

Clearinghouse Rule 17-010

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

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| IN THE MATTER OF RULEMAKING | : | PROPOSED ORDER OF THE |
| PROCEEDINGS BEFORE THE | : | CHIROPRACTIC EXAMINING |
| CHIROPRACTIC EXAMINING | : | BOARD |
| BOARD | : | ADOPTING RULES |
| | : | (CLEARINGHOUSE RULE) |

PROPOSED ORDER

An order of the Chiropractic Examining Board to repeal Chir 10.01 (3); to renumber and amend Chir 10.02 (1); to amend Chir 4.04 (3), ch. Chir 10 (title), 10.02 (intro.) and (2), 10.03, and 10.05; and to create Chir 10.015, 10.02 (1) (a) to (m), and 10.025, relating to courses of study for and delegation to chiropractic technicians and chiropractic radiological technicians.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 446.02 (7) (d), 446.025 (2) (a) 3., and 446.026 (2) (a) 3., Stats.

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides that examining boards, such as the Chiropractic Examining Board, “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, . . .”

Section 227.11 (2) (a), Stats., discusses the parameters of an agency’s rule-making authority, stating an agency “may promulgate rules interpreting the provisions of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation. . .” This section allows an agency to promulgate administrative rules that interpret the statutes it enforces or administers as long as the proposed rule does not exceed proper statutory interpretation. Section 227.01 (1), Stats., defines agency as a board. The Chiropractic Examining Board falls within the definition of agency and is therefore allowed to apply s. 227.11 (2) (a), Stats., to statutes it administers.

Related statute or rule:

None.

Plain language analysis:

Section 446.02 (7) (d) of the Wisconsin Statutes restricts the delegation of adjunctive and x-ray services to chiropractic technologists (technicians) and chiropractic radiological technologists (technicians). Chapter Chir 10 allows for the delegation of these services to unlicensed persons. The proposed rule would amend the Chiropractic Examining Board's administrative rules to align them with section 446.02 (7) (d), Stats. Additionally, under sections 446.025 (2) (a) 3. and 446.026 (2) (a) 3., Stats., chiropractic technicians and chiropractic radiological technicians are required to complete courses of study approved by the Board in order to obtain certification. The Chiropractic Examining Board's administrative rules are currently silent with regards to the specific requirements used to determine whether a course of study is approved. This undefined term has led to an inconsistent application of the statute. The proposed rule seeks to define the requirements for approved courses of study in administrative code, which should result in a more uniform application of the statutes.

Summary of, and comparison with, existing or proposed federal regulation:

The Consumer-Patient Radiation Health and Safety Act of 1981, 42 USCS 10001, et seq. establishes federal guidelines for standards of accreditation of educational programs for certain occupations that administer radiologic procedures. The standards are in place to protect the public from excessive exposure to radiation by health care professionals who use radiation in the treatment of disease or other medical conditions. The regulations are directed towards radiologic technologists, dental hygienists, nuclear medicine technologists and radiation therapy technologists.

42 USCS §10003 (5) defines, "persons who administer radiologic procedures means any person, other than a practitioner, who intentionally administers radiation to other persons for medical purposes, and includes medical radiologic technologists (including dental hygienists and assistants), radiation therapy technologists, and nuclear medicine technologists." 42 CFR 75.2 defines radiation therapy technologist as "a person other than a licensed practitioner who utilizes ionizing radiation-generating equipment for therapeutic purposes on human subjects." Although chiropractic radiological technicians are not specifically addressed, they could be captured under the broad definition of radiation therapy technologists. The federal statute and regulations are comparable to the proposed rule in that they both set forth a course of study for persons who administer radiologic procedures.

