



STATE OF WISCONSIN
Department of Safety and Professional Services
1400 E Washington Ave.
Madison WI 53703

Mail to:
PO Box 8935
Madison WI 53708-8935

Email: dsps@wisconsin.gov
Web: <http://dsps.wi.gov>
Phone: 608-266-2112

Governor Scott Walker Secretary Dave Ross

CHIROPRACTIC EXAMINING BOARD
Room 121A, 1400 E. Washington Avenue, Madison
Contact: Tom Ryan (608) 261-2378
May 30, 2013

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions of the Board.

AGENDA

8:30 a.m.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Adoption of Agenda (1-3)

B. Approval of Minutes-March 14, 2013 and March 28, 2013 (5-8)

C. Administrative Matters

- 1) Staff Updates

D. Preceptor Approvals (9-10)

	<u>Chiropractor</u>	<u>Lic. Granted</u>
<u>Palmer</u>	Thomas Arbour	07/12/1990
	Scott Bautch	01/19/1984
	Jermy Bria	02/10/2006
	Angela Engel	09/24/2002
	Kevin Groth	02/10/2005
	Katherine Lord	12/19/2003
	Patrick Murphy	12/27/1984
	Bridget Owens	07/13/1989
	James Ropicky	07/16/1986
<u>Northwestern</u>	Phillip Carlson	12/18/1997
	Nora Moses	02/27/2003
	Treva Rademaker	04/10/2001
	Christopher Resch	03/12/1991
	Kevin Ritzenthaler	12/21/2000
	George Varish III	03/12/1991
<u>Life University</u>	Jay LaGuardia	07/12/1990

E. Legislative/Administrative Rule Matters

- 1) AB 117 **(11-14)**
- 2) EO 50 Review **(15-18)**
- 3) EO 61 Review **(19-26)**

F. Speaking Engagement(s), Travel, or Public Relation Request(s)

G. Informational Items

H. Items Added After Preparation of Agenda:

- 1) Introductions, Announcements and Recognition
- 2) Presentations of Petition(s) for Summary Suspension
- 3) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
- 4) Presentation of Final Decisions
- 5) Disciplinary Matters
- 6) DLSC Matters
- 7) Executive Director Matters
- 8) Education and Examination Matters
- 9) Credentialing Matters
- 10) Preceptor Approvals
- 11) Class 1 Hearing(s)
- 12) Practice Matters
- 13) Legislation/Administrative Rule Matters
- 14) Liaison Report(s)
- 15) Informational Item(s)
- 16) Speaking Engagement(s), Travel, or Public Relation Request(s)

I. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.; consider closing disciplinary investigation with administrative warning (s. 19.85(1)(b), Stats. and 440.205, Stats., to consider individual histories or disciplinary data (s. 19.85(1)(f), Stats.; and, to confer with legal counsel (s. 19.85(1)(g), Stats.)

J. Presentation and Deliberation on Proposed Stipulations, Final Decisions and Orders by the Division of Legal Services and Compliance (DLSC)

K. DLSC Matters

- 1) Case Status Report **(27-28)**
- 2) Case Closing(s)
 - a. 12 CHI 019 **(29-33)**
 - b. 12 CHI 034 **(35-38)**

L. Application Matters

- 1) Chiropractic Technician Training Review-V.A. **(39-45)**
- 2) Chiropractic Technician Training Review-C.B. **(47-52)**
- 3) Endorsement Application Review-A.C. **(53-91)**
- 4) Endorsement Application Review-M.V. **(93-106)**
- 5) Endorsement Application Review-C.F. **(107-128)**
- 6) Expired Application Request-A.B. **(129-147)**

M. Review of Practical Examination and Examination Results

N. Deliberation of Items Received After Printing of the Agenda

- 1) Disciplinary Matters
- 2) Education and Examination Matters
- 3) Credentialing Matters
- 4) DLSC Matters
- 5) Class 1 Hearings
- 6) Monitoring Matters
- 7) Professional Assistance Procedure (PAP) Matters
- 8) Petition(s) for Summary Suspensions
- 9) Petition(s) for Extension of Time
- 10) Proposed Stipulations, Final Decisions and Orders
- 11) Administrative Warnings
- 12) Proposed Decisions
- 13) Matters Relating to Costs
- 14) Motions
- 15) Petitions for Rehearing
- 16) Formal Complaints
- 17) Case Closings
- 18) Appearances from Requests Received or Renewed

O. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

P. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

Q. Ratify Exam Scores

R. Announcement of April Practical Examination Results

S. Training

- 1) Board Member Training
- 2) Case Advisor Training (149-160)

ADJOURNMENT

Page intentionally left blank

**CHIROPRACTIC EXAMINING BOARD
MEETING MINUTES
March 14, 2013**

Present: James Koshick, Jodi Griffith, John Church, Patricia Schumacher

Excused: Kathleen Schneider

Staff: Tom Ryan, Executive Director; Yolanda McGowan, Legal Counsel; David Carlson, Communications Specialist; and other Department staff

James Koshick, Board Chair, called the meeting to order at 8:30 a.m. A quorum of four members was confirmed.

ADOPTION OF AGENDA

Amendments:

- Item N.9, Add “Reinstatement Application Review-Brian Elijah, D.C.”
- Item H. Preceptorship Applications, add “Northwestern-Patrick Flynn”.

MOTION: Jodi Griffith moved, seconded by John Church, to adopt the agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES

Amendment:

Page 6, under third motion, add “to approve the”, after “Jodi moved, seconded by Church.”

MOTION: Jodi Griffith moved, seconded by John Church, to approve the minutes of January 24, 2013 as amended. Motion carried unanimously.

ELECTION OF OFFICERS FOR 2013

CHAIR

NOMINATION: Jodi Griffith nominated James Koshick as Board Chair, Tom Ryan called three times for other nominations for the offices of Board Chair. James Koshick was elected as Chair unanimously.

VICE CHAIR

NOMINATION: Jodi Griffith nominated John Church, as Board Vice Chair, Tom Ryan called three times for other nominations for the offices of Board Vice Chair. John Church was elected as Vice Chair unanimously.

2013 OFFICERS	
Chair	James Koshick
Vice Chair	John Church
Secretary	Jodi Griffith

BOARD MEMBER APPOINTMENTS

Board Chair Jim Koshick made the following board member appointments for 2013;

- **Preceptor Liaison:** Jodi Griffith, Patricia Schumacher (alternate)
- **Practical Exam Liaison:** James Koshick, John Church (alternate)
- **Exam Workgroup:** John Church, Jodi Griffith, James Koshick
- **Continuing Education (CE) Liaison:**

- 1) John Church, James Koshick (alternate)
- **Credentialing Liaisons:** Jodi Griffith, Patricia Schumacher (alternate)
- **Division of Legal Services and Compliance Monitoring Liaison:** James Koshick, Jodi Griffith (alternate)

MOTION: John Church moved, seconded by Patricia Schumacher, to approve the Chair’s appointments. Motion carried unanimously.

MOTION: Jodi Griffith moved, seconded by John Church, to adopt the New Model Language for disciplinary orders which is included in today’s agenda packet (page 17). Motion carried unanimously.

MOTION: Patricia Schumacher moved, seconded by Jodi Griffith, to adopt the delegated authority for Monitoring as outlined in the document on page 18 of today’s agenda packet as amended. Motion carried unanimously.

MOTION: John Church moved, seconded by Jodi Griffith, to approve all preceptors as noted below. Motion carried unanimously.

	<u>Chiropractor</u>	<u>Lic. Granted</u>
<u>Palmer</u>	Louis Chudy	12/10/1987
	Linda Lorenz	12/13/1990
	John Petry	09/24/2002
	Kevin Schultz	04/01/2001
<u>Northwestern</u>	Patrick Flynn	12/16/1999

MOTION: Jodi Griffith moved, seconded by John Church, to adopt Option 1 (as outlined on page 23 of today’s agenda packet) as the preferred plan to accommodate one day administration of the Chiropractic Practical Examination to more than 12 candidates. Motion carried unanimously.

