



CHIROPRACTIC EXAMINING BOARD
Room N208, 4822 Madison Yards Way, 2nd Floor, Madison
Contact: Yolanda Y. McGowan (608) 266-2112
August 29, 2019

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 of June 27, 2019 (4-7)**
- C. Conflicts of Interest**
- D. Administrative Matters – Discussion and Consideration**
 - 1. Department, Staff, and Board Updates
 - 2. Election of Officers
 - 3. Appointment of Liaisons and Alternates
- E. 8:30 AM PUBLIC HEARING: Clearinghouse Rule CR 19-100 – Chir 12 Relating to Nutritional Counseling Certification (8-20)**
 - 1. Review and Respond to Public Comments and Clearinghouse Report
- F. Legislative and Administrative Rule Matters – Discussion and Consideration (8)**
 - 1. PACE Precheck of Continuing Education Courses
 - 2. Review of Scope Statement for Chir 5, Relating to Approval of Continuing Education Programs **(21-22)**
 - 3. Review of Draft Rules for Chir 5, Relating to Continuing Education **(23-36)**
 - 4. Review of Draft Rules for Chir 6, Relating to Standards of Conduct **(37-46)**
 - 5. Legislation and Pending or Possible Rulemaking Projects
- G. Discussion and Consideration of Items Added After Preparation of Agenda**
 - 1. Introductions, Announcements and Recognition
 - 2. Administrative Matters
 - 3. Election of Officers
 - 4. Appointment of Liaisons and Alternates
 - 5. Delegation of Authorities
 - 6. Education and Examination Matters
 - 7. Credentialing Matters

8. Practice Matters
9. Legislative and Administrative Rule Matters
10. Preceptor Approvals
11. Liaison Reports
12. Board Liaison Training and Appointment of Mentors
13. Informational Items
14. Division of Legal Services and Compliance (DLSC) Matters
15. Presentations of Petitions for Summary Suspension
16. Petitions for Designation of Hearing Examiner
17. Presentation of Stipulations, Final Decisions and Orders
18. Presentation of Proposed Final Decisions and Orders
19. Presentation of Interim Orders
20. Petitions for Re-Hearing
21. Petitions for Assessments
22. Petitions to Vacate Orders
23. Requests for Disciplinary Proceeding Presentations
24. Motions
25. Petitions
26. Appearances from Requests Received or Renewed
27. Speaking Engagements, Travel, or Public Relation Requests, and Reports

H. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), 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.).

I. **Deliberation on DLSC Matters**

1. Administrative Warnings

- a. 17 CHI 020 – C.S.W. **(47-48)**

2. Case Closings

- a. 17 CHI 008 – C.C.W **(49-52)**
- b. 17 CHI 020 – C.S.W. **(53-57)**
- c. 18 CHI 001 – T.G.S. **(58-69)**
- d. 18 CHI 003 – B.M.M. **(70-72)**
- e. 18 CHI 005 – R.G.R. **(73-76)**
- f. 18 CHI 020 – D.M.M. **(77-80)**
- g. 18 CHI 021 – T.T.L. **(81-84)**

J. Deliberation of Items Added After Preparation of the Agenda

1. Education and Examination Matters
2. Credentialing Matters
3. DLSC Matters
4. Monitoring Matters
5. Professional Assistance Procedure (PAP) Matters
6. Petitions for Summary Suspensions
7. Petitions for Designation of Hearing Examiner

8. Proposed Stipulations, Final Decisions and Orders
9. Proposed Interim Orders
10. Administrative Warnings
11. Review of Administrative Warnings
12. Proposed Final Decisions and Orders
13. Matters Relating to Costs/Orders Fixing Costs
14. Case Closings
15. Board Liaison Training
16. Petitions for Assessments and Evaluations
17. Petitions to Vacate Orders
18. Remedial Education Cases
19. Motions
20. Petitions for Re-Hearing
21. Appearances from Requests Received or Renewed

K. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

- L. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate
- M. Open Session Items Noticed Above Not Completed in the Initial Open Session
- N. Delegation of Ratification of Examination Results and Ratification of Licenses and Certificates

ADJOURNMENT

NEXT MEETING: NOVEMBER 21, 2019

 MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 4822 Madison Yards Way, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Interpreters for the hearing impaired provided upon request by contacting the Affirmative Action Officer, 608-266-2112.

**CHIROPRACTIC EXAMINING BOARD
MEETING MINUTES
June 27, 2019**

PRESENT: Scott Bautch, D.C.; James Fortier; Bryan Gerondale, D.C.; Jeffrey King, D.C.; Patricia Schumacher, D.C.

STAFF: Christian Albouras, Executive Director; Dale Kleven, Administrative Rules Coordinator; Kimberly Wood, Program Assistant Supervisor-Advanced; and other Department Staff

CALL TO ORDER

Patricia Schumacher, Chairperson, called the meeting to order at 8:32 a.m. A quorum of five (5) members was confirmed.

ADOPTION OF AGENDA

Amendments to the Agenda:

- Open Session: Under item “C. Introductions, Announcements and Recognition” **ADD:**
 - “3. Resignations and Replacements”
 - “a. Patricia Schumacher, Chiropractic Member”
 - “b. Juli McNeely, Public Member”

MOTION: Scott Bautch moved, seconded by Jeffrey King, to adopt the Agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES OF APRIL 4, 2019

MOTION: Scott Bautch moved, seconded by Bryan Gerondale, to approve the Minutes of April 4, 2019 as published. Motion carried unanimously.

INTRODUCTIONS, ANNOUNCEMENTS AND RECOGNITION

Resignations and Replacements

Patricia Schumacher, Chiropractor Member

MOTION: Jeffrey King moved, seconded by Bryan Gerondale, to recognize and thank Patricia Schumacher for her 6 years of dedicated service to the Board and State of Wisconsin. Motion carried unanimously.

Juli McNeely, Public Member

MOTION: Bryan Gerondale moved, seconded by Scott Bautch, to recognize and thank Juli McNeely for her 3 years of dedicated service to the Board and State of Wisconsin. Motion carried unanimously.

LEGISLATIVE AND ADMINISTRATIVE RULE MATTERS

Adoption Order: CR 18-015, Relating to Examinations

MOTION: Scott Bautch moved, seconded by Jeffrey King, to approve the Adoption Order for Clearinghouse Rule CR 18-015, relating to examinations. Motion carried unanimously.

Review and Respond to Public Comments Concerning CR 18-105 – Chir 1, 4, 10, and 11 Relating to Delegation of Services to Health Care Professionals

MOTION: Bryan Gerondale moved, seconded by Scott Bautch, to authorize the Chairperson, the highest-ranking officer, or longest serving board member, in order of succession, to approve the Legislative Report and Draft for Clearinghouse Rule 18-105, relating to delegation of services to health care professionals, for submission to the Governor's Office and Legislature. Motion carried unanimously.

Scope Statement for Chir 10, Relating to Courses of Study for and Delegation to Chiropractic Technicians and Chiropractic Radiological Technicians

MOTION: Scott Bautch moved, seconded by Bryan Gerondale, to approve the Scope Statement revising Chir 10, for submission to the Department of Administration and Governor's Office and for publication. Additionally, the Board authorizes the Chairperson, the highest-ranking officer, or longest serving board member, in order of succession, to approve the Scope Statement for implementation no less than 10 days after publication. Motion carried unanimously.

MOTION: Scott Bautch moved, seconded by Bryan Gerondale, that if the Board is directed under s. 227.136 (1), Stats., to hold a preliminary public hearing and comment period on the Scope Statement revising Chir 10, the Chairperson, the highest-ranking officer, or longest serving board member, in order of succession, is authorized to approve the notice required under s. 227.136 (2), Stats. Motion carried unanimously.

Proposals for Chir 6, Relating to Standards of Conduct, and Chir 12, Relating to Nutritional Counseling Certification

MOTION: Scott Bautch moved, seconded by James Fortier, to approve the Chairperson, the highest-ranking officer, or longest serving board member, in order of succession, to approve the preliminary rule draft of Chir 12, relating to nutritional counseling certification, for posting for economic impact comments and submission to the Clearinghouse. Motion carried unanimously.

