

Clearinghouse Rule 19-129

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

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 **amend** Chir 6.01, 6.015 (title) and (1), 6.02 (intro.), (1), (4), (5), (6), (9), (10), (11), (15) (intro.), (f) (intro.) and 1. to 3., (g) (intro.) and 1. to 3., and (h), (16), (18), (19), (21), (22), (26), (27), (29), and (30), and 6.03 (1) and (3); and to **create** Chir 6.015 (2) and (3), relating to standards of conduct.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 446.04, 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, “[s]hall 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., sets forth the parameters of an agency’s rule-making authority, stating an agency “may promulgate rules interpreting the provisions of any statute enforced or administered by the agency. . .but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Related statute or rule:

Chapter Chir 4 provides criteria for determining if the use of an instrument or a practice system, analysis, method, or protocol is beyond the scope of the practice of chiropractic.

Plain language analysis:

The Board conducted an evaluation and update of ch. Chir 6 to ensure consistency with current professional practices and standards and applicable Wisconsin statutes. As a result, the following updates have been made:

- The definition of “advertisement” under s. Chir 6.015 (1) is revised to remove references to specific advertising medium. The definition as revised specifies an advertisement may be in any public medium.
- A definition of “patient” is added to the definitions under s. Chir 6.015.
- A provision is created under s. Chir 6.02 (15) (f) (intro.) and (g) (intro.) that permits a chiropractor to advertise specialization or advanced training if the chiropractor has a postgraduate degree in the area of specialty or advanced training conferred by an institution accredited by either the Council on Chiropractic Education or an accrediting agency recognized by the United States department of education.
- Other provisions throughout ch. Chir 6 have been revised to provide clarity and conform to current drafting standards.

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

None.

Comparison with rules in adjacent states:

Illinois: Illinois statutes specify conduct that may subject a chiropractor to disciplinary action (225 ILCS 60/22). Rules of the Illinois Department of Financial and Professional Regulation (68 Ill. Adm. Code 1285.240) set forth standards to be used in determining:

- What constitutes dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.
- What constitutes immoral conduct in the commission of any act, including commission of an act of sexual misconduct related to a licensee’s practice.
- What constitutes gross negligence in the practice of medicine.

Iowa: Iowa statutes specify conduct that may lead to the suspension or revocation of a chiropractic license, or may subject the licensee to discipline (Iowa Code 2017, sections 147.55 and 151.9). The following are identified:

- Fraud in procuring a license.
- Professional incompetency.
- Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee’s profession or engaging in unethical conduct or practice harmful or detrimental to the public.
- Habitual intoxication or addiction to the use of drugs.
- Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee’s ability to practice as a professional chiropractor.

- Fraud in representations as to skill or ability.
- Use of untruthful or improbable statements in advertisements.
- Willful or repeated violations of the provisions of chapter 1088 or 272C of the Iowa statutes.
- Other acts or offenses as specified by board rule.

Rules of the Iowa Board of Chiropractic specify acts and offenses that may subject a chiropractor to disciplinary action (645 IAC 45.2). The Board has also by rule adopted 10 principles of chiropractic ethics relative to the practice of chiropractic in Iowa (645 IAC 43.2).

Michigan: Michigan statutes specify conduct that may subject a chiropractor to disciplinary action (MCL 333.16221). The statutes also provide an individual may not perform or order tests or use analytical instruments or adjustment apparatus that do not meet nationally recognized standards or that are not approved by the Michigan Board of Chiropractic (MCL 333.16423).

Rules of the Michigan Department of Licensing and Regulatory Affairs specify what is considered fraudulent, false, deceptive, or misleading advertising (Mich Admin Code, R 338.12014).

Minnesota: Minnesota statutes specify conduct that may subject a chiropractor to disciplinary action (Minnesota Statutes 2016, section 148.10).

Rules of the Minnesota Board of Chiropractic Examiners specify standards for advertising, including prohibited advertisements and the use of professional designations (Minnesota Rules, parts 2500.0200 to 2500.0600).

Summary of factual data and analytical methodologies:

The methodologies used to develop this proposed rule include reviewing the current definition of advertising and the provisions for unprofessional conduct in ch. Chir 6, and obtaining input and feedback from the Chiropractic Examining Board.

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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8306; 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, P.O. Box 8366, Madison, WI 53708-8366, 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 November 21, 2019, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chir 6.01 is amended to read:

Chir 6.01 Authority. The rules in ~~ch. Chir 6~~ this chapter are adopted under the authority in ss. 15.08 (5) (b), 227.11₁, and 446.04, Stats.

SECTION 2. Chir 6.015 (title) and (1) are amended to read:

Chir 6.015 (title) ~~Definition~~ Definitions.

(1) "Advertisement" means ~~any~~ a communication disseminated or intended to be disseminated ~~to the~~ in any public ~~which~~ medium that is likely to or intended to induce, directly or indirectly, the rendering of professional services by the chiropractor named in or identified by the communication. ~~"Advertisement" includes professional business cards, professional announcement cards, office signs, letterhead, telephone directory listings, directories or listings of health care practitioners, and communications which are likely to or intended to induce, directly or indirectly, the rendering of professional services by the chiropractor named in or identified by the communication in newspapers, broadsides, flyers, radio, television, books, magazines, or motion pictures.~~

SECTION 3. Chir 6.015 (2) and (3) are created to read:

Chir 6.015 (2) "Co-payment or deductible provision" means any term in a contract of insurance with a third party whereby the patient remains financially obligated to the chiropractor for payment.

(3) "Patient" means an individual with whom a chiropractor has an established chiropractor-patient relationship or who, based on the actions of the chiropractor, has a reasonable belief that an established chiropractor-patient relationship exists.