MOTION: John Church moved, seconded by Jodi Griffith, to rescind the current position statement regarding Cold Laser as a treatment modality and adopt the following language:

MAY A CHIROPRACTOR USE LIGHT THERAPY AS A TREATMENT MODALITY?

Light therapy is included in the Physiological Therapeutics authorized by Wis. Admin. Code Chir 10.05. See also s. Chir 4.05 (2) (e) and (g). Motion carried unanimously.

MOTION: John Church moved, seconded by Patricia Schumacher, to appoint James Koshick as the delegate and Jodi Griffith as the alternate delegate to the National Board of Chiropractic Examiners (NBCE) and the Federation of Chiropractic Licensing Boards (FCLB). They are further authorized to attend and travel to the NBCE Annual Meeting and the FCLB Annual Meeting in San Francisco. Motion carried unanimously.

CLOSED SESSION

MOTION: James Koshick read the following motion, whereupon Jodi Griffith moved, seconded by John Church, to convene to closed session to deliberate on cases following hearing (s. 19.85(1) (a), Stats.; consider closing disciplinary investigation with administrative warning (s. 19.85(1)(b), Stats. and 440.205, Stats., to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.; and, to confer with legal counsel (s. 19.85(1)(g), Stats.). Roll Call Vote: James Koshick - yes; Jodi Griffith - yes; John Church - yes; Patricia Schumacher-yes. Open session recessed at 11:35 a.m.

RECONVENE TO OPEN SESSION

MOTION: John Church moved, seconded by Patricia Schumacher to reconvene in open session at 1:04 p.m. Motion carried unanimously.

VOTING ON ITEMS CONSIDERED/DELIBERATED IN CLOSED SESSION

PROPOSED STIPULATIONS, FINAL DECISIONS AND ORDERS

MOTION: James Koshick moved, seconded by John Church to adopt the Findings of Fact, Conclusions of Law, Stipulation and Order, in the following matter:

- 06 CHI 053-Scott L. Harris, D.C.

Motion carried unanimously.

CASE CLOSING

MOTION: James Koshick moved, seconded by John Church, to close case 11 CHI 018 for compliance gained. Motion carried unanimously.

MONITORING

MOTION: James Koshick moved, seconded by Patricia Schumacher, to remove the current suspension and to reinstate James J. Fink's license with limitations as follows: he must see a licensed psychotherapist who will prepare and submit quarterly reports to the Department Monitor; he must within 30 days of returning to practice, secure a peer mentor, pre-approved by the Board, who will submit quarterly reports to the Monitor assessing Mr. Fink's professional performance and practice. Motion carried unanimously.

MOTION: James Koshick moved, seconded by Jodi Griffith, to remove the current limitations and reinstate Richard L. Horaitis to full licensure status. Motion carried unanimously.

APPLICATION MATTERS

MOTION: Patricia Schumacher moved, seconded by Jodi Griffith, to approve the reinstatement application of Brian Elijah, D.C. when all licensing requirements have been met. Motion carried unanimously.

ADJOURNMENT

MOTION: James Koshick moved, seconded by Jodi Griffith, to adjourn the meeting at 1:11 p.m. Motion carried unanimously.

CHIROPRACTIC EXAMINING BOARD
Virtual/Teleconference Meeting
MEETING MINUTES
March 28, 2013

Present: James Koshick, Jodi Griffith, John Church, Patricia Schumacher

Excused: Kathleen Schneider

Staff: Tom Ryan, Executive Director; David Carlson, Communications Specialist; Jill Remy; and Aaron Knautz.

James Koshick, Board Chair, called the meeting to order at 4:06 p.m. A quorum of four (4) members was confirmed.

ADOPTION OF AGENDA

MOTION: Jodi Griffith moved, seconded by Patricia Schumacher, to adopt the agenda, deleting item B, "Approval of Minutes". Motion carried unanimously.

PRACTICAL EXAM MATTERS

MOTION: Jodi Griffith moved, seconded by John Church, to increase the number of examiners for the April 2013 Practical Exam to 29 (including four Board Members). Motion carried unanimously.

