

**STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD**

IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CR 18-071
CHIROPRACTIC EXAMINING :
BOARD :

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The Board conducted an evaluation and update of ch. Chir 4 to ensure consistency with current professional practices and standards and applicable Wisconsin statutes. As a result, the following updates have been made:

- Section Chir 4.01 is revised to accurately describe the purpose of ch. Chir 4 as revised.
- The definition of “chiropractic science” under s. Chir 4.02 (1) was created in 1985 and has not been substantively revised since that time. The proposed rule revises the definition to reflect current chiropractic practice.
- Definitions of “examination,” “physiotherapy,” and “treatment” are created to achieve consistency and clarity of that terminology as it is used in ch. Chir 4.
- The meaning of “practice of chiropractic” under s. Chir 4.03 is replaced with the meaning given in s. 446.01 (2), Stats.
- The proposed rule removes the references under s. Chir 4.05 (1) and (2) to specific techniques, procedures, and instruments that are beyond the scope of chiropractic or prohibited. The section as revised 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.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Chiropractic Examining Board held a public hearing on November 29, 2018. Attorney Dan Riegleman of Riegleman Law Offices, S.C. registered as having a partial objection to the proposed rule, and also provided testimony and written comments. Mr. Riegleman's comments and the Board's response are summarized below.

Mr. Riegleman requests the Board retain the existing provisions of s. Chir 4.03, which defines the practice of chiropractic. He indicates the existing provisions clearly describe a chiropractor's scope of practice, whereas the changes in the proposed rule result in uncertainty as to the manner by which chiropractic is to be performed.

The Board did not modify the proposed rule in response to Mr. Riegleman's comments. The Board believes that, when taken as a whole, the changes in the proposed rule appropriately describe a chiropractor's scope of practice.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

The Legislative Council had no recommendations concerning the proposed rule.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

N/A

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 18-071)

PROPOSED ORDER

An order of the Chiropractic Examining Board to **repeal** Chir 4.03, 4.04 (Note), and 4.05 (1) (a) to (d) and (2) (intro.), (a) to (d), and (e) 1.; to **renumber and amend** Chir 4.05 (1) (intro.) and (2) (e) (intro.) and (f) to (h); to **amend** Chir 4.01, 4.02 (2), 4.04 (2) (a) and (Note), and 4.07 (1); to **repeal and recreate** Chir 4.02 (1); and to **create** Chir 4.02 (1m) and (3) to (5), relating to chiropractic practice.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 446.02 (7d) (a), Stats.

Statutory authority:

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

Explanation of agency authority:

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

Section 227.11 (2) (a), Stats., 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:

Chapter Chir 6 establishes standards of conduct for chiropractors. Section Chir 6.02 (4) provides that unprofessional conduct includes “[p]racticing 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 (1).”

Plain language analysis:

The Board conducted an evaluation and update of ch. Chir 4 to ensure consistency with current professional practices and standards and applicable Wisconsin statutes. As a result, the following updates have been made:

- Section Chir 4.01 is revised to accurately describe the purpose of ch. Chir 4 as revised.
- The definition of “chiropractic science” under s. Chir 4.02 (1) was created in 1985 and has not been substantively revised since that time. The proposed rules revise the definition to reflect current chiropractic practice.
- Definitions of “examination,” “physiotherapy,” and “treatment” are created to achieve consistency and clarity of that terminology as it is used in ch. Chir 4.
- The meaning of “practice of chiropractic” under s. Chir 4.03 is replaced with the meaning given in s. 446.01 (2), Stats.
- The proposed rules remove the references under s. Chir 4.05 (1) and (2) to specific techniques, procedures, and instruments that are beyond the scope of chiropractic or prohibited. The section as revised 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.

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

None.

Comparison with rules in adjacent states:

Illinois: The Illinois Medical Practice Act specifies the scope of chiropractic practice through a definition of “chiropractic physician” (225 ILCS 60/2). The Act defines a chiropractic physician as “a person licensed to treat human ailments without the use of drugs and without operative surgery. Nothing in this Act shall be construed to prohibit a chiropractic physician from providing advice regarding the use of non-prescription products or from administering atmospheric oxygen. Nothing in this Act shall be construed to authorize a chiropractic physician to prescribe drugs.”

Iowa: Iowa statutes specify the scope of chiropractic practice through a definition of “chiropractic” (Iowa Code 2017, section 151.1). The following activities are identified:

- Treating human ailments by the adjustment of the neuromusculoskeletal structures, primarily, by hand or instrument, through spinal care.
- Utilizing differential diagnosis and related procedures.
- Withdrawing or ordering withdrawal of a patient’s blood for diagnostic purposes.
- Performing or utilizing routine laboratory tests.
- Performing physical examinations.
- Rendering nutritional advice.
- Utilizing chiropractic physiotherapy procedures.

A license to practice chiropractic does not authorize the licensee to practice operative surgery or administer or prescribe prescription drugs or controlled substances (Iowa Code 2017, section 151.5).

