patient safety is that the chiropractor should recognize the chiropractic condition and contraindications to chiropractic procedures. Also, in the course of identifying the chiropractic condition, the chiropractor is responsible for recognizing non-chiropractic abnormal physical findings, should they present themselves in the course of the chiropractic examination. SCASA's criteria for patient safety are used by SCASA colleges.

Although I can agree with Florida Board Counsel Bender in answer to the specific question, it does not support the conclusion to bar properly educated and safe SCASA college graduates from practice. Her overall reasoning is incorrect.

Answer to Question #3:

Yes. CCE and SCASA, in applying for recognition by the U.S. Department of Education, went through the same process of petitioning and review. Steven Pappas, chief, Accrediting Agency Evaluation, U.S. Department of Education, answered a similar question in October of 1989, noting that "[i]n recognizing the Straight Chiropractic Academic Standards Association, Inc., the question of 'higher' or 'lower' recognition of your association is not a relevant consideration."

The difference between the accrediting agencies in chiropractic lies not in their level of recognition, but in the school of thought within the overall chiropractic profession which they serve; i.e., SCASA, as it has always maintained, serves straight chiropractic colleges, CCE though it seems reluctant to say so, serves mixing chiropractic colleges.

Answer to Question #4:

No. As mentioned earlier, SCASA graduates are properly educated to practice safely and effectively, consistent with Florida laws. SCASA graduates are already practicing in Florida with no harm to the public.

The board used a wrong conclusion from the Florida board counsel to reach a wrong conclusion about the education provided at SCASA accredited institutions. Florida law for the Department of Professional Regulation states that an eligible graduate is one who graduates from a chiropractic college "accredited by or having status with an agency or its successor which is recognized by the U.S. Office of Education [Department of Education] or by the department---" (emphasis added). SCASA is recognized by the U.S. Department of Education. SCASA clearly meets the requirements of this law and SCASA graduates should, therefore, be eligible for licensure examination by this provision. The board exceeded its authority by excluding SCASA graduates. It is not granted the power to change the law to suit the whims of its members.

Answer to Question #5:

Yes. Colleges accredited by SCASA adhere to the concept of a primary care provider in the preparation and training of its students, consistent with Florida laws and the laws of other states.

Answer to Question #6:

This decision will undoubtedly affect the chiropractic profession nationwide. It will be viewed in a number of ways.

Rational thinking chiropractors and others will see it as absurd and wasteful. It will be seen as an overt and hostile attempt to limit SCASA, SCASA colleges, and straight chiropractic generally which, of course, has been a scenario repeated time and time again; each time costing our profession dearly in time, money, and energy. Or, perhaps it may be seen as a mistake which could easily and quickly be corrected. Ultimately, though, it will be an embarrassment to the Florida board and its counsel.

I believe it may also be seen by a bigoted minority as a triumph over what they perceive as the "enemy" in straight chiropractic. I'm sure there will be some who will applaud the decision, knowing full well that it is wrong, illogical and perhaps even illegal, but also knowing that it will unnecessarily burden SCASA, SCASA colleges and their graduates to right the wrong.

It is disturbing that Dynamic Chiropractic should be posing questions like these to select members of the profession, for at least two reasons:

One reason regards the individuals asked to respond. One may assume, though it's not wholly obvious, that there was an attempt to balance ideologies in certain areas. For example, Dr. Gelardi presents a straight college and Dr. Miller a mixing college, myself the straight accrediting agency, and Dr. Drake the mixing accrediting agency. Notably lacking, however, was Dr. Douglas Gates, president of FSCO, the straight national organization, when Drs. Lucido and Barge, presidents of the two non-straight organizations have been included.

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T.A. Gelardi, D.C.

Answer to Question #1:

No. Gould's Medical Dictionary defines "physical diagnosis" as "to determine physical abnormalities." All colleges of straight chiropractic teach students to determine physical

abnormalities. Doing so is indispensable to safely correcting the physical abnormalities that chiropractors are authorized to correct under Florida statutes. One only has to study the curriculum as described in our colleges' catalogs or write SCASA to learn that fact.

