

COVID-19 Guidance for Chiropractors

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COVID-19 Guidance for Chiropractors and Continued Operation of Chiropractic Offices in Colorado

With rapidly changing federal, state, and local government orders and guidance on the COVID-19 public health crisis, many allied health professionals are asking whether their services are “essential” or “critical,” such that they may continue to operate and provide patient services. Governor Polis issued Executive Order 2020 009 on March 19, 2020 ordering the temporary cessation of all elective and non-essential procedures within the state. The Governor’s Order did not specifically reference chiropractors or chiropractic care, and as of March 26, 2020, the Colorado Chiropractic Association’s website suggested it was permissible to continue to operate by providing guidance to chiropractors choosing to stay open to provide essential services. On March 27, 2020, the Department of Regulatory Agencies issued further guidance to chiropractors entitled “Prohibition on Chiropractic Elective Procedures,” which makes it clear that state agencies strongly recommend cessation of chiropractic operations across the state at least until April 14, 2020, which is when the Governor’s Order expires.

Governor Polis’ Executive Order D 2020 009

The Governor’s Order dated March 19, 2020 is entitled: “Ordering the Temporary Cessation of All Elective and Non-Essential Surgeries and Procedures and Preserving Personal Protective Equipment and Ventilators in Colorado Due to the Presence of COVID-19.” The Order explicitly states that its purpose is to preserve and gather Personal Protective Equipment for the benefit of health care professionals treating COVID-19. Importantly, the Order states:

All hospitals, outpatient surgeries and procedure providers are directed to cease all elective and non-essential surgeries and procedures and to preserve personal protective equipment and ventilators and respirators from March 23, 2020 to April 14, 2020, with the exception of rural and critical access hospitals.

The Order is expressly limited to cessation of elective or non-essential “medical, dental and veterinary” procedures. There is no mention of cessation of chiropractic care or closure of chiropractic offices.

DORA’s March 25, 2020 Response to Frequently Asked Questions (“FAQ”)

On March 25, 2020, healthcare licensees, including chiropractors, received an e-mail from the Department of Regulatory Agencies stating:

“DORA-licensed professionals that need to be diligent about compliance with the [Governor’s Executive Order D 2020 009] order include, but are not limited to Acupuncturists, Audiologists, Chiropractors, Dentists, Dental Hygienists, Hearing Aid Providers, Massage Therapists, Naturopathic Doctors, Nurses, Occupational Therapists, Optometrists, Podiatrists, Physicians, Physical Therapists, Respiratory Therapists, Speech-Language Pathologists, Surgical Assistants, and Veterinarians.” (emphasis added)

This guidance naming chiropractors with other licensed healthcare providers not explicitly identified in the Governor's Order caused confusion, and many members of the chiropractic community formally requested clarification regarding whether they could continue to provide chiropractic treatment to patients.

DORA's March 27, 2020 Email to Chiropractors

At 9:21 a.m. on March 27, 2020, the Department of Regulatory Agencies sent an e-mail to Colorado chiropractors entitled "Prohibition on Chiropractic Elective Procedures." The communication included the following new statements and guidance:

- "[The] Governor's executive order applies to all chiropractic practices and it prohibits any elective procedure, including any chiropractic procedure..."
- "[W]e expect that most chiropractic practices across the state will necessarily halt operations during the emergency..."
- "[W]e advise you to suspend all non-essential healthcare practices at this time."

The email did provide very narrow exceptions that would permit a chiropractor to treat a patient and be in compliance with the Governor's Order, including when:

- There is a threat to the patient's life if the procedure is not performed;
- There is a threat of permanent dysfunction of an extremity or organ system if the procedure is not performed;
- There is a risk of metastasis or progression of staging of a disease or condition if the surgery [procedure] is not performed; or
- There is a risk that the patient's condition will rapidly deteriorate if the procedure is not performed and there is a threat to life, or to an extremity or organ system, or of permanent dysfunction or disability. (emphasis added)

DORA warned in the email that "there are very few, if any, chiropractic procedures that fit within the rubric of these criteria." Based on this new, explicit guidance from DORA interpreting the Governor's Order, any chiropractor choosing to perform in-person chiropractic procedures or adjustments runs a high risk of being subject to civil, criminal, and disciplinary consequences absent a showing that the treatment at issue meets one of the narrow exceptions above.

Please do not hesitate to contact Messner Reeves attorney Katherine K. Otto if you have further questions or would like assistance complying with these laws.