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Signed by Russ Leonard

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Dr. Jim Rosemeyer, De.
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Page 5

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Testimony on SB 275
Before The
SENATE COMMITTEE ON HEALTH
Senator Carol A. Roessler, Chairwoman

October 14, 2003
411 South, State Capitol

Statement of Deputy Secretary Mary Woolsey Schlaefer
representing the Department of Regulation and Licensing

Good afternoon, Chairwoman Roessler and members of the Committee. Thank you for the opportunity to appear today. I am the Deputy Secretary for the Department of Regulation and Licensing. I appear on behalf of the Department to comment on SB 275, regarding the regulation of the chiropractic profession in Wisconsin.

As you are aware, the Department of Regulation and Licensing is an umbrella agency, which, among other things, provides administrative services and support for 46 professional regulatory and advisory boards, including the Chiropractic Examining Board.

SB 275 proposes a number of changes affecting the practice of Chiropractic, including adding an additional administrative layer to the determination whether a chiropractor has engaged in professional misconduct and adding more requirements relating to continuing education for chiropractors.

The Chairman of the Chiropractic Examining Board has appeared before the Committee to provide the Board's comments on the proposed legislation. I am here to comment on behalf of the Department. I will focus my comments on the impact the proposal would have on the Department's role in the regulation of the chiropractic profession.

The proposed legislation contains some provisions that the Department agrees could benefit consumers of chiropractic services in Wisconsin, including the patient evaluation, treatment and referral requirements and the provisions related to sexual misconduct. There are,

however, other provisions in the proposal that are of significant concern to the Department either because the provisions are contrary to the public interest or simply unrealistic.

I am prepared to answer questions about each of the items in the proposed legislation. However, in the interest of time, I would like to focus my comments on the two items in the proposed legislation that most concern the Department.

Peer Review Panel

The first item of concern is the proposal to establish a system of peer review for complaints against chiropractors. The proposal would create another procedural layer in the processing of complaints against chiropractors, which would require significant additional staff resources in the Department that are not now available and are not adequately provided for in the proposal.

The Department strongly opposes the peer review proposal for a number of reasons. **First**, it is duplicative. The peer review panel would be charged with determining essentially the same issues as the existing Chiropractic Examining Board, *i.e.*, whether a chiropractor has engaged in professional misconduct. **Second**, the proposed process, which is limited to a paper review, is inadequate to fully and fairly decide issues of professional misconduct and disadvantages complainants who do not write well or have access to essential documents. **Third**, access to the process would be limited to complainants who could afford the initial \$275 filing fee and \$750 appeal fee. (Out of the initial \$275 filing fee, \$235 would be paid to the person designated as the peer reviewer. By contrast, members of the Chiropractic Examining Board are reimbursed just \$25 per day. The remaining \$40 would go to the Department for administrative support). **Finally**, the proposal would place significant burdens on the Department without providing the resources necessary to meet those burdens. The added responsibilities would include advising complainants and respondents about the process, collecting and processing the initial complaint, notifying each patient, chiropractor and insurer named in the complaint, collecting responses from each person named in the complaint, redacting information from the documents, disseminating the documents to the peer review panel member and disseminating the decision to all patients and parties named in the complaint. The

costs of providing these and other required services would exceed the \$40 fee provided to the Department under the proposal.

Continuing Education Requirements

The proposed legislation also includes a number of additional requirements relating to continuing education. Chiropractors are currently required to complete 40 hours of continuing education every two years. Existing rules define what entities may sponsor continuing education courses as well as requirements for sponsorship. The proposed legislation would essentially codify existing requirements in statute. The legislation would also require the Department to deny approval of all courses sponsored by an organization for ninety days, if the sponsor violates any of the specified requirements, regardless of the nature or seriousness of the violation.