In addition to identifying those abnormalities which chiropractors are authorized to address, SCASA colleges follow a published criteria for patient safety which mandates that their graduates be well trained to recognize contraindications to chiropractic care, as well as any other abnormal and unusual findings which make themselves present.

Students and graduates of SCASA colleges take the same NBCE and state licensing examinations in physical diagnosis as do their counterparts from the mixing colleges. I know that our people do very well on these examinations.

It should go without saying that all primary care providers should be trained to recognize and respond appropriately to emergency first aid situations. SCASA colleges certainly train their graduates appropriately in this area.

Answer to Question #2:

I certainly agree that any person or group that claims to contribute to health by correcting a physical abnormality should be able to first discover if and how that abnormality exists and if it is safe to attempt certain examination and corrective procedures. Determining the existence and nature of the physical abnormality that constitutes chiropractic's reason for being recognized as a separate primary health care profession in Florida and all other states is the most important part of the education of a straight chiropractor and the part in which straight chiropractors excel.

Answer to Question #3:

Absolutely. All accrediting agencies must meet the same USDE criteria and go through the same petitioning process. Those agencies that meet the criteria receive the same recognition. That recognition, regardless of the accrediting body, has the same worth. SCASA and CCE are recognized to accredit colleges that have programs that meet their educational standards and lead to the Doctor of Chiropractic degree. CCE and SCASA accredit chiropractic colleges within the mixer and straight school of thought respectively.

Answer to Question #4:

No. The decision is legally and logically wrong. I believe the courts will correct the errors of consequence now being made by the Florida board. The Florida board does not have the statutory authority to sit in judgment of any federally recognized accrediting agency. Florida law quite clearly states that an individual is eligible for licensure (assuming all other licensure requirements are met) if "he is a graduate of a chiropractic college accredited by or has status with an agency or its successor, which is recognized and approved by the United States Office of Education." SCASA is recognized by the USDE to accredit colleges of straight chiropractic awarding the Doctor of Chiropractic degree. This law does not give the board the right to pick and choose accrediting agencies already approved by the USDE. The law was passed in response to a similar situation several years ago when the Florida board misused its discretion by trying to exclude graduates of a straight chiropractic college for similar reasons.

The Florida law also states that the Department of Professional Regulation "shall give full recognition to the different philosophies of chiropractic prevailing in the profession and shall not reject any application solely because the accrediting agency is an adherent of one such philosophy as distinguished from another."

Sherman, which is SCASA accredited, is recognized by the Florida board, and its graduates have been effectively and safely practicing in Florida for a number of years. The concept of a chiropractor that is the basis of SCASA's Educational Standards is the same concept of a chiropractor that is the basis of the Florida Chiropractic Practice Act.

Answer to Question #5:

Certainly! The concept of a chiropractor that serves as the basis for SCASA's Educational Standards is that of a primary health care professional. SCASA member colleges have excellent and broad programs in chiropractic, and their graduates are well prepared to render safe and effective chiropractic care.

Answer to Question #6:

It may serve as yet another lesson that licensing boards cannot act contrary to the law. Straight chiropractic, because it is consistent with all chiropractic licensing laws and because it fills a need and has practitioners and supporters of great vision, patience and generosity, is here to stay. SCASA colleges will be approved in Florida and in all states. Whether these approvals come quickly or slowly, inexpensively or expensively, peacefully or tumultuously, in a way that would bring public respect and acceptance, or further public confusion, scorn and retribution, is in the hands of the ACA/ICA/CCE.

The other reason is far more important and concerns the reason why these questions are not appropriate. Instead of inviting a debate of the obvious, "DC" should be asking, "What can be done about the inequity in Florida that is perpetuating the conflict within our profession?"

This profession needs solutions, not food for editorials.

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John Miller, D.C.; and E. Maylon Drake, Ed.D.