CLOSED SESSION

MOTION: Scott Bautch moved, seconded by Bryan Gerondale, to convene to Closed Session to deliberate on cases following hearing (§ 19.85(1) (a), Stats.); to consider licensure or certification of individuals (§ 19.85 (1) (b), Stats.); to consider closing disciplinary investigations with administrative warnings (§§ 19.85 (1) (b), and § 440.205, Stats.); to consider individual histories or disciplinary data (§ 19.85 (1) (f), Stats.); and to confer with legal counsel (§ 19.85 (1) (g), Stats.). Patricia Schumacher, Chairperson, read the language of the motion aloud for the record. The vote of each member was ascertained by voice vote. Roll Call Vote: Scott Bautch-yes; James Fortier-yes; Bryan Gerondale-yes; Jeffrey King-yes and Patricia Schumacher-yes. Motion carried unanimously.

The Board convened into Closed Session at 11:32 a.m.

DELIBERATION ON CREDENTIALING MATTERS

Review Renewal Application File for Stephen G. Flikke

MOTION: Bryan Gerondale moved, seconded by Scott Bautch, to approve the renewal application of Stephen G. Flikke for unrestricted licensure once all requirements are met. Motion carried unanimously.

Review Re-Registration Application File for Will H. Schlinsog

MOTION: Bryan Gerondale moved, seconded by James Fortier, to require Will H. Schlinsog to complete and successfully pass the SPEC examination prior to regaining licensure, pursuant to Chir 3.02(3)(a). Motion carried unanimously.

DELIBERATION ON DIVISION OF LEGAL SERVICES AND COMPLIANCE MATTERS

Proposed Stipulations, Final Decisions and Orders

18 CHI 029 – Craig L. Jordan, D.C.

MOTION: Jeffrey King moved, seconded by Scott Bautch, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Craig L. Jordan, DLSC Case Number 18 CHI 029. Motion carried. Abstained: Bryan Gerondale

Case Closings

MOTION: Scott Bautch moved, seconded by Jeffrey King, to close the following DLSC Cases for the reasons outlined below:

1. 17 CHI 023 – J.M.W. – Prosecutorial Discretion (P1)
2. 18 CHI 011 – R.J.Z. – Prosecutorial Discretion (P2)
3. 18 CHI 019 – T.F.B. – Prosecutorial Discretion (P2)
4. 19 CHI 002 – B.T.D. – No Violation

Motion carried unanimously.

RECONVENE TO OPEN SESSION

MOTION: Scott Bautch moved, seconded by James Fortier, to reconvene into Open Session. Motion carried unanimously.

The Board reconvened into Open Session at 12:27 p.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION, IF VOTING IS APPROPRIATE

MOTION: Jeffrey King moved, seconded by Scott Bautch, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

(Be advised that any recusals or abstentions reflected in the Closed Session motions stand for the purposes of the affirmation vote.)

DELEGATION OF RATIFICATION OF EXAMINATION RESULTS AND RATIFICATION OF LICENSES AND CERTIFICATES

MOTION: Scott Bautch moved, seconded by Bryan Gerondale, to delegate ratification of examination results to DSPS staff and to ratify all licenses and certificates as issued. Motion carried unanimously.

ADJOURNMENT

MOTION: Bryan Gerondale, seconded by Scott Bautch, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 12:30 p.m.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Dale Kleven Administrative Rules Coordinator		2) Date When Request Submitted: 8/19/19 Items will be considered late if submitted after 12:00 p.m. on the deadline date: ▪ 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Chiropractic Examining Board			
4) Meeting Date: 8/29/19	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? 8:30 A.M. Public Hearing: CR 19-100 – Chir 12 Relating to Nutritional Counseling Certification 1. Review and Respond to Public Comments and Clearinghouse Report Legislation and Rule Matters – Discussion and Consideration 1. PACE Precheck of Continuing Education Courses 2. Review of Draft Rules for Chir 5, Relating to Continuing Education 3. Review of Draft Rules for Chir 6, Relating to Standards of Conduct 4. Legislation and Pending and Possible Rulemaking Projects	
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:			
11) Authorization			
<i>Dale Kleven</i>		<i>August 19, 2019</i>	
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.			

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 **repeal** Chir 12.01 (1) (a) and (b) and 12.03 (1) (k); to **renumber and amend** Chir 12.01 (1) (intro.) and (4), 12.02 (1) (intro.), (a), (a) (Note), (b), and (c), and 12.03 (1) (c); to **amend** Chir 12.01 (2) and (3), 12.03 (1) (intro.), (b) 3., 4., 5., 9., 10., 11., 13., 15., 17., 19., 21., 22., 24., and 25., (d), (e), (f), (i), and (j), (2) (a) 1. to 9., and (3), 12.04 (intro.), 12.05 (1), and 12.06 (1) to (3); and to **create** Chir 12.01 (4) (a) to (e) and (5) and 12.03 (1) (am), (b) 10. (Note), and (c) 1. to 3., relating to nutritional counseling certification.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 446.02 (2) (c), 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 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:

None.

Plain language analysis:

The Board conducted an evaluation and update of ch. Chir 12 to ensure the definitions under s. Chir 12.01, the criteria for granting a certificate for nutritional counseling under s. Chir 12.02, and the criteria for approval of nutritional counseling educational programs under s. Chir 12.03 are consistent with current professional and academic practices and applicable Wisconsin statutes. As a result, the following updates have been made:

- A definition of “patient” is added to the definitions under s. Chir 12.01.
- The requirement under s. Chir 12.03 (2) (a) 5. that program subject matter is generally taught at the undergraduate or postgraduate level of a chiropractic college and relates to improving the clinical skills of a chiropractor is revised. The revised requirement is that program subject matter contributes to the advancement, extension, and enhancement of the clinical skills of a chiropractor and fosters the enhancement of general or specialized practice and values.
- Other provisions throughout ch. Chir 12 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 does not certify chiropractors in nutritional counseling. The statutory definition of chiropractic physician provides a chiropractor is not prohibited from providing advice regarding the use of non-prescription products (225 ILCS 60/2).

Iowa: Iowa does not certify chiropractors in nutritional counseling. Iowa statutes provide that licensed chiropractors who make dietetic or nutritional assessments or give dietetic or nutritional advice in the normal practice of their profession are exempted from the requirement to be licensed to practice dietetics (Iowa Code 2017, section 152A.3).

Michigan: Michigan does not certify chiropractors in nutritional counseling. By statutory definition, the practice of chiropractic includes the use of nutritional advice (MCL 333.16401).

Minnesota: Minnesota does not certify chiropractors in nutritional counseling. Minnesota statutes provide no person may engage in dietetics or nutrition practice unless the person is licensed as a dietitian or nutritionist (Minnesota Statutes 2016, section 148.630).

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of ch. Chir 12 to ensure the rules are consistent with current professional and academic practices and applicable Wisconsin statutes. No additional factual data or analytical methodologies were used to develop the proposed rules.

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 53708-8366; 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 August 29, 2019, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chir 12.01 (1) (intro.) is renumbered Chir 12.01 (1) and amended to read:

Chir 12.01 (1) ~~“Administering”~~ “Administer” means ~~the direct application of a product to directly apply a nutritional supplement or direct the self-application of a nutritional supplement, whether by ingestion or any other means, to the body of a patient or research subject, by any of the following:~~

SECTION 2. Chir 12.01 (1) (a) and (b) are repealed.

SECTION 3. Chir 12.01 (2) and (3) are amended to read:

Chir 12.01 (2) ~~“Dispensing”~~ “Dispense” means ~~delivering a product to deliver a nutritional supplement to an ultimate user or research subject by a chiropractor.~~

(3) “Nutritional counseling” means providing counsel, direction, guidance, advice, or a recommendation to a patient regarding the health effects of ~~vitamins, herbs or~~ nutritional supplements.