ADJOURNMENT

MOTION: Patricia Schumacher moved, seconded by Jodi Griffith, to adjourn the meeting at 4:37 p.m. Motion carried unanimously.



State of Wisconsin

DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

CORRESPONDENCE / MEMORANDUM

DATE: May 10, 2013
TO: CHIROPRACTIC EXAMINING BOARD
FROM: JUSTIN TOMER
SUBJECT: PRECEPTOR APPROVAL

The following requests for approval of preceptors have been submitted to the DRL 45 days in advance of the beginning of the school's next trimester:

Table with 3 columns: Institution, Chiropractor, Lic. Granted. Rows include Palmer, Northwestern, and Life University with associated names and dates.

All of the above have current licenses in good standing.

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Tom Ryan		2) Date When Request Submitted: 5/21/13	
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Chiropractic Examining Board			
4) Meeting Date: 5/30/13	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Discussion of AB 117	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Review Assembly Bill 117 which proposes to eliminate the Chiropractic Pratical Exam.			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)			
Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			



2013 ASSEMBLY BILL 117

April 3, 2013 – Introduced by Representatives KOOYENGA, TITTL, CZAJA, T. LARSON, SPIROS, KUGLITSCH, HUTTON, KNODL, NASS, BORN, MARKLEIN, SCHRAA, KLEEFISCH, ENDSLEY, CRAIG, BEWLEY and TRANEL, cosponsored by Senators GROTHMAN, TIFFANY, ELLIS, VUKMIR, T. CULLEN and PETROWSKI. Referred to Committee on Health.

1 **AN ACT** *to repeal* 20.165 (1) (gc) and 446.02 (3) (a); *to amend* 20.165 (1) (g) and
2 446.028; and *to repeal and recreate* 446.02 (3) (b) of the statutes; **relating**
3 **to:** examination and continuing education requirements for chiropractic
4 licensure in this state.

Analysis by the Legislative Reference Bureau

Under current law, the examinations required for chiropractic licensure in this state include a practical examination administered by the Chiropractic Examining Board (board) that tests the applicant's knowledge of the subjects usually taught in a chiropractic school and any examination that the National Board of Chiropractic Examiners (NBCE) requires.

This bill eliminates the requirement that an applicant for chiropractic licensure pass a practical exam administered by the board. Also, the bill specifies that an applicant for chiropractic licensure must pass Parts I, II, III, and IV of the chiropractic examination that the NBCE administers.

The bill also adds the American Chiropractic Association as an acceptable sponsor of continuing education programs required by the board.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

ASSEMBLY BILL 117**SECTION 1**

1 **SECTION 1.** 20.165 (1) (g) of the statutes is amended to read:

2 20.165 (1) (g) *General program operations.* The amounts in the schedule for
3 the licensing, rule making, and regulatory functions of the department, other than
4 the licensing, rule-making, and credentialing functions of the medical examining
5 board and the affiliated credentialing boards attached to the medical examining
6 board and except for preparing, administering, and grading examinations. Ninety
7 percent of all moneys received under chs. 440 to 480, except ch. 448, ss. 440.03 (13),
8 and 440.05 (1) (b), and 446.02 (3) (a), less \$10 of each renewal fee received under s.
9 452.12 (5), and all moneys transferred from the appropriation under par. (i) and all
10 moneys received under s. 440.055 (2), shall be credited to this appropriation.

11 **SECTION 2.** 20.165 (1) (gc) of the statutes is repealed.

12 **SECTION 3.** 446.02 (3) (a) of the statutes is repealed.

13 **SECTION 4.** 446.02 (3) (b) of the statutes is repealed and recreated to read:

14 446.02 (3) (b) Parts I, II, III, and IV of the examination administered by the
15 National Board of Chiropractic Examiners.