Answer to Question #1:

We are of course familiar with the opinion of the Florida attorney general, to which you refer. It appears in a memorandum to the Florida board of chiropractic dated September 20, 1989. We agree with its conclusions that chiropractic, as taught in SCASA colleges, does not involve sufficient training in diagnosis.

SCASA's position on diagnosis derives from the fact that SCASA was founded by proponents from the two anti-diagnostic chiropractic schools, Sherman College of Straight Chiropractic, and Pennsylvania College of Straight Chiropractic. These colleges have historically propounded the view that a chiropractor need only diagnose for purposes of chiropractic care.

CCE's standards, on the other hand, reflect the position of the overwhelming majority of the chiropractic profession: that the chiropractic profession has an ethical and legal duty to educate chiropractic students broadly in techniques of diagnosis so that, as doctors of chiropractic, they will be able to recognize and treat patients who will benefit from chiropractic care and refer those who may not to an appropriate professional.

The SCASA bylaws provide possibly the most enlightening explanation of the distinction between SCASA's approach to chiropractic and that supported by CCE and its 13 member colleges. These bylaws state, in part, as follows:

"Accreditation by the Commission (SCASA) provides an alternative route for colleges which cannot accept the philosophical stands nor the medicodiagnostic objectives of the Council on Chiropractic Education." (Bylaws, at page (ii).

SCASA, by its own admission, rejects the notion that its colleges should be able to prepare its students for diagnosing conditions which are not susceptible to chiropractic treatment.

Answer to Question #2:

We agree completely with this finding in the Florida attorney general's opinion. CCE's Standards and its Policy Resolutions firmly take the position that the responsibility of the chiropractic profession is to educate a doctor of chiropractic to be a primary care provider, one who can act as an entry point into the health care system for those in need of health care. (Standards, Section III, A,1; Policy Resolutions, R and S). It has been CCE's position that, in order for chiropractors to act as primary care providers, it is critical that they be educated sufficiently in techniques of diagnosis so that they can evaluate which findings lend themselves to chiropractic care and which do not, and thus are appropriate for referral to another health care professional.

Doctors of chiropractic who lack sufficient training necessarily create an unreasonable risk of harm to those patients who present ailments which may, in fact, not benefit from chiropractic care. This fact has not escaped our courts.

We refer you to a New Jersey court decision, *Rosenberg v. Kahill*, 492 App.2d 371 (N.J. 1985). In this case, the patient, an infant, was seen for a period of about 1-1/2 years by the defendant chiropractor before he was finally diagnosed as suffering from Hodgkin's Disease. The evidence showed that the defendant chiropractor took x-rays of the infant which disclosed evidence of soft tissue abnormalities: tumors. Nevertheless, the defendant chiropractor failed to observe or recognize these abnormalities and treated the condition by providing chiropractic treatment. The decision noted:

"He [defendant chiropractor] claimed that he had taken the x-rays only for the purposes of chiropractic treatment and that a chiropractor of his 'school' or specialty, referred to as 'straight chiropractic,' was under no duty to notice tissue abnormalities on such x-rays." (492 App.2d at 373)

In holding that the chiropractor in question had a legally enforceable duty to recognize the ailment and refer the patient to a medical doctor for follow up; the court traced the history of the development of chiropractic within that state. The court pointed out that the governor had appointed a committee to study the practice of chiropractic in New Jersey. The 1949 report by that committee resulted in a substantial expansion of the practice of chiropractic in New Jersey. The court noted: the Committee emphasized the common responsibilities of the medical and chiropractic professions and concluded that chiropractors must have the same fundamental education as other medial practitioners. (492 App.2d at 377).