SECTION 4. Chir 12.01 (4) is renumbered Chir 12.01 (4) (intro.) and amended to read:

Chir 12.01 (4) (intro.) “Nutritional supplement” means a product, other than tobacco, that is labeled as a nutritional or dietary supplement or intended to supplement the diet and that contains or is a concentrate, metabolic, constituent, or extract of one or more of the following dietary ingredients: a vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance for use by man to supplement the diet by increasing the total daily intake, or concentrate, metabolics, constituent, extract or combination of these ingredients; or is labeled as a nutritional or dietary supplement.

SECTION 5. Chir 12.01 (4) (a) to (e) and (5) are created to read:

Chir 12.01 (4) (a) A vitamin.

(b) A mineral.

(c) An herb or other botanical.

(d) An amino acid.

(e) A dietary substance for use by an individual to supplement the diet by increasing total daily intake.

(5) “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 6. Chir 12.02 (1) (intro.), (a), (a) (Note), (b), and (c) are renumbered Chir 12.02 (intro.), (1), (1) (Note), (2), and (3) and amended to read:

Chir 12.02 (intro.) The board shall grant a certificate for nutritional counseling to a ~~licensed~~ chiropractor licensed under ch. 446, Stats., who does all of the following:

(1) Submits an application ~~for a certificate~~ to the department on a form provided by the department.

(Note) Application forms are available on the department’s website at dsps.wi.gov, or by request to from the board office located at 1400 East Washington Avenue Department of Safety and Professional Services, P.O. Box 8935, Madison, Wisconsin 53708, or from the department's website at: <http://dsps.wi.gov> call (608) 266-2112.

(2) Pays the fee specified ~~in~~ under s. 446.02 (2) (c), Stats.

(3) Submits evidence satisfactory to the board that ~~he or she~~ the applicant has ~~completed~~ received any of the following:

(a) ~~Received a~~ A postgraduate degree in human nutrition, nutrition education, food and nutrition, or dietetics conferred by a college or university that is accredited by an accrediting body ~~listed as nationally recognized by the secretary of the federal United States~~ department of education.

(b) ~~Received diplomate~~ Diplomate status in human nutrition conferred by a college of chiropractic accredited by the Council on Chiropractic Education, ~~(CCE) or approved by the board,~~ or accredited by an accrediting agency ~~approved~~ recognized by the United States ~~office~~ department of education ~~or its successor.~~

(c) ~~Received a A postgraduate degree in human nutrition conferred by a foreign school determined to be equivalent to an accredited college of chiropractic by the CCE Council on Chiropractic Education or approved by the board or another board approved accrediting agency, indicating that the applicant has graduated from a program that is substantially equivalent to a postgraduate or diplomate program under ~~subd. 1. or 2. par. (a) or (b).~~~~

(d) ~~Received a A degree from or otherwise successfully completed other recognition of successful completion of a postgraduate program after December 1, 2006 consisting of a minimum of 48 hours in human nutrition that is approved by the board as provided in under s. Chir 12.03, after December 1, 2006 at the time the program is completed.~~

SECTION 7. Chir 12.03 (1) (intro.) is amended to read:

Chir 12.03 (1) (intro.) To qualify for board approval as a nutritional counseling education program ~~under s. Chir 12.02 (1) (c) 4.~~, a program shall meet all of the following minimum requirements:

SECTION 8. Chir 12.03 (1) (am) is created to read:

Chir 12.03 (1) (am) The program consists of a minimum of 48 hours in human nutrition.

SECTION 9. Chir 12.03 (1) (b) 3., 4., 5., 9., and 10. are amended to read:

Chir 12.03 (1) (b) 3. Analysis of laboratory data including hair, saliva, urine, and blood samples.

4. Symptoms of severe vitamin and nutritional deficiencies, and the toxicity of excess vitamin and mineral supplementation, herbals, or other nutritional supplements.

5. Protein, carbohydrates, and fat macronutrient needs, and symptoms of deficiencies of any of these nutrients.

9. The Codex Alimentarius Commission.

10. ~~The Dietary supplement health~~ Supplement Health and ~~education act~~ Education Act of 1994, ~~P.L. 103-417~~ and related regulations.

SECTION 10. Chir 12.03 (1) (b) 10. (Note) is created to read:

Chir 12.03 (1) (b) 10. (Note) The Dietary Supplement Health and Education Act of 1994 is also known as Public Law 103-417.

SECTION 11. Chir 12.03 (1) (b) 11., 13., 15., 17., 19., 21., 22., 24., and 25. are amended to read:

Chir 12.03 (1) (b) 11. Etiology of organ system dysfunction, and internal medicine diseases and conditions.

13. The efficacy, safety, risks, and benefits of glandular products, chelation therapy, and therapeutic enzymes.

15. Sports nutrition, endurance, body building, and exercise physiology.

17. Contraindications, side effects, and toxic effects of botanicals, nutritional supplements, and diet products.

19. Nutrition relating to infants, pregnancy, and lactation.

21. Adolescent ~~nutrition~~ nutritional needs.

22. Male and female ~~nutrition~~ nutritional needs.

24. Food, drug, and nutritional ~~supplements~~ supplement interactions.

25. ~~Safety and~~ The safety, efficacy, – risks, and benefits of nutritional supplements.

SECTION 12. Chir 12.03 (1) (c) is renumbered Chir 12.03 (1) (c) (intro.) and amended to read:

Chir 12.03 (1) (c) (intro.) ~~The program sponsor agrees to provide a responsible person to monitor and verify the attendance of each registered chiropractor at the program, and the program sponsor agrees to keep the records of attendance for 3 years from the date of the program and to furnish each participant with evidence of having attended the program.~~ agrees to do all of the following:

SECTION 13. Chir 12.03 (1) (c) 1. to 3. are created to read:

1. Provide a responsible person to monitor and verify attendance at the program.
2. Keep records of attendance for at least 3 years from the date of the program.
3. Furnish each participant with evidence of having attended the program.

SECTION 14. Chir 12.03 (1) (d), (e), (f), (i), and (j) are amended to read:

Chir 12.03 (1) (d) ~~The program sponsor shall not assign or delegate its~~ Any assignment or delegation of a program sponsor's responsibilities to monitor or record attendance, provide evidence of attendance, compare course content with subject matter content required under sub. (1) (b), or provide information on instructors or other aspects of the program ~~unless the assignment or delegation is specifically identified in the application for approval under sub. (2) and approved by the board.~~

(e) ~~The program sponsor has reviewed and validated the program's content to insure~~ ensure its compliance with par. (b).

(f) ~~When a~~ Any course instructor ~~of the program that~~ is on the undergraduate or postgraduate faculty of a chiropractic college, ~~the program sponsor has provided written verification that the course instructor~~ has been appointed in accordance with the accreditation standards of the Council on Chiropractic Education.

(i) ~~The program shall include~~ includes a written assessment instrument; ~~that is~~ designed to ensure ~~that~~ the chiropractor actively participated in the presentation of material and derived a measurable benefit from participation. There shall be an assessment or test at the conclusion of each 12 hours of education. A score of 75% or higher shall be considered a passing score.

(j) ~~The program shall contain~~ contains a reasonable security procedure to ~~assure that~~ ensure the chiropractor enrolled is the actual participant.

SECTION 15. Chir 12.03 (1) (k) is repealed.

SECTION 16. Chir 12.03 (2) (a) 1. to 9. and (3) are amended to read:

Chir 12.03 (2) (a) 1. ~~Be~~ The application shall be on a form provided by the board.

(Note) Application forms are available on the department's website at dsps.wi.gov, or by request to the board office located at 1400 East Washington Avenue Department of Safety and Professional Services, P.O. Box 8935, Madison, Wisconsin 53708, or from the department's website at: <http://dsps.wi.gov> call (608) 266-2112.

2. ~~Identify~~ The application shall identify the name and address of the program sponsor and describe how the program sponsor qualifies under ~~s. Chir 12.03 sub. (1) (a).~~

3. ~~Describe~~ The application shall identify the time and ~~place~~ location of the program.