The Department opposes this proposal. The Department views the proposal as unnecessary and unduly harsh. This is a solution without a problem. There is no demonstrated need to codify what is essentially already in the administrative rules into statute. Moreover, the requirement that all courses of a sponsor be denied for ninety days if the sponsor fails to meet any requirement, no matter how technical, is unnecessarily harsh and could significantly inconvenience individuals making a good faith attempt to comply with continuing education requirements.

The proposed legislation also requires that chiropractors list the continuing education courses they have completed on their license renewal form and that the Department audit a percentage of all renewal applications for compliance with continuing education requirements. The Department supports continuing education requirements as an effective, pro-active means to prevent public harm. The Board and Department currently conduct an audit of a random sample of chiropractors to determine and enforce compliance with existing continuing education requirements. The Department would like to increase its efforts to enforce continuing education requirements for chiropractors as well as the other 20 professions that have continuing education requirements. However, we are unable to do so with existing resources. We currently have a staff of 23.5 FTE employees available for processing an average of approximately 170,294 license applications and renewals each year, as well as to answer literally thousands of calls regarding the process and regulations affecting the professions. The applications and renewals

for many professions require extensive information gathering and review, including but not limited to, determining compliance with initial degree and/or coursework requirements, work experience requirements that necessitate verifying the hours and nature of work conducted, tabulating and tracking exam scores on a series of tests taken over a period of time, reviewing building floor plans to confirm compliance with regulatory requirements, and verifying and investigating license status in other states. Given the limited resources currently available, the Department is not able to undertake additional information tracking and review responsibilities. The proposal that chiropractors list their continuing education programs on their renewal forms would be of marginal value at best, without resources to undertake efforts to confirm that the information provided is accurate and complete. The continuing education reporting proposal is one that the Department would support, if it had the resources meaningfully to enforce the requirement. However, because the proposed legislation does not provide the necessary resources, the Department must oppose the proposal as an empty reporting requirement.

In sum, the proposed legislation includes some items that would advance public protection. The proposal includes other items that either would not be in the public interest or cannot be enforced effectively with existing resources. We respectfully ask the Committee to review the current proposal carefully in light of the concerns expressed above. The Department welcomes the opportunity to work with the Committee and interested parties to design proposed legislation that would effectively promote public protection. However, the Department opposes the proposed legislation as currently written because portions of it are not in the public interest and other portions do not provide the resources necessary to enable the Department to administer the proposed law effectively.

Thank you for your time. I would be happy to respond to your questions.

Halbur, Jennifer

From: Schultz, Dale
Sent: Thursday, September 18, 2003 3:31 PM
To: *Legislative Senate Republicans; *Legislative Senate Democrats; *Legislative Assembly Republicans; *Legislative Assembly Democrats
Subject: Co-Sponsorship of LRB 3012/2

Date: September 18, 2003

To: All Legislators

From: Senator Dale Schultz

Re: Co-Sponsorship of LRB 3012/2

I am introducing a bill on behalf of the Wisconsin Chiropractic Association, which significantly improves a chiropractor's accountability to their patients, raises the profession's standard of care, and defines the responsibilities of those offering and attending chiropractic continuing education. This bill does not expand the scope of chiropractic practice. The following is a brief explanation of each bill provision.

Unprofessional Conduct

To ensure decisions are rendered promptly and fairly, if an individual or organization wishes to make a complaint against a chiropractor they will have the choice of using the traditional discipline methods through the Department of Regulation & Licensing (DRL) or to seek a peer review from a newly created peer review panel. The bill significantly increases the penalties for repetitious violations of the law by setting new financial penalties and mandatory license revocations.

Delegation and Referral

To improve both the quality and cost effectiveness of care, the bill allows chiropractors to delegate portions of their work to properly trained RNs and LPNs. At the same time, chiropractors will be required to refer patients to medical doctors when their condition is not treatable by chiropractic means.

Technique Limitations

To limit the risk to the public's health and safety, the bill limits chiropractors to using techniques that are taught at the undergraduate or postgraduate level at chiropractic colleges or universities.