Comparison with rules in adjacent states:

Illinois: Illinois defines a chiropractic radiographer as a person other than a licensed practitioner who performs medical radiation procedures and applies x-radiation to the human body for diagnostic evaluation of skeletal anatomy, while under the general supervision of a licensed chiropractor [32 Ill. Adm. Code 401.20]. Persons seeking accreditation as a chiropractic radiographer must take the exam administered by the

American Chiropractic Registry of Radiologic Technologists (ACRRT) [32 Ill. Adm. Code 401.70 b) 4)].

Iowa: Iowa does not have a license classification for chiropractic radiological technologists or chiropractic technologists.

Michigan: Michigan does not have a license classification for chiropractic radiological technologists or chiropractic technologists.

Minnesota: Minnesota issues a registration for chiropractic radiologic technologist after the applicant has passed the radiography examination of the American Chiropractic Registry of Radiologic Technologists (ACRRT) [Minn. R. 4732.0585].

Summary of factual data and analytical methodologies:

The methodologies used to develop this proposed rule include reviewing neighboring states' statutes and rules, obtaining feedback from the Chiropractic Examining Board, and reviewing the curriculum from a variety of chiropractic schools.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Greg.Gasper@wisconsin.gov, or by calling (608) 261-4466.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 8:30 a.m. on March 30, 2017, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chir 4.04 (3) is amended to read:

Chir 4.04 (3) A chiropractor may employ a chiropractic radiological technician certified under ch. 446, Stats., to operate x-ray equipment ~~only upon submitting proof satisfactory to the board that the technician has successfully completed a course of instruction approved by the board.~~ Any chiropractic radiological technician employed may work only under the direct supervision and direction of a licensee. The chiropractor shall maintain records by which the chiropractor has verified the chiropractic radiological technician is certified under ch. 446, Stats.

SECTION 2. Chapter Chir 10 (title) is amended to read:

DELEGATION TO UNLICENSED PERSONS CHIROPRACTIC TECHNICIANS AND CHIROPRACTIC RADIOLOGICAL TECHNICIANS

SECTION 3. Chir 10.01 (3) is repealed.

SECTION 4. Chir 10.015 is created to read:

Chir 10.015 Chiropractic technician course of study. The board shall grant certification as a chiropractic technician to an applicant who satisfies the requirements under s. 446.026 (2) (a), Stats. The course of study required under s. 446.026 (2) (a) 3., Stats., shall meet all of the following:

(1) The course of study shall include a prerequisite 4.5 hour therapeutic overview course covering chiropractic technician scope of practice, anatomy, and contraindications followed by all of the following:

(a) Four hours in patient history.

(b) Four hours in physical examination, including height, weight, and blood pressure measurements.

(2) The course of study shall include a final assessment of competency of the didactic and clinical components of the program.

(3) The certification program shall have a chiropractor licensed under ch. 446, Stats., present in the facility and available to the students of the course of study.

SECTION 5. Chir 10.02 (intro.) is amended to read:

Chir 10.02 (intro.) Delegation of adjunctive services to ~~unlicensed persons a~~ chiropractic technician. A chiropractor licensed under ch. 446, Stats., may delegate the performance of adjunctive services to ~~an unlicensed person~~ a chiropractic technician certified under ch. 446, Stats., only if all of the following conditions are met:

SECTION 6. Chir 10.02 (1) is renumbered Chir 10.02 (1) (intro.) and amended to read:

Chir 10.02 (1) (intro.) The chiropractor maintains records by which the chiropractor has verified that the ~~unlicensed person~~ chiropractic technician has successfully completed a didactic and clinical training program approved by the board and covering the performance of the delegated service. Successful completion of a training program is demonstrated by attaining proficiency in the delivery of that service to minimally competent chiropractic practice standards as measured by objective knowledge and skills testing. The didactic and clinical training program shall meet all of the following criteria:

SECTION 7. Chir 10.02 (1) (a) to (m) are created to read:

Chir 10.02 (1) (a) The program constitutes an organized program of learning which contributes directly to the professional competency of a chiropractic technician to perform the delegated service.