16 **SECTION 5.** 446.028 of the statutes is amended to read:

17 **446.028 Continuing education approval; program sponsors.** Each
18 program sponsor of a continuing education program required to be completed by a
19 chiropractor, chiropractic technician, or chiropractic radiological technician as a
20 condition of license renewal shall submit the program to the examining board for
21 approval. In this section, "program sponsor" means the Wisconsin Chiropractic
22 Association, the American Chiropractic Association, the International
23 Chiropractors Association, a college of chiropractic approved by the examining
24 board, and a college of medicine or osteopathy accredited by an accrediting body
25 listed as nationally recognized by the secretary of the federal department of

ASSEMBLY BILL 117

1 education. "Program sponsor" does not include an individual, organization, or
2 institution of higher education approved under s. 46.03 (38) to provide instruction
3 in the use of an automated external defibrillator.

4 **SECTION 6. Initial applicability.**

5 (1) This act first applies to an application for a license to practice as a
6 chiropractor that the chiropractic examining board receives on the effective date of
7 this subsection.

8 (END)

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Tom Ryan		2) Date When Request Submitted: 5/14/13	
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Chiropractic Examining Board			
4) Meeting Date: 5/30/13	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? EO 50 Review	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: The Board will continue its review of position statements in accordance with the directives included in Executive Order 50 issued by Governor Walker. Per a motion at the January 24th, 2013 meeting, the Board intended to review all Position Statements and Rules as a group commencing with their March 14 meeting. At its March 14, 2013 meeting, the Board revised the position statement on cold laser therapy. The attached position statement document includes that revision.			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

Positions Statements Related to Chiropractors Issued by the Chiropractic Examining Board

MAY A CHIROPRACTOR USE LIGHT THERAPY AS A TREATMENT MODALITY?

Light therapy is included in the Physiological Therapeutics authorized by Wis. Admin. Code Chir 10.05. See also s. Chir 4.05 (2) (e) and (g).

ARE CHIROPRACTORS PERMITTED TO DO EXTREMITY MANIPULATION?

Pursuant to Wisconsin Administrative Code Chir 4.03, the practice of chiropractic includes the application of chiropractic science in the adjustment of the spinal column, skeletal articulations and adjacent tissue, which also includes the use of procedures and instruments preparatory and complementary to treatment of the spinal column, skeletal articulations and adjacent tissue. Accordingly, extremity manipulations may be done, either as preparatory or complementary to the treatment of the spinal column, or separately.

CAN A CHIROPRACTOR PERFORM “MANIPULATION UNDER ANESTHESIA”?

With Manipulation under anesthesia (MUA), a chiropractor performs a chiropractic adjustment while the patient is sedated. The Board has authorized the use of MUA by chiropractors with adequate training under certain circumstances.

In 1997, the Board set forth the following protocol for MUA:

1. A chiropractor should be appropriately trained by qualified chiropractic and medical instructors in a MUA certification course with a minimum of 15 supervised MUA treatments prior to receiving course certification. This course must be approved by the Commission on Accreditation of the Council on Chiropractic Education (CCE).
2. MUA is an extraordinary treatment involving additional risks to the patient inherent in anesthesia and additional costs associated with hospital/surgical center and anesthesiologist fees. Therefore, MUA should be recommended and administered only for patients with chronic and severe conditions demonstrated to be unresponsive to non-MUA chiropractic adjustment and management.
3. Prior to administering MUA, a chiropractor shall first:
 - a. Refer the patient to another independent chiropractor for a course on non-MUA chiropractic adjustment clinically appropriate to the patient's condition for which MUA is recommended.

- b. Fully inform the patient about the risks of the procedure, alternative modes of treatment, and obtain specific written informed consent of the patient for the MUA procedure.

The Chiropractic Examining Board revisited the issue and clarified its position in February 2003 as follows:

The anesthesia utilized in conjunction with MUA must be administered by either an anesthesiologist who is a licensed physician with a credential to practice medicine and utilize drugs, or a Certified Registered Nurse Anesthetist under the direct supervision in a hospital setting of a licensed physician with a credential to practice medicine and utilize drugs.

Manipulation under anesthesia does not constitute chiropractic treatment utilizing drugs and does not fall within the proscription against the prescribing, dispensing, delivery or administration of drugs.

ARE CHIROPRACTORS PERMITTED TO USE NEEDLE ELECTROMYOGRAPHY (NEMG)?

