

**STATE OF FLORIDA
BOARD OF CHIROPRACTIC MEDICINE**

IN RE:

**FRED QUINTANA, D.C.
PETITION FOR DECLARATORY STATEMENT**

**FINAL ORDER
DECLARATORY STATEMENT**

On January 10, 2006, Petitioner filed a Petition for Declaratory Statement with the Board of Chiropractic Medicine, pursuant to Section 120.565, Florida Statutes, and Chapter 28-105 of the Florida Administrative Code. The Petitioner inquired whether a licensed chiropractic physician can delegate the use of physical modalities, such as hot packs, electrical muscle stimulators, ultrasound therapy devices, and mechanical massage to an unlicensed, but trained assistant, under Section 460.403(9)(a) and (c), Florida Statutes.

THIS MATTER came before the Board for final action at a duly-noticed public meeting on February 10, 2006, in Jacksonville, Florida. Petitioner was not present, but was represented by counsel, Robert Trilling, Esq. Paul Lambert, Esq. made an appearance on behalf of the Florida Chiropractic Association, upon a motion to intervene. The motion to intervene was GRANTED.

Findings of Fact

1. Petitioner is a licensed chiropractic physician in Florida.
2. Petitioner intends to employ unlicensed but trained assistants to administer physical modalities, to include the use of hot packs, electrical muscle stimulators,

ultrasound therapy devices, and mechanical massage, as delegated by the Petitioner under his direct supervision.

Conclusions of Law

1. The Board of Chiropractic Medicine has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

2. The Board recognizes that pursuant to State Farm Mutual Automobile Insurance Company vs. Universal Medical Center of South Florida, Inc. 881 So.2d 557 (Fla 3rd DCA 2004), the Court was posed with the question as to whether unlicensed medical assistants could administer physical therapy modalities, including the application of hot packs, electrical muscle stimulations, ultrasound therapy treatments and mechanical massages, under the supervision of a licensed physician. Id. at 559. The Court recognized that the use of such physical modalities fell within the common practice of chiropractic physicians, osteopathic physicians, allopathic physicians, podiatric physicians, and massage therapists; and was incidental to the practice, which, pursuant to Section 486.161(1), Florida Statutes, creates an exemption from the requirement of licensure as a physical therapist. Id. at 560.

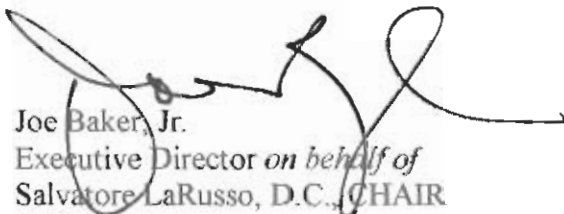
3. Further the Court found that whether such use of physical therapy modalities could be delegated to unlicensed medical assistants by the respective physician as part of their practice was a determination properly left to the respective licensing board, which includes, among the other respective licensing boards, the Board of Chiropractic Medicine. Id.

4. As such, the Board has determined that as part of the practice of chiropractic medicine as defined in Section 460.403(9)(a) and (c), Florida Statutes, and upon authority of State Farm Mutual Automobile Insurance Company vs. Universal Medical Center of South Florida, Inc. 881 So.2d 557 (Fla 3rd DCA 2004), chiropractic physicians may lawfully delegate the performance of physical therapy modalities to assistants who are not licensed, whom the chiropractic physician knows to be trained and competent to perform such physical therapy modalities under appropriate supervision.

This Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 6th day of March, 2006.

BOARD OF CHIROPRACTIC MEDICINE


Joe Baker, Jr.
Executive Director *on behalf of*
Salvatore LaRusso, D.C., CHAIR

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Department of Health and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The Notice of Appeal must be filed within thirty (30) day sof rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Fred Quintana, D.C.**, 755 E. 49th Street, Suite 10, Hialeah, Florida 33013, **Robert Trilling, Esq.**, 5400 S. University Drive, Suite 104, Davie, Florida 33328; by interoffice mail to **Michael T. Flury**, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; this 8th day of March, 2006.

Cheryl Roberts

Deputy Agency Clerk

facsimile
TRANSMITTAL

to: Florida Board of Chiropractics; Attn: Joe Baker
fax #: 850 922 8876
re: Petition to Board of Chiropractics regarding delegation of duties
date: January 10, 2006
pages: 3, including this cover sheet.
cc: Michael Flurry
850 922 6425

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JAN 10 2006

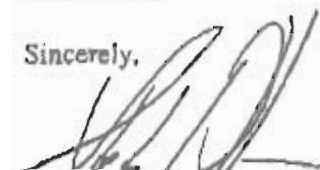
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Dear Board:

Please find attached an *Amended* Petition for Declaratory Statement to be placed on calendar at the next meeting in Jacksonville. After speaking with Mr. Flurry, he informed me that the petition needed to be more specific as to what laws needed clarifying. Please note that Fla Stat. 460.403(9)(a), 460.403(9)(c) and 460.413(1)(u) are at issue as to how they are affected by State Farm Mutual Automobile Insurance Company vs. Universal Medical Center of South Florida, Inc. 881 So. 2d 557. If you have any questions regarding this matter, please call our office at the below listed number.