4. ~~Be~~ The application shall be complete as prescribed in this subsection and filed with the board no later than 75 days prior to the program date. An application is not considered complete until such time as all information required to be submitted with the application, and any supplementary information requested by the board, is received by the board.

5. ~~Include~~ The application shall include satisfactory evidence, ~~of the program sponsor's verification showing to the satisfaction of as determined by~~ the board, that the program subject matter is generally taught at the undergraduate or postgraduate level of a chiropractic college and relates to improving contributes to the advancement, extension, and enhancement of the clinical skills of a chiropractor and fosters the enhancement of general or specialized practice and values. A detailed course outline or syllabus describing the subject matter of the program, and the amount of time devoted to each section of the outline or syllabus shall be attached to the application.

6. ~~Describe~~ The application shall describe the names and qualifications of all instructors, and if applicable, whether an instructor ~~of the program~~ who is an undergraduate or postgraduate faculty member of a sponsoring college was appointed in accordance with accreditation standards of the Council on Chiropractic Education.

7. ~~Identify~~ The application shall identify whether the program sponsor intends to assign or delegate any of its responsibilities to another person or entity, and if so, include all of the following:

a. A specific description of the ~~assignment or delegation~~ assigned or delegated responsibility.

b. The name, address, and qualifications of the person or entity ~~who is~~ assigned or delegated to perform the responsibility, ~~including name, address and qualification to perform the responsibility.~~

c. ~~The~~ A description of the method by which the program sponsor intends to ~~assure that~~ ensure the delegated or assigned responsibility is performed.

8. ~~Include~~ The application shall include a description of the written assessment instrument, that is designed to ensure ~~that the~~ a chiropractor has actively participated in the presentation of material and derived a measurable benefit from participation.

~~9. Include~~ The application shall include a reasonable description of the security procedure that will be used to assure that the ensure a chiropractor enrolled in the program is the actual participant.

(3) Programs shall be approved for one hour of education credit for every 50 minutes of instruction. Continuing education credit may not be ~~awarded~~ approved for meals, breaks, and testing or assessment periods.

SECTION 17. Chir 12.04 (intro.) is amended to read:

Chir 12.04 (intro.) The board may deny approval of an application submitted under s. Chir 12.03 (2) for any of the following reasons:

SECTION 18. Chir 12.05 (1) is amended to read:

Chir 12.05 (1) The program sponsor, an instructor, or a person or entity delegated or assigned a responsibility has a financial, personal, or professional interest which that conflicts directly with the performance of responsibilities ~~in~~ under this chapter.

SECTION 19. Chir 12.06 (1) to (3) are amended to read:

Chir 12.06 (1) A chiropractor ~~shall~~ may not delegate to any chiropractic assistant or other person any recommendations, analysis, advice, consultation, or dispensing with respect to ~~vitamins, herbs, or~~ nutritional supplements. Nothing in this subsection may be construed to prevent chiropractic assistants or administrative employees from processing sales of ~~vitamins, herbs, or~~ nutritional supplements.

(2) ~~After December 1, 2008 a~~ A chiropractor ~~shall~~ may not sell, barter, trade, or give away ~~vitamins, herbs or~~ nutritional supplements unless the chiropractor holds a certificate for nutritional counseling and except as consistent with the provisions of this chapter.

(3) A chiropractor ~~shall~~ may not deliver, dispense, administer, transfer, or sell a ~~product~~ nutritional supplement unless ~~that product~~ the nutritional supplement is prepackaged for use by consumers and labeled in accordance with the requirements of state and federal law.

SECTION 20. 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)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.

The Department estimates one-time administrative costs of \$63.99. These costs may be absorbed in the agency budget.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefit to implementing the rule is providing consistency with current professional and academic practices and applicable Wisconsin statutes. If the rule is not implemented, it will continue to not provide a definition of "patient."

14. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is consistency with current professional and academic practices and applicable Wisconsin statutes.

15. Compare With Approaches Being Used by Federal Government

None

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: Illinois does not certify chiropractors in nutritional counseling. The statutory definition of chiropractic physician provides a chiropractor is not prohibited from providing advice regarding the use of non-prescription products (225 ILCS 60/2).

Iowa: Iowa does not certify chiropractors in nutritional counseling. Iowa statutes provide that licensed chiropractors who make dietetic or nutritional assessments or give dietetic or nutritional advice in the normal practice of their profession are exempted from the requirement to be licensed to practice dietetics (Iowa Code 2017, section 152A.3).

Michigan: Michigan does not certify chiropractors in nutritional counseling. By statutory definition, the practice of chiropractic includes the use of nutritional advice (MCL 333.16401).

Minnesota: Minnesota does not certify chiropractors in nutritional counseling. Minnesota statutes provide no person may engage in dietetics or nutrition practice unless the person is licensed as a dietitian or nutritionist (Minnesota Statutes 2016, section 148.630).

17. Contact Name

Dale Kleven

18. Contact Phone Number

(608) 261-4472

This document can be made available in alternate formats to individuals with disabilities upon request.



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 19-100

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. Form, Style and Placement in Administrative Code

a. In s. Chir 12.01 (1) (intro.), the underscored period should be moved to appear after the strike-through of the phrase “by any of the following.”.

b. In the treatment clause for SECTION 16 of the proposed rule, the listing of “1. to 9.” should be revised to “1., (Note), and 2. to 9.”. The listing should also be revised in the rule caption’s listing of affected provisions.

c. In s. Chir 12.03 (2) (a) 5., the underscored comma after the word “evidence” should be moved to appear after the strike-through of “to the satisfaction of”.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In determining acceptable educational hours, the board could consider explaining the computation of hours required for a qualifying nutritional counseling education program. Section 446.02 (2) (c), Stats., requires 48 hours of postgraduate study in nutrition, as does s. Chir 12.03 (1) (am) in the proposed rule. However, in total, it appears that the rule requires only 40 hours of study, because s. Chir 12.03 (3) treats 50 minutes as an hour of education credit. The statute refers to “study” hours, rather than “credit” hours; if these terms are treated synonymously, that could be explained.

b. Section 446.02 (2) (c), Stats., also specifies that no fee is required for an individual who is eligible for the veterans fee waiver program. However, in s. Chir 12.02 (2), in both the current and proposed rule, the requirement to pay the fee does not refer to the veterans waiver. It would

be helpful to a reader if the waiver were explicitly referenced. For example, the provision could specify, “unless the person is eligible for the veterans fee waiver program under s. 45.44, Stats.”.

STATEMENT OF SCOPE

Chiropractic Examining Board

Rule No.: Chapter Chir 5

Relating to: Approval of Continuing Education Programs

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The Chiropractic Examining Board will establish requirements for approval of continuing education programs recognized by the Providers of Approved Continuing Education (PACE) of the Federation of Chiropractic Licensing Boards.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Current rules provide requirements for approval of continuing education programs. The Board has determined that continuing education programs that meet the standards established by PACE should not be subject to the same requirements for approval as continuing education programs that are not. The proposed rules will establish separate requirements for approval of continuing education programs recognized by PACE.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

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 446.025 (3) (b), Stats., provides "[a] chiropractic radiological technician shall, at the time that he or she applies for renewal of a certificate . . . submit evidence satisfactory to the examining board that he or she has completed at least 12 continuing educational credit hours in programs established by rules promulgated by the examining board."

Section 446.026 (3) (b), Stats., provides "[a] chiropractic technician shall, at the time that he or she applies for renewal of a certificate . . . submit evidence satisfactory to the examining board that he or she has completed at least 6 continuing educational credit hours in programs established by rules promulgated by the examining board."

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

80 hours

6. List with description of all entities that may be affected by the proposed rule:

Wisconsin credentialed chiropractors, chiropractic radiological technicians, and chiropractic technicians, as well as sponsors and providers of continuing education required to be completed by persons with these credentials.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule will have minimal to no economic impact on small businesses and the state's economy as a whole.