The Board has determined that the use of Needle Electromyography (NEMG) is within the scope of practice of a chiropractor as defined by Wis. Stat. § 446.01(2) and Wis. Admin. Code Chir 4.03, and has authorized the use of NEMG by chiropractors with adequate training under certain circumstances.

Specifically, NEMG may be utilized by Chiropractors for diagnostic purposes. NEMG equipment may be operated only by a chiropractor who has the education, training and expertise necessary to be eligible for, or has been admitted to, Diplomate status by the American Board of Chiropractic Neurology (DABCN or DACNB). The requisite education, training and expertise presume passage of the ABCN exam.

IS IT PERMISSIBLE FOR A CHIROPRACTOR TO DELEGATE ADJUNCTIVE SERVICES TO A NON-LICENSED PERSON?

Section 446.02(7) of the Wisconsin Statutes provides that a chiropractor may delegate the performance of adjunctive services to chiropractic technologists and x-ray services to chiropractic radiological technologists *only*, and then, provided that: 1) the services are performed under the direct, on-premises supervision of the chiropractor; and that 2) the person has adequate education, training, and experience to safely perform those services. "Adjunctive services" means services which are preparatory or complimentary to chiropractic adjustments of the spine or skeletal articulations, or both. It does not include making a chiropractic diagnosis or performing a chiropractic adjustment.

See also, s. Chir 10.02 of the Wisconsin Administrative Code, which provides that a chiropractor may delegate the performance of adjunctive services to an unlicensed person only if all of the following conditions are met:

- (1) The chiropractor maintains records by which the chiropractor has verified that the unlicensed person 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.
- (2) The chiropractor exercises direct supervision of the unlicensed person performing the delegated service.

In addition, s. Chir 10.05 of the Wisconsin Administrative Code, provides that 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 only if the delegation is consistent with s. Chir 10.02 and the unlicensed person has adequate training, education and experience to perform the delegated function to minimally acceptable chiropractic standards.

MAY A CHIROPRACTOR CERTIFIED FOR NUTRITIONAL COUNSELING PROMOTE THE SALE OF AND/OR SELL HCG PRODUCTS AS PART OF RECOMMENDED WEIGHT LOSS PROGRAM?

HCG, a hormone produced by the human placenta during pregnancy, is approved by the FDA as a prescription drug for the treatment of female infertility, and certain other medical conditions. However, HCG is *not* approved for use as a weight loss aid. In fact, the prescription drug label notes there “is no substantial evidence that it increases weight loss beyond that resulting from caloric restriction, that it causes a more attractive or ‘normal’ distribution of fat, or that it decreases the hunger and discomfort associated with calorie-restricted diets.” HCG is not approved for any over-the-counter sales. The FDA is advising consumers to steer clear of HCG weight-loss products, often marketed as “homeopathic,” but which may or may not qualify as such. The FDA has also warned companies selling HCG products for use as a weight loss aid are illegal as not approved by the FDA. Moreover, HCG is not listed in the Homeopathic Pharmacopoeia of the United States as one of the active ingredients that may legally be included in homeopathic drug products. See [FDA on HCG](#).

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Tom Ryan		2) Date When Request Submitted: 5/14/13	
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Chiropractic Examining Board			
4) Meeting Date: 5/30/13	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? EO 61 Review	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: <p>To comply with Executive Order #61, the Board is being asked to rview its rules to identify rules that unnecessarily burden small businesses to conduct theirn affairs and expand. Per a motion at the January 24th, 2013 meeting, the Board intended to review all Position Statements and Rules as a group commencing with their March 14 meeting.</p>			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: <ol style="list-style-type: none"> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. 			