SECTION 4. Chir 6.02 (intro.), (1), (4), (5), (6), (9), (10), (11), (15) (intro.), (f) (intro.) and 1. to 3., (g) (intro.) and 1. to 3., and (h), (16), (18), (19), (21), (22), (26), (27), (29), and (30) are amended to read:

Chir 6.02 (intro.) Unprofessional conduct. Unprofessional conduct by a chiropractor includes all of the following:

(1) Engaging in any practice which constitutes a substantial danger to the health, welfare, or safety of a patient or the public.

(4) Practicing or attempting to practice beyond the scope of a license issued by the board, including ~~but not limited to~~ acts prohibited under s. Chir 4.05 (4).

(5) Practicing or attempting to practice while the ability to perform is impaired by a physical, mental, or emotional disorder, or by drugs or alcohol.

(6) Performing professional services inconsistent with training, education, or experience.

(9) Failing to conduct a competent assessment, evaluation, or diagnosis as a basis for treatment or consultation.

(10) Revealing confidential patient information without the consent of a the patient or person authorized by the patient to provide consent, except that information shall be revealed to the board or its representatives pursuant to investigation of a licensee or as otherwise authorized by law.

(11) Refusing to render services to a person because of race, color, sex, or religion.

(15) (intro.) Advertising in a manner which is false, deceptive, or misleading. An advertisement ~~which that~~ does any of the following is false, deceptive, or misleading:

(f) (intro.) Includes reference to or implies specialization ~~or advanced training~~, unless the chiropractor has a postgraduate degree in the area of specialty conferred by an institution accredited by either the Council on Chiropractic Education or an accrediting agency recognized by the United States department of education, or unless all of the following ~~are true~~ apply to the chiropractor's specialty:

1. The specialty is recognized by a council of the American ~~chiropractic association~~ Chiropractic Association or the ~~international chiropractors association~~ International Chiropractors Association.

2. The specialty requires at least 300 hours of postgraduate credit hours and passage of a written examination approved by the American ~~chiropractic association~~ Chiropractic Association or the ~~international chiropractors association~~ International Chiropractors Association.

3. The title applied to the specialty by the chiropractor is the title applied by the American ~~chiropractic association~~ Chiropractic Association or the ~~international chiropractors association~~ International Chiropractors Association.

(g) (intro.) Includes reference to or implies advanced training, unless the chiropractor has a postgraduate degree in the area of specialty conferred by an institution accredited by either the Council on Chiropractic Education or an accrediting agency

recognized by the United States department of education, or unless the chiropractor has successfully completed a postgraduate training program meeting all of the following are true requirements:

~~1. The postgraduate training was received in~~ program is one, unified program approved by the ~~American chiropractic association~~ Chiropractic Association or the ~~international chiropractors association~~ International Chiropractors Association, or ~~through~~ one, unified program at a college accredited by the ~~council~~ Council on chiropractic education Chiropractic Education and approved by the board.

~~2. The chiropractor has completed~~ program consists of at least 100 hours of ~~postgraduate~~ training in the area in which the chiropractor claims advanced training.

~~3. The postgraduate training program includes~~ requires successful completion of a written examination ~~as a requirement for successful completion of the training program.~~

(h) Appears in any classified directory, listing, or other compendium under a heading, ~~which that~~, when considered together with the advertisement, has the capacity or tendency to be deceptive or misleading with regard to the profession or professional status of the chiropractor.

(16) Aiding, ~~or~~ abetting, or permitting unlicensed persons in the practice of chiropractic.

(18) Obtaining or attempting to obtain a license through fraud or misrepresentation, or making any material misstatement, omission, or falsification in connection with an application for a license, registration, or renewal.

(19) Refusing upon request to cooperate in a timely manner with the board's investigation of a complaint lodged against a licensee. Licensees taking longer than 30 days to respond to a request from the board or its representative shall have the burden of demonstrating that they have acted in a timely manner.

(21) Failing to notify the board of having a chiropractic license, certificate, permit, or registration granted by any other jurisdiction subject to disciplinary action.

(22) Having a license, certificate, permit, or registration granted by another jurisdiction to practice as a chiropractor limited, suspended, ~~or~~ revoked, or subject to any other disciplinary action.

(26) Violating ~~a law~~, or aiding or abetting the violation of, any law substantially related to the practice of chiropractic.

(27) Failing to maintain patient records for a minimum period of 7 years after the last treatment or after the patient reaches the age of majority, whichever is ~~greater~~ longer.

(29) Negating the co-payment or deductible provisions of a contract of insurance by agreeing to forgive any or all of the patient's obligation for payment under the contract, unless the chiropractor reduces the chiropractor's claim to the insurance carrier in regard to that patient by an equal proportion. ~~In this section, "co-payment or deductible provisions" means any terms in a contract of insurance with a third party whereby the patient remains financially obligated to the chiropractor for payment.~~

(30) Giving or receiving unauthorized assistance, violating rules of conduct, or otherwise cheating or acting dishonestly ~~respecting~~ with regard to any examination required for the granting of a license or registration to practice chiropractic.

SECTION 5. Chir 6.03 (1) and (3) are amended to read:

Chir 6.03 (1) A chiropractor shall evaluate each presenting patient to determine whether ~~the patient presents~~ a condition exists that is treatable through chiropractic means. An evaluation shall be based upon an examination appropriate to the presenting patient. In conducting an evaluation, a chiropractor shall utilize chiropractic science, as ~~described~~ defined in s. Chir 4.02 (1), and the principles of education and training of the chiropractic profession.

(3) If an evaluation indicates a condition ~~which~~ that is not treatable through chiropractic means, the chiropractor shall inform the patient ~~that~~ the condition is not treatable through chiropractic means and recommend ~~that~~ the patient seek additional advice or care.

SECTION 6. 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)