(b) The program pertains to subject matters which integrally relate to the performance of the delegated service.

(c) The program is conducted by individuals who have specialized education, training, or experience by reason of which the individuals should be considered qualified concerning the performance of the delegated service.

(d) The program fulfills pre-established goals and objectives.

(e) The program provides proof of attendance.

(f) The program includes a final assessment of competency of the didactic and clinical components of the program.

(g) A program or portion of a program that covers the performance of thermotherapy and cryotherapy shall comprise one hour.

(h) A program or portion of a program that covers the performance of electrotherapy shall comprise 3 hours.

(i) A program or portion of a program that covers the performance of therapeutic ultrasound shall comprise 3 hours.

(j) A program or portion of a program that covers the performance of light therapy shall comprise 3 hours.

(k) A program or portion of a program that covers the performance of surface electromyography shall comprise 3 hours.

(L) A program or portion of a program that covers the performance of mechanical therapy, decompression, and traction shall comprise 4 hours.

(m) A program or portion of a program that covers exercise and rehabilitation shall comprise 24 hours and include all of the following topics:

1. Basic functional anatomy.
2. Kinematics and joint movement.
3. Indications and contraindications.
4. Recordkeeping and reporting.
5. Scope of practice.
6. Baselines assessment, outcomes, and goals.

SECTION 8. Chir 10.02 (2) is amended to read:

(2) The chiropractor exercises direct supervision of the ~~unlicensed person~~ chiropractic technician performing the delegated service.

SECTION 9. Chir 10.025 is created to read:

Chir 10.025 Chiropractic radiological technician course of study. The board shall grant certification as a chiropractic radiological technician to an applicant who satisfies the requirements under s. 446.025 (2) (a), Stats. The course of study required under s. 446.025 (2) (a) 3., Stats., shall meet all of the following:

(1) The course of study shall comprise 48 hours, including all of the following topics:

- (a) Introduction to x-ray examination.
- (b) Physics of x-ray examination.
- (c) Anatomy.
- (d) Patient position.
- (e) Safety measures.
- (f) Machine operation.
- (g) Exposure techniques and accessories.
- (h) Processing and dark room techniques.
- (i) Film critique and quality assurance.
- (j) Professionalism.
- (k) Recordkeeping.
- (L) Emergency procedures summary.

(2) The course of study shall include a final assessment of competency of the didactic and clinical components of the program.

(3) The certification program shall have a chiropractor licensed under ch. 446, Stats., present in the facility and available to the students of the course of study.

SECTION 10. Chir 10.03 is amended to read:

Chir 10.03 X-ray services. A chiropractor may delegate x-ray examination procedures to ~~an unlicensed person~~ a chiropractic radiological technician certified under ch. 446, Stats. only if the delegation is consistent with s. Chir 10.02 and the ~~unlicensed person~~ has successfully completed a course of instruction comprising at least 48 hours and including the following components: ~~introduction to x ray examination; physics of x ray examination; anatomy; patient positioning; safety measures; machine operation; exposure techniques and accessories; processing and dark room techniques; film critique and quality assurance; professionalism; recordkeeping; emergency procedures, summary; and successful completion of an examination on the content of the course of instruction.~~ The chiropractor shall comply with s. Chir 4.04 before delegating the performance of x-ray services to ~~an unlicensed person~~ a chiropractic radiological technician.

SECTION 11. Chir 10.05 is amended to read:

Chir 10.05 Physiological therapeutics. A chiropractor may delegate the performance of patient services through physiological therapeutics that include but are not limited to heat, cold, light, air, water, sound, electricity, massage, and physical exercise with and without assistive devices to ~~an unlicensed person~~ a chiropractic technician certified under ch. 446, Stats., only if the delegation is consistent with s. Chir 10.02 and the ~~unlicensed person~~ chiropractic technician has adequate training, education, and experience to perform the delegated function to minimally acceptable chiropractic standards.

SECTION 12. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