OFFICE OF THE GOVERNOR

EXECUTIVE ORDER # 61

Relating to Job Creation and Small Business Expansion

WHEREAS, creating jobs and growing our state's economy is dependent on a vibrant small business sector; and

WHEREAS, small businesses have generated 64% of net new jobs over the past fifteen years and employ over half of all private sector employees; and

WHEREAS, according to recent U.S. Census data, 86% of Wisconsin business employ fewer than 20 workers, and 74% have ten workers or less; and

WHEREAS, small businesses spend 80% more per worker than large employers to comply with government regulations and, according to a recent National Federation of Independent Business survey of Wisconsin employers, 91% said it was impossible to know about, comply with, and understand all of government's regulations; and

WHEREAS, according to the U.S. Small Business Administration, complying with government regulations costs small businesses \$10,585 per worker, which discourages investment and hiring by small businesses; and

WHEREAS, government regulations are regularly cited as one of the top three concerns for small business growth, according to NFIB's Small Business Optimism Index; and

WHEREAS, 2011 Wisconsin Act 46 strengthened Wisconsin's Small Business Regulatory Review Board (Board) empowering small business owners and giving them the ability to judge the economic impact of government regulation; and

WHEREAS, 2011 Wisconsin Act 46 requires state agencies to submit any rule with an economic impact to the Board for review and allows the Board to suggest changes to the agency that will improve compliance and reduce the rule's burden on small businesses; and

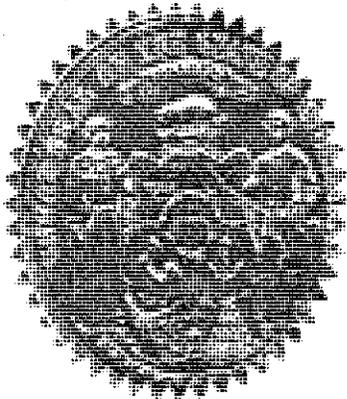
WHEREAS, pursuant to Wis. Stat. § 227.30, the Board has the authority to review rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses to conduct their affairs; and

WHEREAS, state agencies and the Board should not only be reviewing new rules but collaborating to reform existing rules that hinder job creation and small business expansion and that this effort would help further the state's goal of creating 250,000 jobs by 2015.

NOW THEREFORE, I, SCOTT WALKER, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and laws of this State, specifically Wis. Stat. § 227.10(2m), do hereby:

1. Require all state agencies to review 2011 Wisconsin Act 46 to ensure they are in compliance, ready to assist small business owners, and properly submitting any proposed rules with an economic impact to the Board;
2. Require all state agencies to cooperate with the Board to identify existing rules hindering job creation and small business growth;

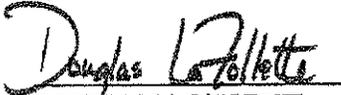
3. Require all state agencies to work with the Board to recommend changes to these rules that will both reduce their burden on job creators while continuing to comply with the intent of the statutes that created them;
4. Require all state agencies to work with the Board to identify strategies that will increase compliance with existing rules;
5. Request that the Board engage small business owners and their representative organizations to gather input on any rules hindering job growth;
6. Request that the Board provide a report and analysis of these rules, in a manner similar to Wis. Stat. § 227.30(1), to the Governor's Office of Regulatory Compliance and the agency with the authority to amend the rules, which details the rules they have identified for modification.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done in the City of Eau Claire this twenty-second day of February, in the year two thousand twelve.


SCOTT WALKER
Governor

By the Governor:


DOUGLAS LA FOLLETTE
Secretary of State

notice, under ch. 985, of the hearing in the official state newspaper and give any other notice which the committee directs. The hearing shall be conducted in accordance with s. 227.18 and shall be held not more than 60 days after receipt of notice of the requirement.

History: 1985 a. 182 ss. 1, 3, 50; 1987 a. 186; 2005 a. 249.

Rule suspension under sub. (2) (d) does not violate the separation of powers doctrine. *Martinez v. DILHR*, 165 Wis. 2d 687, 478 N.W.2d 582 (1992).

A collective bargaining agreement between the regents and the teaching assistants association is not subject to review by the committee. 59 Atty. Gen. 200.

In giving notice of public hearings held under sub. (2), the committee should concurrently employ the various forms of notice available that best fit the particular circumstances. 62 Atty. Gen. 299.