You ask if chiropractors will expose patients to "unwarranted and life-threatening conditions," if chiropractors are not broadly trained in diagnosis? Of course. Numerous lawsuits attest to that fact [see *Salazar v. Ehmann*, 505 P. 2d 387 (Colo App. 1972) where a chiropractor failed to properly diagnose a patient who suffered from broken bone and shoulder dislocation; *Roberson v. Counselman*, 686 P. 2d 149 (Kan. 1984) where a chiropractor failed to refer a patient for acute heart disease; *Abos v. Martyn*, 31 Cal. App. 2d 705 (1939) where a chiropractor failed to detect tuberculosis of the spinal column; *Janssen v. Mulder*, 205 N.W. 159 (Minn. 1925) where a chiropractor failed to recognize diphtheria; and *Dowell v. Mossberg*, 355 P. 2d 624 (Ore. 1960) where a chiropractor failed to diagnose diabetes. The point should be clear: to act as primary care

providers, chiropractors need to be broadly educated in diagnostic techniques. If they are not, they should only be permitted to treat patients upon referral from another professional who is so educated.

Answer to Question #3:

No, the recognition given SCASA by the U.S. Department of Education is not equivalent to that given to CCE. By its terms, that recognition was limited to "straight chiropractic education" and is in sharp contrast to the recognition given to CCE as a "nationally recognized accreditation agency for the recognition of educational programs leading to a D.C. degree." SCASA had, in fact, sought, in its application to the U.S. Department of Education, dated November 10, 1987, recognition, "---to accredit colleges nationwide that grant the Doctor of Chiropractic Degree." Instead, the secretary of the Department of Education granted SCASA a more limited status. In a letter from the secretary, dated August 30, 1988, the secretary stated:

"For a period of two years from the date of this letter, I shall list the association as a nationally recognized accreditation agency for the accreditation and preaccreditation (only with regard to one of your two preaccreditation statuses, candidacy) of straight chiropractic education---"

By contrast, the recognition granted by the secretary to CCE, in a letter, dated September 29, 1987, stated in part, "---for a period of two years from the date of this letter, I shall continue to list your organization's Commission on Accreditation as a nationally recognized accreditation agency for the accreditation of education programs leading to the D.C. degree."

The unique and limited scope of SCASA's recognition is further recognized when it is compared to that recognition granted other professional accreditation associations by USDE. We refer you to the Department of Education's publication, Nationally Recognized Accrediting Agencies and Associations. This publication lists all of the accreditation agencies recognized by USDE. The recognition given to SCASA is for "straight chiropractic education." The recognition given to CCE is for "programs leading to a D.C. degree." Similarly, the approval given the Bureau of Professional Education, American Osteopathic Association, is for "programs leading to the D.O. degree"; the recognition given to the Liaison Committee on Medical Education of the Council on Medical Education of the American Medical Association and the Executive Council of the Association of the American Medical Colleges is for "programs leading to the M.D. degree"; and the approval given to the Council on Naturopathic Medical Education is for "programs leading to the N.D. or N.M.D. degree."

CCE is a member of the council on Post-secondary Accreditation (COPA). This is the only nationally recognized association which accredits and monitors accreditation associations. SCASA is not a member and has not applied for membership. Proponents of SCASA, including the third college to receive its recognition, the Southern California College of Chiropractic (SCCC), have claimed its recognition by USDE is equivalent to that of CCE's. COPA, in a letter dated March 30, 1989, to president of SCCC from its President Thurston Manning, replied thusly:

"In fact, the recognition of SCASA by the secretary of education stated explicitly that the scope of recognition of SCASA is "straight chiropractic education," and the supporting analysis by Acting Assistant Secretary Kenneth Whitehead states, "---I have determined that "straight" chiropractic constitutes a distinct field of practice,"--- It is incorrect to assert, as your document does, that the department's recognition "equates" SCASA and CCE."

CCE agrees with the president of COPA. Further, the distinction is basic. SCASA's view of chiropractic relegates the chiropractor to a dependant and secondary professional status,



depriving him or her of the right to act as a primary care provider. In our view, SCASA's recognition of a college should only be recognized in states (if any exist) where the chiropractor, by statute, has been denied the ability to be a primary care provider. This, in our opinion, is the point the secretary intended when he carefully distinguished SCASA's recognition from CCE's.