Contact Person: Dale Kleven, Administrative Rules Coordinator, DSPSAdminRules@wisconsin.gov, (608) 261-4472

Approved for publication:


Authorized Signature

04/04/2019
Date Submitted

Approved for implementation:

Authorized Signature

Date Submitted

Note: Substantive changes from the version of this document reviewed by the Board on June 28, 2018, are shown with **yellow highlight**.

Chapter Chir 5

CONTINUING EDUCATION

Chir 5.01 Continuing education requirements for credential renewal.

(1)

- (a)** Every chiropractor shall complete at least 40 continuing education credit hours in approved continuing education programs during each 2-year license registration period ending on December ~~14~~ 15 of each even-numbered year, except as specified in s. Chir 3.02 (1) (c).
- (b)** Continuing education requirements for license renewal apply to the first full 2-year period in which a chiropractor is licensed.
- (c)** The board may grant a waiver, partial waiver, or postponement of the continuing education requirements in cases of hardship.
- (d)** Course work completed in pursuit of the educational requirements of ch. Chir 12 may be counted on an hour-for-hour basis.
- (e)** Of the 40 continuing education credit hours in par. (a), a chiropractor holding a nutritional counseling certificate issued under ch. Chir 12 shall complete at least 4 continuing education hours in nutrition.
- (f)** One credit of course work completed to become proficient in the use of an automated external defibrillator as required in ss. Chir 2.02 (6) (c), 3.02 (1) (e), and 3.03 (1) (i), may be counted as a continuing education credit hour.
- (g)** Beginning with the license registration period ending on December 15, 2022, up to 20 of the continuing education credit hours required under par. (a) may be acquired through participation in online continuing education programs approved under s. Chir 5.02.

(1g)

- (a)** Every chiropractic radiological technician shall complete at least 12 continuing education credit hours in approved continuing education programs during each 2-year certificate registration period ending on December ~~14~~ 15 of each even-numbered year. A chiropractic radiological technician who receives an initial certificate during a licensing biennium is not required to satisfy the continuing education requirement from the date of that certificate to the end of that licensing biennium.
- (b)** The board may grant a waiver, partial waiver, or postponement of the continuing education requirements in cases of hardship.
- (c)** Beginning with the certificate registration period ending on December 15, 2022, up to 6 of the continuing education credit hours required under par. (a) may be acquired through participation in online continuing education programs approved under s. Chir 5.02.

(1r)

- (a)** Every chiropractic technician shall complete at least 6 continuing education credit hours in approved continuing education programs during each 2-year certificate registration period ending on December ~~14~~ 15 of each even-numbered year. A chiropractic technician who receives an initial certificate during a licensing biennium is not required to satisfy the continuing education requirement from the date of that certificate to the end of that licensing biennium.
- (b)** The board may grant a waiver, partial waiver, or postponement of the continuing education requirements in cases of hardship.
- (c)** Beginning with the certificate registration period ending on December 15, 2022, up to 3 of the continuing education credit hours required under par. (a) may be acquired through participation in online continuing education programs approved under s. Chir 5.02.

- (2) Continuing education credit hours may apply only to the 2-year license period in which the credit hours are acquired, unless either of the following applies:
- (a) The continuing education credit hours required of a particular chiropractor, chiropractic radiological technician, or chiropractic technician as a consequence of a disciplinary proceeding, informal settlement conference, or resolution of an investigation into the conduct or competence of the chiropractor, chiropractic radiological technician, or chiropractic technician may not be counted towards the fulfillment of generally applicable continuing education requirements.
 - (b) If the chiropractor, chiropractic radiological technician, or chiropractic technician has failed to meet the credential renewal requirement during the period, continuing education hours acquired on or after December 14 15 of any even-numbered year will apply to the preceding period only if the chiropractor, chiropractic radiological technician, or chiropractic technician has failed to meet the credential renewal requirement during that period, and will not apply to any other period or purpose.
- (3) To obtain credit for completion of continuing education programs, a chiropractor, chiropractic radiological technician, or chiropractic technician shall certify on ~~his or her~~ the application for credential renewal that ~~he or she has completed~~ all continuing education credits have been completed as required ~~in~~ under this section ~~for the previous 2-year credential registration period. A chiropractor, chiropractic radiological technician, or chiropractic technician shall retain for a minimum period of 4 years, and shall make available to the board or its agent upon request, certificates of attendance issued by the program sponsor for all continuing education programs for which he or she claims credit for purposes of renewal of his or her credential. Chiropractors, chiropractic radiological technicians, or chiropractic technicians attending a program for credit shall be present in the room where a program is being presented in order to claim credit. A chiropractor, chiropractic radiological technician, or chiropractic technician may claim credit hours for continuing education for which he or she was in actual attendance in the room, except for authorized break periods or to attend to personal hygiene needs.~~
- (4) A chiropractor, chiropractic radiological technician, or chiropractic technician shall retain a certificate or other evidence of attendance issued by the program sponsor for a minimum of 4 years from the date of completion of a continuing education program.
 - (5) The board shall require any chiropractor, chiropractic radiological technician, or chiropractic technician who is under investigation by the board for alleged misconduct to submit evidence of compliance with the continuing education requirements under this section.
 - (6) Except as provided under subs. (1) (g), (1g) (c), and (1r) (c), credit may only be claimed for completing a program in which an instructor employs an in person, classroom-type presentation and the chiropractor, chiropractic radiological technician, or chiropractic technician is in attendance in the same room as the instructor. A home study or other distance learning program may be approved for credit only in cases of extreme hardship, as determined by the board.

Chir 5.02 Approval of continuing education programs.

- (1) The board may approve a continuing education program ~~which that~~ meets all of the following ~~minimum~~ requirements:
 - (a) The program is sponsored by the Wisconsin ~~chiropractic association~~ Chiropractic Association, the ~~American chiropractic association~~, the ~~international chiropractors association~~ International Chiropractors Association, a college of chiropractic approved by the board, or a college of medicine or osteopathy accredited by an agency recognized by the United States department of education.
 - (b) ~~Chiropractors. The~~ For a continuing education program required under s. Chir 5.01 (1) (a), the program subject matter relates contributes to ~~improving the clinical skills of a chiropractor and is generally taught at the undergraduate or postgraduate level of a chiropractic college meeting the requirements of s. Chir 2.02 (6) (b) the advancement, extension, and enhancement of the clinical skills of a chiropractor and fosters the enhancement of general or specialized practice and values. The board will not approve credit~~

~~for continuing education regarding a technique or practice which the board has determined to be unsafe or ineffective.~~

- (bm)** ~~Chiropractic radiological technician and chiropractic technician. The~~ For a continuing education program required under s. Chir 5.01 (1g) (a) or (1r) (a), the program subject matter relates to improving the clinical skills of a chiropractic radiological technician or chiropractic technician, as applicable.
- (c)** The program sponsor agrees to provide a responsible person to monitor and verify the attendance of each registered chiropractor, chiropractic radiologic radiological technician, or chiropractic technician, as applicable, at participating in the program, and the program sponsor agrees to keep the records of attendance for 3 years from the date of the program and to furnish each participant with evidence of having attended the program. This paragraph does not apply to an online continuing education program.
- (d)** A program sponsor shall not assign or delegate its responsibilities to monitor or record attendance, provide evidence of attendance, validate course content, or provide information on instructors or other aspects of the program unless the assignment or delegation is specifically identified in the application for approval and approved by the board.
- (e)** The program sponsor has reviewed and validated the program's course content to ensure its compliance with pars. (b) and (bm).
- (f)** When If a course instructor of the program is on the undergraduate or postgraduate faculty of a chiropractic college, the program sponsor has provided written verification that the course instructor has been appointed in accordance with the accreditation standards of the eouneil Council on ehiropractic education Chiropractic Education, and that the chiropractic college exercises sufficient supervision over a faculty member's course content.
- (g)** The program offers significant professional educational benefit for participants, as determined by the board.
- (h)** The A course instructor is qualified to present of the program has qualifications appropriate for presenting the course.
- (i)** For an online continuing education program, the program includes a written assessment instrument that is designed to ensure the chiropractor, chiropractic radiological technician, or chiropractic technician, as applicable, actively participated in the presentation of material and derived a measurable benefit from participation, and also includes means to furnish each participant with evidence of having attended the program.
- (1m)** The board shall approve a continuing education program that is approved under s. 46.03 (38), Stats., to provide instruction in the use of an automated external defibrillator. Subsections (1) to (4) and (6) do not apply to programs approved under this section.
- (2)**
- (a)** Continuing education programs may include subject material ~~other than that which relates to improving the clinical skills of a chiropractor and is generally taught at the undergraduate or postgraduate level of a chiropractic college, meeting the requirements of s. Chir 2.02 (6) (b) that does not meet the requirements under sub. (1) (b).~~ However, only the parts of the program ~~which relate to improving the clinical skills of a chiropractor and are generally taught at the undergraduate or postgraduate level of a chiropractic college that include subject material that meets the requirements under sub. (1) (b)~~ are eligible for credit.
- (am)** Continuing education programs may include subject material other than that which relates to improving the clinical skills of a chiropractic radiological technician or chiropractic technician. However, only the parts of the program which relate to improving the clinical skills of a chiropractic radiological technician or chiropractic technician, as applicable, are eligible for credit.
- (b)** Any presentation, program content, materials or displays for the advertising, promotion, sale or marketing of equipment, devices, instruments or other material of any kind or purpose shall be kept separate from the program content and presentation for which approval is applied and granted.
- (c)** Programs shall be approved for one hour of continuing education for every 50 minutes of instruction.

