**RRC STAFF OPINION**

 *Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: N.C. BOARD OF CHIROPRACTIC EXAMINERS

RULE CITATION: 21 NCAC 10 .0211

RECOMMENDED ACTION:

 Approve, but note staff’s comment

X Object, based on:

 X Lack of statutory authority

 Unclear or ambiguous

 Unnecessary

 Failure to comply with the APA

 Extend the period of review

COMMENT:

*Counsel believes that based on the authority cited the board does have the authority to set restrictions on those who provide financing or management services to chiropractic practices. More properly speaking they have the right to set limits on the agreements covering the provision of those services. In doing so they have the right to review the contractual relations and have the right to require the contract be in writing and set the entire terms of the agreement in writing.*

*This authority is derived from G.S. 90-157.3 which limits the ownership of a chiropractic practice to an NC licensed chiropractor and any participation in the control over a practice to an NC licensed chiropractor. The authority is also derived from G.S. 90-142 which allows the board to “adopt suitable rules and regulations for the … enforcement” of the practice act.*

*In order to determine whether the management services agreements are proper and do not improperly restrict the independence and control of the practitioner the board must be able to review the entire agreement. To do this they are within their authority to require that the agreement be in writing. And any provisions within a management services agreement affecting “the control of the practice” would be properly within the review authority of the board.*

*Based on this it seems to me that the provisions in (d)(3) – (7) directly affect the practice of chiropractic and must be under the control of a NC licensed chiropractor and are within the authority of the board to regulate.*

*However paragraphs (d)(1) and (2) do not seem to affect the practice of chiropractic so much as they affect the division of profits from the practice. There is no authority cited to control or restrict how a licensee may choose to divide the proceeds he receives as a result of exercising his professional control over his practice. While the board may be entitled to review the revenue provisions of the agreement to determine whether any provision of the agreement might be a restriction on the licensee’s professional control, they do not have the right to forbid all revenue sharing or fee paying arrangements.*

§ 90‑142.  Rules and regulations.

The State Board of Chiropractic Examiners may adopt suitable rules and regulations for the performance of their duties and the enforcement of the provisions of this Article. (1919, c. 148, s. 4; C.S., s. 6714; 1967, c. 263, s. 2.)

§ 90‑157.3.  Ownership of chiropractic practices limited.

(a) Each partner in a partnership that is engaged in the practice of chiropractic shall be licensed under this Article.

(b) Each general partner in a limited partnership that is engaged in the practice of chiropractic and each limited partner who takes part in the control of the practice shall be licensed under this Article.

(c) The provisions of Chapter 55B of the General Statutes shall apply to all business corporations organized under Chapter 55 of the General Statutes and engaged in the practice of chiropractic. (1999‑430, s. 2.)