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MEMORANDUM

TO: Dr. William Ward, President
Virginia Chiropractic Association
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FROM: Meade Spotts

DATE: February 4, 2010

RE: Substitute to House Bill 153

The analysis below is provided in response to your request for interpretation and clarification of the language contained in the substitute to House Bill 153 as passed by the House Health, Welfare and Institutions Committee of the 2010 Virginia General Assembly (“HB 153”), specifically as related to a chiropractors’ right to provide physical therapy services.

Section B of HB 153 states *“No person shall advertise services using the words ‘physical therapy’ or ‘physiotherapy’ unless those services are provided by a physical therapist or physical therapist assistant licensed pursuant to this chapter,”* (meaning licensed by the Board of Physical Therapy). Clearly, this restriction on advertising applies to chiropractors and, if HB 153 is passed, chiropractors could not use the terms “physical therapy” or “physiotherapy” in their advertising unless the services are being provided by a licensed physical therapist or physical therapist assistant. In and by itself, the language in Section B restricting advertising of physical therapy services could also be interpreted by some as suggesting or implicitly providing that a doctor of chiropractic could not provide those services.

However, concerns with the Section B advertising restrictions and possible adverse impact on the scope of the chiropractic profession are clearly addressed by the addition of Section D to HB 153, which states *“Nothing in this section shall be construed to restrict or limit the legally authorized scope of practice of any profession licensed, certified, registered, permitted, or recognized under a multistate licensure privilege issued by any of the health regulatory boards within the Department of Health Professions prior to January 1, 2010.”* It is clear that Section D includes the chiropractic profession in that chiropractors are licensed by the Board of Medicine, which is a health regulatory Board within the Department of Health

Professions. Therefore, HB 153 does not in and of itself alter the scope of practice of chiropractors.

The next and most important question, as it relates to chiropractors providing physical therapy, is a legal understanding of “*legally authorized scope of practice prior to January 1, 2010.*” The legally authorized scope of practice for chiropractors is set forth in various provisions of the Code of Virginia as well as a 2001 Attorney General’s opinion. §54.1-2900 of the Medical Practice Act states “*‘Practice of chiropractic’ means the adjustment of the 24 movable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy, but does not include the use of surgery, obstetrics, osteopathy or the administration or prescribing of any drugs, medicines, serums or vaccines.*” Physical therapy or physiotherapy is not included among the specifically identified prohibited uses or activities.

As set forth in the Code of Virginia, this language reflects the legally authorized scope of practice of chiropractors prior to January 1, 2010. In interpreting this language, the 2001 Attorney General opinion clearly and specifically stated that the legally authorized scope of practice of the profession includes physical therapy. In that there has been no subsequent Attorney General opinion on this issued, the 2001 opinion supports the argument that chiropractors’ “legally authorized scope of practice prior to January 1, 2010” includes physical therapy.

The language set forth in Section D of the substitute for HB 153 is intended to clarify that the legally authorized scope of practice for certain licensed professionals, which encompasses chiropractors, includes physical therapy. As a result of the inclusion of this language and the statements set forth in the 2001 Attorney General’s opinion, it is my opinion that any efforts to legally restrict chiropractors’ practice of physical therapy would likely require enactment of (a) legislation changing the definition of the practice of chiropractic in order to provide certainty and clarity for such adverse position or (b) a change in the Medical Practice Act’s definition of the practice of chiropractic.

Also of note is that with the use of the term “legally authorized scope of practice of any profession” (emphasis added), a current and future chiropractor licensed in Virginia will be assured of their scope of practice including physical therapy. The allowance is allocated to the profession as a whole as it existed prior to January 1, 2010 and not to the individual licensees as of January 1, 2010.

As to specifically addressing concerns that this legislation restricts chiropractors’ scope of practice from including physical therapy, it is my opinion that this is not the case and, to the contrary, it provides additional support for the understanding that the practice of chiropractic includes physical therapy. Furthermore, it is my opinion that subsequent legislation would now be necessary to challenge the 2001 Attorney General opinion which states your profession may provide physical therapy.

Recognizing that inclusion of physical therapy within the legally authorized scope of practice for the chiropractic profession currently hinges on the 2001 Attorney General opinion,

this legislation, as currently worded, should be considered as providing some protection of the Attorney General opinion and providing further support of your profession's legally authorized right to provide physical therapy in accordance with current interpretations.

The opinions set forth herein are made as of the date hereof, and we assume no obligation to supplement this opinion letter if any applicable laws change after the date hereof or if we become aware after the date hereof of any facts that might change the opinions expressed herein. The opinions in this memorandum do not have the force or effect of law.