Nutritional Supplements

By requiring 48 hours of education for those chiropractors that wish to provide specific advice on nutritional supplements, the bill is setting a standard to assure that the clinical knowledge of chiropractors in practice is consistent with the education currently offered at chiropractic colleges/universities.

Continuing Education

The bill defines the responsibilities of those that sponsor and attend chiropractic continuing education (CE) programs and provides discipline for those few education sponsors and chiropractors that evade their responsibilities.

If you would like to co-sponsor this bill, please contact my office at 6-0703 by Thursday, September 25.

ESSIE CONSULTING GROUP
16 N. CARROLL ST. SUITE 900
MADISON, WISCONSIN 53703

TODAY / Showed 10/7
CR - she said
no.

TO: Sen. Carol Roessler

FROM: Patrick Essie

DATE: October 6, 2003

RE: Co-sponsorship of LRB 3012/2

I am respectfully asking that you co-sponsor LRB 3012/2 on behalf of the Wisconsin Chiropractic Association. Senator Dale Schultz has agreed to author the bill. Eileen O'Neill in Sen. Schultz's office will be taking names for co-sponsorship until this Wednesday at 5 p.m.

This draft is similar – but far less aggressive in scope – than AB 356, which was introduced by Rep. Gregg Underheim this summer. Along with Rep. Underheim, AB 356 was co-sponsored by Reps. Ott, Kestell, Freese, Musser, Hines, Seratti, Bies, J. Lehman, Hundertmark, Gronemus, Berceau, Weber, Albers, Turner, Kreibich, Pettis, Loeffelholz, Kreuser, Hahn, Ladwig, Olsen, Nass, Staskunas, Travis and Plouff; and co-sponsored by Sens. Schultz, Reynolds, Breske, Chvala, Carpenter and Hansen.

LRB 3012/2 significantly improves a chiropractor's accountability to their patients, raises the raises the profession's standard of care, and defines the responsibilities of those offering and attending chiropractic continuing education. This bill does not expand the scope of chiropractic practice. The following is a brief explanation of each bill provision.

Unprofessional Conduct

To ensure decisions are rendered promptly and fairly, if an individual or organization wishes to make a complaint against a chiropractor they will have the choice of using the traditional discipline methods through the Department of Regulation & Licensing (DRL) or to seek a peer review from a newly created peer review panel. The bill significantly increases the penalties for repetitious violations of the law by setting new financial penalties and mandatory license revocations.

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Continuing Education

The bill defines the responsibilities of those that sponsor and attend chiropractic continuing education (CE) programs and provides discipline for those few education sponsors and chiropractors that evade their responsibilities.

Feel free to contact me at (608) 256-7701 with any questions you might have. To become a co-sponsor, contact Eileen in Sen. Schultz's office at (608) 266-0703 by Oct. 8.



Carol Roessler
STATE SENATOR

October 6, 2003

Kent Belville D.C.
Mike Fletcher D.C.
Belville/Fletcher Chiropractic
440 Koeller
Oshkosh WI, 54901

Dear Kent and Mike,

I would very much appreciate your input on a chiropractic bill that is scheduled for a public hearing in the Senate Committee on Health, Children, Families, Aging and Long Term Care, which I chair.

More specifically, this bill relates to the definition of the practice of chiropractic; chiropractic evaluations, treatments, and referrals to physicians; unprofessional conduct by chiropractors; delegations by chiropractors; continuing education for chiropractors; and nutritional guidance provided by chiropractors to patients.

I have attached a copy of the bill for your review.

I value your input and look forward to hearing from you.

Sincerely,

CAROL ROESSLER
State Senator
18th Senate District

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Carol Roessler
STATE SENATOR

October 6, 2003

Dr. Gerald Hendrickson
Hendrickson Pain Relief Center
2334 Jackson St.
Oshkosh WI, 54901

Dear Gerald,

I would very much appreciate your input on a chiropractic bill that is scheduled for a public hearing in the Senate Committee on Health, Children, Families, Aging and Long Term Care, which I chair.