If an administrative rule is properly adopted and is within the power of the legislature to delegate there is no material difference between it and a law. No law, including a valid rule can be revoked by a joint resolution of the legislature as such a resolution deprives the executive its power to veto an act of the legislature. 63 Atty. Gen. 159.

Legislative committee review of administrative rules in Wisconsin. Bunn and Gallagher. 1977 WLR 935.

227.27 Construction of administrative rules.

- (1) In construing rules, ss. 990.001, 990.01, 990.03 (1), (2) and (4), 990.04 and 990.06 apply in the same manner in which they apply to statutes, except that ss. 990.001 and 990.01 do not apply if the construction would produce a result that is inconsistent with the manifest intent of the agency.
- (2) The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau or the secretary of state, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.

History: 1983 a. 544; 1985 a. 182 ss. 22, 55 (2), (3); Stats. 1985 s. 227.27; 2005 a. 249; 2007 a. 20.

227.30 Review of administrative rules or guidelines.

- (1) The small business regulatory review board may review the rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1), to conduct their affairs. If the board determines that a rule or guideline places an unnecessary burden on the ability of a small business to conduct its affairs, the board shall submit a report and recommendations regarding the rule or guideline to the joint committee for review of administrative rules and to the agency.
- (2) When reviewing the report, the joint committee for review of administrative rules shall consider all of the following:
 - (a) The continued need for the rule or guideline.
 - (b) The nature of the complaints and comments received from the public regarding the rule or guideline.
 - (c) The complexity of the rule or guideline.

- (d) The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.
 - (e) The length of time since the rule or guideline has been evaluated.
 - (f) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule or guideline since the rule or guideline was promulgated.
- (3) The joint committee for review of administrative rules may refer the report regarding the rule or guideline to the presiding officer of each house of the legislature for referral to a committee under s. 227.19 (2) or may review the rule or guideline as provided under s. 227.26.

History: 2003 a. 145; 2005 a. 249.

SUBCHAPTER III

ADMINISTRATIVE ACTIONS AND JUDICIAL REVIEW

Cross-reference: See also ch. NR 2, Wis. adm. code.

227.40 Declaratory judgment proceedings.

- (1) Except as provided in sub. (2), the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of the rule brought in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for the county where the dispute arose. The officer or other agency whose rule is involved shall be the party defendant. The summons in the action shall be served as provided in s. 801.11 (3) and by delivering a copy to that officer or, if the agency is composed of more than one person, to the secretary or clerk of the agency or to any member of the agency. The court shall render a declaratory judgment in the action only when it appears from the complaint and the supporting evidence that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule in question.
- (2) The validity of a rule may be determined in any of the following judicial proceedings when material therein:
- (a) Any civil proceeding by the state or any officer or agency thereof to enforce a statute or to recover thereunder, provided such proceeding is not based upon a matter as to which the opposing party is accorded an administrative review or a judicial review by other provisions of the statutes and such opposing party has failed to exercise such right to review so accorded;
 - (b) Criminal prosecutions;
 - (c) Proceedings or prosecutions for violations of county or municipal ordinances;
 - (d) Habeas corpus proceedings relating to criminal prosecution;

**227.10 Statements of policy and interpretations of law;
discrimination prohibited.**

- (1)** Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. A statement of policy or an interpretation of a statute made in the decision of a contested case, in a private letter ruling under s. 73.035 or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render it a rule or constitute specific adoption of a rule and is not required to be promulgated as a rule.
- (2)** No agency may promulgate a rule which conflicts with state law.
- (2m)** No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter. The governor, by executive order, may prescribe guidelines to ensure that rules are promulgated in compliance with this subchapter.

227.114 Rule making; considerations for small business.

227.114(2)

- (1) In this section, "small business" means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.
- (2) When an agency proposes or revises a rule that may have an effect on small businesses, the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:
 - (a) The establishment of less stringent compliance or reporting requirements for small businesses.
 - (b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
 - (c) The consolidation or simplification of compliance or reporting requirements for small businesses.
 - (d) The establishment of performance standards for small businesses to replace design or operational standards required in the rule.
 - (e) The exemption of small businesses from any or all requirements of the rule.

Page intentionally left blank