~~(3) Home study programs may be approved for credit only in cases of extreme hardship, as determined by the board.~~

(4)

(a) An application for approval of a continuing education program shall:

1. Be on a form provided by the board.

Note: Application forms are available on ~~request from the Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708~~ the department's website at dsps.wi.gov, or by request from the Department of Safety and Professional Services, P. O. Box 8935, Madison, Wisconsin 53708, or call (608) 266-2112. **This note is on a list for LRB to revise. The rule does not reflect this change.**

2. Identify the name and address of the program sponsor and describe how the program sponsor qualifies under this section.

3. Describe the time and place of the program.

4. Be complete as prescribed in this subsection and filed with the board no later than 75 days prior to the program date. An application is not considered complete until such time as all information required to be submitted with the application, and any supplementary information requested by the board, is received by the board.

5. Include evidence of the program sponsor's verification showing to the satisfaction of the board that the subject matter ~~is generally taught at the undergraduate or postgraduate level of a chiropractic college meeting the requirements of s. Chir 2.02 (6) (b) and relates to improving the clinical skills of a chiropractor~~ meets the requirements under sub. (1) (b). A detailed course outline or syllabus describing the subject matter of the program, and the amount of time devoted to each section of the outline or syllabus shall be attached to the application.

5m. Include evidence of the program sponsor's verification showing to the satisfaction of the board that the subject matter relates to improving the clinical skills of a chiropractic radiological technician or a chiropractic technician, as applicable. A detailed course outline or syllabus describing the subject matter of the program, and the amount of time devoted to each section of the outline or syllabus shall be attached to the application.

6. Describe the names and qualifications of all instructors, and if applicable, whether an instructor of the program who is an undergraduate or postgraduate faculty member of a sponsoring college was appointed in accordance with accreditation standards of the Council on Chiropractic Education (~~CCE~~) or by an agency approved by the United States ~~Office of Education or its successor~~ department of education.

7. Identify whether the program sponsor intends to assign or delegate any of its responsibilities to another person or entity, and if so, include each of the following:

a. A specific description of the assignment or delegation.

b. The person or entity who is assigned or delegated to perform the responsibility, including name, address and qualification to perform the responsibility.

c. The method by which the program sponsor intends to assure that the delegated or assigned responsibility is performed.

(b) If necessary in order to determine whether an applicant meets the requirements of this chapter, the board may require that the applicant submit information in addition to that described in this section.

(5) Continuing education credit may not be awarded for meals or break periods.

(6) The sponsor of an approved program shall ensure that the program is carried out and presented as represented to and approved by the board, and that all responsibilities of the program sponsor, an instructor, and any person or entity delegated or assigned a responsibility relating to a program approved by the board are fulfilled.

Note: Continuing education approval request forms are available ~~upon request from the Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708~~ on the department's website at dsps.wi.gov, or by request from the Department of Safety and Professional Services, P. O. Box 8935, Madison, Wisconsin 53708, or call (608) 266-2112. **This note is on a list for LRB to revise. The rule does not reflect this change.**

Chir 5.03 Application denials. The board ~~may~~ shall deny approval of an application for any of the following reasons:

- (1) The program or program sponsor does not meet requirements established in this chapter.
- (2) The emphasis of the program is on the business, management, or insurance aspects of a chiropractic practice rather than on improving the clinical skills of the chiropractor, chiropractic radiological technician, or chiropractic technician, as applicable.
- (3) The board determines that the program sponsor has not provided adequate assurance that responsibilities delegated or assigned to others will be satisfactorily performed.
- (4) The program sponsor, an instructor, or a person delegated or assigned a responsibility has a financial, personal or professional interest which conflicts directly with the performance of responsibilities in this chapter.
- (5) Failure on the part of a program sponsor, an instructor, or a person delegated or assigned a responsibility to carry out a program as represented to and approved by the board or as provided in this chapter.
- (6) The program subject matter relates to practice that is prohibited under s. Chir 4.05.

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 **repeal** Chir 5.02 (3); to **amend** Chir 5.01 (1) (a), (1g) (a), (1r) (a), (2) (b), and (3), 5.02 (1) (intro.), (a), (b), (bm), (c), (f), and (h), (2) (a), and (4) (a) 5. and 6., and 5.03 (intro.); and to **create** Chir 5.01 (1) (g), (1g) (c), (1r) (c), (4), and (5), 5.02 (1) (i), and 5.03 (6), relating to continuing education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 446.025 (3) (b), 446.026 (3) (b), and 446.028, 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 an examining board, 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:

None.

Plain language analysis:

The Board conducted an evaluation and update of ch. Chir 5 to ensure consistency with current practices and applicable Wisconsin statutes. As a result, the following updates have been made:

- The date referenced in s. Chir 5.01 (1) (a), (1g) (a), (1r) (a), and (2) (b) is revised from December 14 to December 15 to align with the renewal date under s. 440.08 (2) (a) 24., Stats.

- Section Chir 5.01 (1) (g), (1g) (c), and (1r) (c) are created to allow a chiropractor, chiropractic radiological technician, or chiropractic technician to acquire up to half of their required continuing education credit hours by participating in online continuing education programs approved by the Board. This provision first applies to the renewal period ending on December 15, 2022.
- Section Chir 5.01 (3) is revised and s. Chir 5.01 (5) is created to comply with s. 440.03 (4m), Stats., as created by 2017 Wisconsin Act 59. Under this provision, the Board may require a credential holder to submit proof of completing continuing education programs or courses only if a complaint is made against the credential holder.
- Section Chir 5.02 (1) (a) is revised to remove the American Chiropractic Association (ACA) as an approved program sponsor, as the ACA is not included in the definition of “program sponsor” under s. 446.028, Stats.
- The requirement under s. Chir 5.02 (1) (b) and (2) (a) that program subject matter relates to improving the clinical skills of a chiropractor and is generally taught at the undergraduate or postgraduate level of a chiropractic college meeting the requirements of s. Chir 2.02 (6) (b) is revised. The revised requirement is that program subject matter contributes to the advancement, extension, and enhancement of the clinical skills of a chiropractor and fosters the enhancement of general or specialized practice and values.
- Section Chir 5.02 (1) (i) is created to require an online continuing education program to include a written assessment instrument that is designed to ensure active participation in the program and that a measurable benefit was derived from participation, and also include means to furnish each participant with evidence of having attended the program.
- Section Chir 5.03 is revised to require the Board to deny approval of a continuing education program for any of the enumerated reasons. Current rules allow the Board to exercise discretionary authority in issuing a denial.
- Other provisions throughout ch. Chir 5 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: Rules of the Illinois Department of Financial and Professional Regulation address continuing medical education (CME) for persons licensed to practice chiropractic in Illinois (68 Ill. Adm. Code 1285.110). A CME program must be sponsored by one of the following:

- The Accreditation Council on Continuing Medical Education (ACCME) and organizations accredited by ACCME as sponsors of CME.
- The Illinois State Medical Society or its affiliates.