More specifically, this bill relates to the definition of the practice of chiropractic; chiropractic evaluations, treatments, and referrals to physicians; unprofessional conduct by chiropractors; delegations by chiropractors; continuing education for chiropractors; and nutritional guidance provided by chiropractors to patients.

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I value your input and look forward to hearing from you.

Sincerely,

CAROL ROESSLER
State Senator
18th Senate District

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Carol Roessler
STATE SENATOR

October 6, 2003

Dr. Kimberly Johnson
Johnson Chiropractic
2100 Omro Rd.
Oshkosh WI, 54901

Dear Kimberly,

I would very much appreciate your input on a chiropractic bill that is scheduled for a public hearing in the Senate Committee on Health, Children, Families, Aging and Long Term Care, which I chair.

More specifically, this bill relates to the definition of the practice of chiropractic; chiropractic evaluations, treatments, and referrals to physicians; unprofessional conduct by chiropractors; delegations by chiropractors; continuing education for chiropractors; and nutritional guidance provided by chiropractors to patients.

I have attached a copy of the bill for your review.

I value your input and look forward to hearing from you.

Sincerely,

CAROL ROESSLER
State Senator
18th Senate District

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Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Senate Health Committee

FROM: Alice O'Connor & Mark Grapentine, JD
Wisconsin Medical Society

DATE: October 14, 2003

RE: Oppose SB 275

On behalf of more than 10,000 members statewide, the Wisconsin Medical Society thanks you for this opportunity to provide written testimony on Senate Bill 275. Due to problems with the dramatic addition of a “duty to refer” in chiropractic practice where the Wisconsin Supreme Court has directly held that chiropractors are not qualified to hold such a duty, we oppose SB 275 as currently drafted.

Under the bill (page 8, beginning with line 6), chiropractors would have the duty to refer patients to physicians if the chiropractor determines that the patient has a condition not treatable by chiropractic means or will not respond to further chiropractic treatment. Having a duty to refer may at first seem acceptable on its face, but that referral duty would instantly and dramatically broaden chiropractor power with the ability to diagnose specific non-chiropractic medical problems – a power Wisconsin’s judiciary has recognized is distinct to physicians only as currently defined.

The Wisconsin Supreme Court has ruled that a chiropractor expressly does not have a duty to refer, for fundamental policy reasons:

...because implicit in a requirement that a chiropractor refer a patient to a medical doctor is the imposition on the chiropractor to make a medical determination that the patient needs medical care, such a determination could not be made without employing medical knowledge. Because a chiropractor is not licensed to make such a determination, we hold that a chiropractor does not have a duty to refer a patient who is not treatable through chiropractic means to a medical doctor.

See Kerkman v. Hintz, 142 Wis. 2d 404, 421 (1988).

Relying on Kerkman, the Wisconsin Court of Appeals ruled that chiropractors have no duty to recognize medical problems. To do so “would require chiropractors to make medical determinations which, under Wisconsin law, they are not licensed to make.” See Goldstein v. Janusz, 218 Wis.2d 683, 686 (Ct. App. 1998).

Senate Health – SB 275

October 14, 2003

- page 2 -

Both the Kerkman and Janusz cases held in favor of chiropractors defending themselves against lawsuits brought by injured patients. With this in mind, we fear that the true goal of the “Duty to Refer” provision is to allow chiropractors to diagnose medical conditions beyond the scope of their current practice. The Society believes this major policy change would not be in the best interest of patient safety, and supports maintaining current law.

Thank you again for this opportunity to appear before you. Please feel free to contact Alice O’Connor at aliceo@wismed.org or Mark Grapentine at markg@wismed.org. Both can be reached at (608) 442-3800.