Answer to Question #4:

Yes, it was correct. Florida statutes recognize chiropractors as primary care doctors. (See Florida Statutes, 460.401-460.403). In our opinion, the Florida state board has the responsibility to assure the public that any students who are permitted to take the Florida State Chiropractic Board examination are broadly trained and educated in diagnosis. It is clear that SCASA is antagonistic to this approach. Therefore, the Florida board, in our judgment, may not prudently rely upon SCASA's recognition of a college as signifying that the college has adequately educated its students in diagnostic skills.

Answer to Question #5:

No for the reasons already stated.

Answer to Question #6:

Florida's decision is consistent with the position of the great majority of state chiropractic boards throughout this country. Today, we are aware of only a small minority of states that recognize and rely on SCASA's approval of a college. Florida's decision, and the sound legal opinion upon which it was based, reaffirms that mainstream chiropractic is and will continue to be a primary care discipline.

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OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LEGAL AFFAIRS  
THE CAPITOL  
TALAHASSEE, FLORIDA, 32399-1050

MEMORANDUM

TO: Board of Chiropractic, Chairman and Members

FROM: Theresa M. Bender, Counsel to the Board

RE: SCASA Accreditation DATE: September 20, 1989

With the assistance of Dr. Glisson, I have obtained three letters from the United States Department of Education and the Council on Post-secondary Accreditation. These letters clarify the form of recognition granted to SCASA by the U.S. Department of Education.

In a letter dated August 30, 1988, Secretary William J. Bennett of the Department of Education wrote to Mr. Leroy Moore, President of SCASA. In his letter, Mr. Bennett specifically stated "For a period of two years from the date of this letter, I shall list the Association as a nationally recognized accrediting agency for the accreditation and preaccreditation (only with regard to one of your pre-accreditation statuses, candidacy) of straight chiropractic education..." In his letter dated September 28, 1987, Secretary Bennett specifically stated SCASA: recognition was that of "Recognized Candidate for Accreditation." Based on these statements, the Board can conclude that Secretary Bennett limited recognition of SCASA to candidacy or temporary probationary status for a period of two years.

Chapter 460.406 (1) (c), F.S., requires a candidate for licensure to be "a graduate of chiropractic college accredited by, or has status with an agency or its successor which is recognized and approved by the U.S. Office of Education or the Council on Post-secondary Accreditation (COPA), or by the department---" It is within the purview of this Board to interpret this language to mean those chiropractic colleges which have permanent or full recognition or status as an accrediting agency by the U.S. DOE or COPA. Based on this interpretation, SCASA is not an accrediting agency as defined in Chapter 460. 406 (1) (c), F.S.

Furthermore, the Secretary of Education in recognizing SCASA, stated explicitly that the scope of recognition of SCASA is "straight chiropractic education." A letter from President Manning of COPA, on March 30, 1989, quotes Acting Assistant Secretary Kenneth Whitehead as stating that "--I have determined that 'straight' chiropractic constitutes a distinct field of practice." The Federal Court has termed "straight chiropractic" as a "deviant splinter group" of the profession.

Chapter 460.406, F.S., defines the "practice of chiropractic," as well as the terms "chiropractic," "doctor of chiropractic," and "chiropractor." Chapter 460, F.S. also sets out the scope of practice. It is general knowledge in the field of chiropractic that the term "chiropractic" includes diagnostic practice. This is evident throughout Florida's practice act, and in particular, Section 460.406, F.S. It is only "straight chiropractic" that has deviated from this norm and espoused an anti-diagnostic approach to chiropractic practice, thereby constituting a limited scope of practice. Chiropractic and "straight chiropractic" are not the one and same profession, but two separate, distinct professions.

The Board has interpreted Chapter 460,F.S., has a broad scope of practice requiring physical diagnosis in order to properly treat a patient. Without a proper physical diagnostic examination a chiropractor would submit the public to unwarranted and perhaps life threatening conditions, not to mention malpractice. Therefore, an applicant for licensure who does not have the appropriate diagnostic training, but is only trained in "straight chiropractic," does not meet the requirements pertinent to the definition and scope of practice found in Chapter 460, F.S.

FEBRUARY 1990