- The Illinois Chiropractic Society or its affiliates.
- The Illinois Prairie State Chiropractic Association or its affiliates.
- The International Chiropractic Association or its affiliates.
- The American Chiropractic Association or its affiliates.
- Any other accredited school, college or university, state agency, or any other person, firm, or association that has been approved and authorized by the Department.

A CME program must meet all of the following requirements:

- Contributes to the advancement, extension and enhancement of the professional skills and scientific knowledge of the licensee.
- Fosters the enhancement of general or specialized practice and values.
- Is developed and presented by persons with education, experience, or both in the subject matter of the program.
- Specifies the course objectives, course content and teaching methods to be used.
- Specifies the number of CME hours that may be applied to fulfilling the Illinois CME requirements for license renewal.
- Provides a mechanism for evaluation of the program and instructor by the participants.
- Provides each participant in the program with a certificate of attendance or participation.

As the rules do not expressly allow or prohibit online CME programs, an online CME program meeting the above requirements may be used to satisfy the CME requirement.

Iowa: Rules of the Iowa Board of Chiropractic address continuing education for chiropractic physicians (645 IAC 44.1 to 44.11). A continuing education program must meet all of the following requirements:

- Constitutes an organized program of learning which contributes directly to the professional competency of the licensee.
- Pertains to subject matters which integrally relate to the practice of the profession.
- Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program.
- Fulfills stated program goals, objectives, or both.
- Provides proof of attendance to licensees in attendance.

Of the 60 hours of continuing education during a renewal period, 20 hours relating to clinical case management of chiropractic patients must be earned by completing a program in which an instructor conducts the class employing a traditional in-person, classroom-type presentation and the licensee is in attendance in the same room as the instructor.

Michigan: Rules of the Michigan Department of Licensing and Regulatory Affairs address continuing education for persons licensed to practice chiropractic in Michigan (Mich Admin Code, R 338.12006 to R 338.12008a). A continuing education program must be accredited by the Commission on Accreditation of the Council on Chiropractic Education or approved by another state's board of chiropractic.

Fifteen of the 30 required hours of continuing education may be from online programs, excluding the required 2 hours of continuing education on physical measures, the 2 required hours of continuing education on the performance and ordering of tests, and any continuing education program in which a participant performs a chiropractic manipulation or adjustment on another individual.

Minnesota: Rules of the Minnesota Board of Chiropractic Examiners address continuing education for persons licensed to practice chiropractic in Minnesota (Minnesota Rules, parts 2500.1100 to 2500.2000). The Board registers and approves continuing education sponsors. A program sponsor must use the following criteria to determine if a continuing education program is approved and the number of continuing education units for which approval is granted:

- Whether the material to be presented is likely to enhance the practitioner's knowledge and skill in the practice of chiropractic.
- Whether the instructors or speakers presenting the program, and those persons preparing the program, are sufficiently qualified in the field of their instruction, either by practical or academic experience or both.
- Whether the classes will be held in a suitable setting, or under suitable conditions, that are considered by the Board to be conducive to the learning process.
- Whether the program may improve the practitioner's ability to keep records necessary to substantiate the need for chiropractic care.

A chiropractor may obtain the annual continuing education requirement through alternatives to traditional classroom presentations. The programs must be approved by the Board or a Board-approved sponsor. An online program approved for continuing education credit must include a written assessment instrument, designed to ensure that the chiropractor actively participated in the presentation of material and derived a measurable benefit from participation.

Summary of factual data and analytical methodologies:

The rules were developed by reviewing the provisions of ch. Chir 5 to ensure the rules are consistent with current practices and applicable Wisconsin statutes. No additional factual data or analytical methodologies were used to develop the proposed rules.

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

The proposed rules will be 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.

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 53708-8366; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. Chir 5.01 (1) (a) is amended to read:

Chir 5.01 (1) (a) Every chiropractor shall complete at least 40 continuing education credit hours in approved continuing education programs during each 2-year license registration period ending on December ~~14~~ 15 of each even-numbered year, except as specified in s. Chir 3.02 (1) (c).

SECTION 2. Chir 5.01 (1) (g) is created to read:

Chir 5.01 (1) (g) Beginning with the license registration period ending on December 15, 2022, up to 20 of the continuing education credit hours required under par. (a) may be acquired through participation in online continuing education programs approved under s. Chir 5.02.

SECTION 3. Chir 5.01 (1g) (a) is amended to read:

Chir 5.01 (1g) (a) Every chiropractic radiological technician shall complete at least 12 continuing education credit hours in approved continuing education programs during each 2-year certificate registration period ending on December ~~14~~ 15 of each even-numbered year. A chiropractic radiological technician who receives an initial certificate during a licensing biennium is not required to satisfy the continuing education requirement from the date of that certificate to the end of that licensing biennium.

SECTION 4. Chir 5.01 (1g) (c) is created to read:

Chir 5.01 (1g) (c) Beginning with the certificate registration period ending on December 15, 2022, up to 6 of the continuing education credit hours required under par. (a) may be acquired through participation in online continuing education programs approved under s. Chir 5.02.

SECTION 5. Chir 5.01 (1r) (a) is amended to read:

Chir 5.01 (1r) (a) Every chiropractic technician shall complete at least 6 continuing education credit hours in approved continuing education programs during each 2-year certificate registration period ending on December ~~14~~ 15 of each even-numbered year. A chiropractic technician who receives an initial certificate during a licensing biennium is not required to satisfy the continuing education requirement from the date of that certificate to the end of that licensing biennium.

SECTION 6. Chir 5.01 (1r) (c) is created to read:

Chir 5.01 (1r) (c) Beginning with the certificate registration period ending on December 15, 2022, up to 3 of the continuing education credit hours required under par. (a) may be acquired through participation in online continuing education programs approved under s. Chir 5.02.

SECTION 7. Chir 5.01 (2) (b) and (3) are amended to read:

Chir 5.01 (2) (b) If the chiropractor, chiropractic radiological technician, or chiropractic technician has failed to meet the credential renewal requirement during the period, continuing education hours acquired on or after December ~~14~~ 15 of any even-numbered year will apply to the preceding period only if the chiropractor, chiropractic radiological technician, or chiropractic technician has failed to meet the credential renewal requirement during that period, and will not apply to any other period or purpose.

(3) To obtain credit for completion of continuing education programs, a chiropractor, chiropractic radiological technician, or chiropractic technician shall certify on ~~his or her~~ the application for credential renewal that ~~he or she has completed~~ all continuing education credits have been completed as required ~~in~~ under this section ~~for the previous 2-year credential registration period. A chiropractor, chiropractic radiological technician, or chiropractic technician shall retain for a minimum period of 4 years, and shall make available to the board or its agent upon request, certificates of attendance issued by the program sponsor for all continuing education programs for which he or she claims credit for purposes of renewal of his or her credential. Chiropractors, chiropractic radiological technicians, or chiropractic technicians attending a program for credit shall be present in the room where a program is being presented in order to claim credit. A chiropractor, chiropractic radiological technician, or chiropractic technician may claim credit hours for continuing education for which he or she was in actual attendance in the room, except for authorized break periods or to attend to personal hygiene needs.~~

SECTION 8. Chir 5.01 (4) to (6) are created to read:

Chir 5.01 (4) A chiropractor, chiropractic radiological technician, or chiropractic technician shall retain a certificate or other evidence of attendance issued by the program sponsor for a minimum of 4 years from the date of completion of a continuing education program.

(5) The board shall require any chiropractor, chiropractic radiological technician, or chiropractic technician who is under investigation by the board for alleged misconduct to submit evidence of compliance with the continuing education requirements under this section.