ORDER OF SPEAKERS

FOR

SEN. DALE SCHEWTS

Russ Leonard 3

Sherry Wallace, DC 5

Wendy Hernandez, DC 7

JEFF WILSON, DC 9

MIKE McMANUS, DC 11

AGAINST

STEVE CONWAY, DC

4 TIM ROEMER, DC

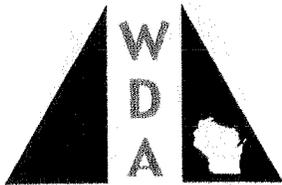
6 OPPOSE

8 OPPOSE

10 OPPOSE

12 OPPOSE

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WISCONSIN DIETETIC ASSOCIATION
Your Link to Nutrition and Health

FEB 06 2004

1411 West Montgomery Street
Sparta, Wisconsin 54656-1003
608-269-0042
1-888-232-8631
FAX 608-269-0043
wda@centurytel.net

February 4, 2004

State Senator Carol Roessler, Chair
Senate Committee on Health, Children,
Families, Aging and Long Term Care
P.O. Box 7882
Madison, WI 53707-7882

Re: Confirmation of Meeting Scheduled for February 10 at 12:30 p.m.

Dear Senator Roessler:

I am writing on behalf of the Wisconsin Dietetic Association (WDA) to thank you for agreeing to meet with me and other representatives of our organization on February 10 at your office. We appreciate this opportunity to discuss with you our opposition to Section 10 of Senate Bill 275, which expands the chiropractic scope of practice to include nutritional counseling. Nutritional counseling is a complex area, particularly for patients with serious chronic illnesses. As certified specialists in the role of nutrition in health care, we welcome this chance to share with you our specific concerns with this aspect of the bill.

Additionally, thank you and your legislative aide, Jennifer Halbur, for including WDA as you plan the obesity awareness campaign for legislators. Wisconsin's registered dietitians and dietetic technicians have special training, knowledge and skills which we believe will be of assistance as legislators increase their health awareness. We look forward to continued participation in this project.

Sincerely,

Gail Underbakke

Gail Underbakke, MS, RD, CD
Public Policy Chair
Wisconsin Dietetic Association Board of Directors



1411 West Montgomery Street
Sparta, WI 54656
www.eatrightwisc.org
OFC 888-232-8631
FAX 608-269-0043
wda@centurytel.net

DATE: February 10, 2004
TO: Senator Carol Roessler
FROM: Jane M. Dunn, President
Gail Underbakke, Public Policy Chair
Christina Lemon
Wisconsin Dietetic Association
RE: Opposition to Section 12, SB 275

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nutritional supplements
counseling - would be
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The use of nutritional supplements, vitamins, and herbs -- and the associated nutritional counseling -- can be a highly beneficial or highly harmful part of a patient's health care. Wisconsin has recognized the complexity of this field by requiring the certification of dietitians and by restricting the practice of others when it comes to nutritional counseling, as opposed to sales and provision of related product information.

Section 12 of AB 275 permits chiropractors who are licensed before January 1, 2003, to engage in nutritional counseling after completing only 48 hours of postgraduate study in nutrition (this does not apply to chiropractors who are certified as a dietitian). Chiropractors licensed after January 1, 2003, are presumed to have received the proper training through their doctor of chiropractic degree program.

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There are real concerns regarding the training and skill of chiropractors to expand their practice into counseling and guiding the individual patient on, for example, treatment of diabetes or another disease through use of dietary supplements. Protection of the public's/patient's health and safety demand that we act with caution in determining who should be legislatively sanctioned as qualified to counsel patients in this important area.

Background

1. Nutritional counseling is a complex area.
 - Not a generic term for instruction on how to eat properly.
 - Involves assessment of nutritional status of patients with a condition that puts them at risk; includes review and analysis of medical and diet history, lab values, anthropometric measurements, followed by choice of nutrition modalities most appropriate for person -- may range from diet modification and nutrition

counseling including personal diet plan to specialized medical nutrition therapies including intravenous or enteral nutrition.