Thank You.

Sincerely,


Stephen C. Bullock, Esq.

From the desk of...
Stephen C. Bullock
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Suite 104
Davis, FL 33328
e-mail: RTTrilling@bellsouth.net
Phone: (954) 252-5238
Fax: (954) 252-5259

FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK *Heather Coleman*

DATE 1-10-06

AMENDED

**PETITION FOR DECLARATORY STATEMENT BEFORE THE
FLORIDA BOARD OF CHIROPRACTIC MEDICINE**

Petitioners: Dr. Fred Quintana, D.C.
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Counsel: Trilling & Associates, P.A.
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Robert A. Trilling, Esq.
Fla. Bar. No.: 457957
Stephen C. Bullock, Esq.
Fla. Bar. No.: 685305

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- At Issue:**
- Whether under Fla Stat 460.403 (9)(a) a Chiropractic Physician may delegate the use of physical means or physiotherapy, including light heat, water, or exercise under Fla. Stat. 460.403 (9)(c), by way of simple physical modalities such as hot packs, electrical muscle stimulators, ultrasound therapy devices, and mechanical massage, to a trained, yet unlicensed assistant without violating Fla Stat 460.413(1)(u).
 - State Farm Mutual Automobile Insurance Company vs. Universal Medical Center of South Florida, Inc., 881 So. 2d 557 (Fla. App. 3 Dist. 2004) and its applicability to the field of Chiropractics under 460.403(9)(a), 460.403(9)(c), and 460.413(1)(u).
 - What constitutes direct supervision under Chapter 460 of Florida Statutes.

Background: In State Farm v. Universal, the Third District Court of Appeals authorized unlicensed assistants, to administer physical modalities such as hot packs, electrical muscle stimulators, ultrasound therapy devices, and mechanical massage "under the direct supervision and responsibility of a physician." The court reasoned that these functions all involved either relatively simple modalities performed to assist the physician with patient treatments or the use of standard medical equipment. The physician in State Farm v. Universal was a medical doctor.

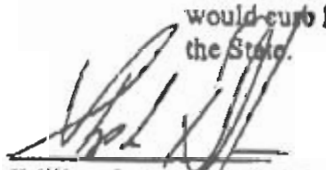
The 3rd D.C.A. in that case used statute 486.161(1) to make their determination. They determined that according to that statute, all physical therapists must be licensed with the state unless "using a physical agent is a part of or incidental to the lawful practice of her or his profession" under the statutes applicable to the profession of chiropractic physician, podiatric physician, doctor

or medicine, massage therapist, nurse, osteopathic physician or surgeon, occupational therapist, or naturopath." State Farm v. Universal 881 So. 2d pg. 560.

Although the State Farm v. Universal case stated that administering these physical modalities "also fell within the common practice of chiropractic medicine," it further stated that "whether or not the physical therapy the medical assistants performed fell within the scope of the supervising physician's practice is a determination properly left for the respective licensing boards of medicine that discipline physicians for the physician's improper delegation of duties." *Supra* 881 So. 2d pg. 560. It is for these reasons that Dr. Fred Quintana, D.C. is petitioning the Board of Chiropractics to determine whether such physical modalities fall under chiropractics and whether a licensed chiropractic physician may delegate such duties to an unlicensed yet trained assistant.

United Automobile has successfully argued to a court lower than the 3rd D.C.A. (11th Circuit) that the State Farm case is limited to medical doctors supervising medical assistants because both fall under Chapter 458 of Florida Statutes. This directly conflicts with what is stated in State Farm v. Universal and Florida Statute. For this reason, Dr. Quintana, D.C. wishes to clarify the Board's position as to the above mentioned issues.

Affect: The delegation of relatively simple physical modalities by a Chiropractic Physician to unlicensed, yet trained and supervised assistants is a common practice in the State of Florida. A ruling against such delegation by the Board of Chiropractics would curb how this doctor as well as many other Chiropractors practice within the State.



Trilling & Associates, P.A.
Robert A. Trilling, Esq.
Fla. Bar. No.: 457957
Stephen C. Bullock, Esq.
Fla. Bar. No.: 685305
Counselors for Petitioner

1/10/06
Date