(6) Except as provided under subs. (1) (g), (1g) (c), and (1r) (c), credit may only be claimed for completing a program in which an instructor employs an in person, classroom-type presentation and the chiropractor, chiropractic radiological technician, or chiropractic technician is in attendance in the same room as the instructor. A home study or other distance learning program may be approved for credit only in cases of extreme hardship, as determined by the board.

SECTION 9. Chir 5.02 (1) (intro.), (a), (b), (bm), (c), (f), and (h) are amended to read:

Chir 5.02 (1) (intro.) The board may approve a continuing education program ~~which that~~ meets all of the following minimum requirements:

(a) The program is sponsored by the Wisconsin ~~chiropractic association~~ Chiropractic Association, ~~the American chiropractic association~~, ~~the international chiropractors association~~ International Chiropractors Association, a college of chiropractic approved by the board, or a college of medicine or osteopathy accredited by an agency recognized by the United States department of education.

~~(b) Chiropractors. The~~ For a continuing education program required under s. Chir 5.01 (1) (a), the program subject matter relates contributes to improving the clinical skills of a chiropractor and is generally taught at the undergraduate or postgraduate level of a chiropractic college meeting the requirements of s. Chir 2.02 (6) (b) the advancement, extension, and enhancement of the clinical skills of a chiropractor and fosters the enhancement of general or specialized practice and values. The board will not approve credit for continuing education regarding a technique or practice which the board has determined to be unsafe or ineffective.

~~(bm) Chiropractic radiological technician and chiropractic technician. The~~ For a continuing education program required under s. Chir 5.01 (1g) (a) or (1r) (a), the program subject matter relates to improving the clinical skills of a chiropractic radiological technician or chiropractic technician, as applicable.

(c) The program sponsor agrees to provide a responsible person to monitor and verify the attendance of each registered chiropractor, chiropractic ~~radiologic~~ radiological technician, or chiropractic technician, as applicable, ~~at participating in~~ the program, and the program sponsor agrees to keep the records of attendance for 3 years from the date of the program and to furnish each participant with evidence of having attended the program. This paragraph does not apply to an online continuing education program.

~~(f) When~~ If a course instructor of the program is on the undergraduate or postgraduate faculty of a chiropractic college, the program sponsor has provided written verification that the course instructor has been appointed in accordance with the accreditation standards of the ~~council~~ Council on ~~chiropractic education~~ Chiropractic Education, and that the chiropractic college exercises sufficient supervision over a faculty member's course content.

~~(h) The~~ A course instructor is qualified to present of the program has qualifications appropriate for presenting the course.

SECTION 10. Chir 5.02 (1) (i) is created to read:

Chir 5.02 (1) (i) For an online continuing education program, the program includes a written assessment instrument that is designed to ensure the chiropractor, chiropractic radiological technician, or chiropractic technician, as applicable, actively participated in the presentation of material and derived a measurable benefit from participation, and also includes means to furnish each participant with evidence of having attended the program.

SECTION 11. Chir 5.02 (2) (a) is amended to read:

Chir 5.02 (2) (a) Continuing education programs may include subject material ~~other than that which relates to improving the clinical skills of a chiropractor and is generally taught at the undergraduate or postgraduate level of a chiropractic college, meeting the requirements of s. Chir 2.02 (6) (b) that does not meet the requirements under sub. (1) (b).~~ However, only the parts of the program ~~which relate to improving the clinical skills of a chiropractor and are generally taught at the undergraduate or postgraduate level of a chiropractic college~~ that include subject material that meets the requirements under sub. (1) (b) are eligible for credit.

SECTION 12. Chir 5.02 (3) is repealed.

SECTION 13. Chir 5.02 (4) (a) 5. and 6. are amended to read:

Chir 5.02 (4) (a) 5. Include evidence of the program sponsor's verification showing to the satisfaction of the board that the subject matter ~~is generally taught at the undergraduate or postgraduate level of a chiropractic college meeting the requirements of s. Chir 2.02 (6) (b) and relates to improving the clinical skills of a chiropractor~~ meets the requirements under sub. (1) (b). A detailed course outline or syllabus describing the subject matter of the program, and the amount of time devoted to each section of the outline or syllabus shall be attached to the application.

6. Describe the names and qualifications of all instructors, and if applicable, whether an instructor of the program who is an undergraduate or postgraduate faculty member of a sponsoring college was appointed in accordance with accreditation standards of the Council on Chiropractic Education (~~CCE~~) or by an agency approved by the United States ~~Office of Education or its successor~~ department of education.

SECTION 14. Chir 5.03 (intro.) is amended to read:

Chir 5.03 (intro.) Application denials. The board ~~may~~ shall deny approval of an application for any of the following reasons:

SECTION 15. Chir 5.03 (6) is created to read:

Chir 5.03 (6) The program subject matter relates to practice that is prohibited under s. Chir 4.05.

SECTION 16. 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)

Note: Substantive changes from the version of this document reviewed by the Board on June 27, 2019, are shown in red

Chapter Chir 6

STANDARDS OF CONDUCT

Chir 6.01 Authority. The rules in ~~ch. Chir 6~~ this chapter are adopted under the authority in ss. 15.08 (5) (b), 227.11, and 446.04, Stats.

Chir 6.015 Definition Definitions. In this chapter:

(1) "Advertisement" means ~~any a~~ 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.~~

(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 ~~based on the actions of the chiropractor~~ that an established chiropractor-patient relationship exists.

Chir 6.02 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.
- (2) Practicing or attempting to practice when unable to do so with reasonable skill and safety to patients.
- (3) Practicing in a manner which substantially departs from the standard of care ordinarily exercised by a chiropractor.
- (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 (+).
- (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.
- (7) Engaging in sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient.
- (8) Engaging in excessive evaluation or treatment of a patient.
- (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.
- (12) Knowingly falsifying patient records.
- (13) Impersonating another chiropractor.

(14) Obtaining or attempting to obtain any compensation for chiropractic services by fraud, including billing for services not rendered or submitting a claim for a fraudulent diagnosis.

Note: The use by a licensee of "no out-of-pocket expense" payment arrangements may constitute insurance fraud, and may therefore violate this subsection as well as s. 943.395, Stats.

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

(a) Contains a misrepresentation of fact.

(b) Is likely to mislead or deceive because of a failure to disclose material facts.

(c) Is intended to or is likely to create false or unjustified expectations of favorable results.

(d) Fails to prominently disclose complete details of all variables and material factors relating to any advertised fee.

(e) Contains any representation or implication that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(f) 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) Includes reference to or implies advanced training, unless the chiropractor has a postgraduate degree in the area of 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, 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.

(i) Implies that the chiropractic services provided will result in emotional or spiritual benefits.

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

(17) Failing to exercise a reasonable degree of supervision over subordinate employees.

(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.
 - (20) Knowingly providing false information to the board or its representative.
 - (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.
 - (23) Failing to notify the board of any criminal conviction, the circumstances of which relate substantially to the practice of chiropractic.
 - (24) Being convicted of a crime substantially related to the practice of chiropractic.
 - (25) Violating any provision of ch. 446, Stats., or any rule or order of the board.
 - (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.
 - (28) Failing to release patient health care records to a patient in accordance with s. 146.83, Stats.
 - (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.~~
- Note:** It is no violation of this rule for a chiropractor to adjust fees, but the fee charged must be accurately reported to any third party payor. It is no violation of this rule for a chiropractor to provide treatment without any charge.
- (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.
 - (31) Making a representation likely to create an unjustified expectation about the results of a nutritional counseling service or procedure.

Chir 6.03 Duty to evaluate and inform.

- (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.
- (2) If an evaluation indicates a condition treatable by chiropractic means, the chiropractor shall treat the patient using appropriate chiropractic means.
- (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.
- (4) A chiropractor may render concurrent or supportive chiropractic care to a patient, but a chiropractor shall refrain from further chiropractic treatment when a reasonable chiropractor should be aware that the patient's condition will not be responsive to further treatment.

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 will be 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.

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.

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), 227.11, 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~~ 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)