- State of Wisconsin, when it created certification of dietitians, recognized complexity of nutrition and nutrition counseling and therapy, and the importance of education and training in this field. It further recognized that dietitians provide a comprehensive approach to providing nutrition services which addresses the complexities of changing diet and behavior, especially for patients with serious chronic illnesses.
 - Need to distinguish between individual nutritional assessment and prescription of individualized nutrition regimen/course of treatment, versus furnishing general nutrition information and marketing or distributing food supplements and vitamins; the proposed legislation covers both.
2. Vitamins, herbs and nutritional supplements are not harmless substances.
- Many cases reported in print media of death or serious illness linked to dietary supplements and/or their improper administration.
 - Exempt from federal (FDA) regulation and no requirement for peer-reviewed science regarding claims for effectiveness.
 - Widely varying quality and purity of “same” substance depending on manufacturer.
3. Chiropractors’ and dietitians’ training for nutritional counseling is not equal and cannot be made so by a 48-hour course.
- Although the Council on Chiropractic Education now requires that nutrition be incorporated into the doctor of chiropractic degree program, it leaves coverage of the topic to each individual school.
 - There is no independent research regarding what type of education a chiropractor receives in this area; furthermore, a study of chiropractors’ provision of nutrition counseling and their sources of nutrition information around the country found that specific nutrition training standards for chiropractors do not exist.
 - Dietitians, by contrast, receive a bachelor’s, master’s, or doctoral degree in human nutrition, nutrition education, food and nutrition, or dietetics from an accredited college or university. More than 40% hold advanced degrees. They are trained specialists in the role of nutrition in health care, and particularly in nutritional counseling and recommendations tailored to the needs of the individual patient.
 - A 48-hour course on nutrition cannot match the expertise of a dietitian when it comes to the nutritional needs of the individual patient (of interest, the American Chiropractic Board of Nutrition requires 300 hours of nutrition course work,

passage of a written exam, and three years practice experience in order to grant a diploma - the equivalent of board certification for physicians).

4. There is a huge difference in counseling an individual patient as to what dietary supplements or vitamins or herbs may be helpful in improving that patient's particular health condition, and in marketing food supplements or vitamins -- which is already permitted by current law.
 - Ch. 448.72, governing the certification of dietitians, specifically exempts from any certification requirement "*a person who markets or distributes food, food materials or dietary or food supplements, who explains the use, benefits or preparation of food, food materials or dietary or food supplements, who furnishes nutritional information on food, food materials or dietary or food supplements, or who disseminates nutritional information or literature. . .*"
 - The proposed language in the chiropractic bill draft would go far beyond the marketing of food supplements, vitamins, and so on, and would authorize the chiropractor to provide individualized "*counsel, guidance, direction, advice or recommendations*" regarding the health benefits of vitamins, herbs, or nutritional supplements -- and then sell the patient the recommended supplements.
5. Chiropractors' "counsel" on the "health benefits of vitamins, herbs or nutritional supplements" raises conflict-of-interest concerns since chiropractors also sell these products.
 - Current law and chiropractic regulations authorize chiropractors to sell vitamins, herbs or nutritional supplements.
 - As noted above, they may explain these products' use and furnish information on them.
 - The proposed statute would go far beyond current practice and put the chiropractor in the position of providing the same nutritional counseling and therapy that dietitians are credentialed by the state to provide.
 - A chiropractor is a recognized health provider with specialized knowledge; a patient comes to a chiropractor with the implicit belief that the chiropractor will use his or her specialized knowledge to benefit the patient; the patient trusts the chiropractor to do what is best for the patient.
 - The mere potential for conflict of interest between personal financial gain and individual patient needs has resulted, for example, in the state prohibiting physicians from both prescribing and filling prescriptions in their office, and in requiring dietitians to inform a patient of any financial interest the dietitian might have in a referral to or for another service, product or publication.