Rules of the Iowa Board of Chiropractic include acupuncture in the scope of chiropractic practice. A chiropractic physician who engages in the practice of acupuncture must maintain documentation that shows successful completion of a course in acupuncture consisting of at least 100 hours of traditional, in-person classroom instruction with the instructor on site (645 IAC 43.5).

Michigan: Michigan statutes specify the scope of chiropractic practice through a definition of “practice of chiropractic” (MCL 333.16401). The following activities are identified:

- The diagnosis of human conditions and disorders of the human musculoskeletal and nervous systems as they relate to subluxations, misalignments, and joint dysfunctions.
- The evaluation of conditions or symptoms related to subluxations, misalignments, and joint dysfunction.
- The chiropractic adjustment of subluxations, misalignments, and joint dysfunction and the treatment of related bones and tissues for the establishment of neural integrity and structural stability.
- The use of physical measures, analytical instruments, nutritional advice, rehabilitative exercise, and adjustment apparatus.

The practice of chiropractic does not include any of the following:

- The performance of any procedure that cuts or punctures the skin.
- The dispensing or prescribing of drugs or medicine.
- Except for diagnostic purposes only, the use of x-ray.
- The performance of an invasive procedure involving a body orifice or cavity unless allowed by rule and limited to examinations involving the ears, nose, and throat.
- The treatment of fractures or dislocations.

Rules of the Michigan Department of Licensing and Regulatory Affairs specify the criteria and requirements for adjustment apparatus, analytical instruments, performance or ordering of tests, and performance of invasive procedure (Mich Admin Code, R 338.12010, R 338.12011, R 338.12011a, and R 338.12011b).

Minnesota: Minnesota statutes address the scope of chiropractic practice through a definition of “chiropractic services” (Minnesota Statutes 2016, subdivision 1 of section 148.01). Chiropractic services are defined as “the evaluation and facilitation of structural, biomechanical, and neurological function and integrity through the use of adjustment, manipulation, mobilization, or other procedures accomplished by manual or mechanical forces applied to bones or joints and their related soft tissues for correction of vertebral subluxation, other abnormal articulations, neurological disturbances, structural alterations, or biomechanical alterations, and includes, but is not limited to, manual therapy and mechanical therapy as defined in section 146.23.”

An individual licensed to practice chiropractic is authorized to perform chiropractic services, acupuncture, and therapeutic services, and to provide diagnosis and to render opinions pertaining to those services for the purpose of determining a course of action in the best interests of the patient, such as a treatment plan, appropriate referral, or both. The practice of chiropractic is not the practice of medicine, surgery, osteopathic medicine, or physical therapy. (Minnesota Statutes 2016, subdivisions 3 and 4 of section 148.01).

Rules of the Minnesota Board of Chiropractic Examiners provide a chiropractor is engaged in the practice of chiropractic when the chiropractor provides examination or treatment services and the patient, or a person authorized to act for the patient, accepts the services provided (Minnesota Rules, part 2500.6000).

Summary of factual data and analytical methodologies:

The rules were developed by reviewing the provisions of ch. Chir 4 to ensure the rules are consistent with current professional practices and standards 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, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 8:30 a.m. on November 29, 2018, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chir 4.01 is amended to read:

Chir 4.01 Authority and purpose. This chapter is adopted under authority in ss. 15.08 (5) (b); and 227.11, Stats., and ch. 446, Stats., to interpret the statutory definition of chiropractic practice specified in s. 446.01 (2), Stats. establish standards for the practice of chiropractic.

SECTION 2. Chir 4.02 (1) is repealed and recreated to read:

Chir 4.02 (1) "Chiropractic science" means the body of organized knowledge related to identifying the cause of departure from health of the patient and the treatment of such conditions without use of drugs or surgery. "Chiropractic science" includes using patient examination to create a diagnosis that serves as a basis for forming clinical judgments of a patient's condition, degree or nature of treatment needed, and management and rehabilitation necessary for the restoration and preservation of health.

SECTION 3. Chir 4.02 (1m) is created to read:

Chir 4.02 (1m) "Examination" includes any of the following:

- (a) Patient history.
- (b) Evaluation techniques.
- (c) Lab analysis.
- (d) Use of analytical instruments to determine vital signs and screen health status.
- (e) Orthopedic and neurological testing.
- (f) Range of motion and muscle testing.
- (g) Diagnostic evaluation or imaging of the body.

SECTION 4. Chir 4.02 (2) is amended to read:

Chir 4.02 (2) "Instrument" means a device employed or applied in accordance with the principles and techniques of chiropractic science, which is used in the practice of chiropractic to diagnose, analyze, treat, or prevent the cause of departure from complete health and proper condition of the ~~human~~ patient.

SECTION 5. Chir 4.02 (3) to (5) are created to read:

Chir 4.02 (3) "Physiotherapy" has the meaning given "physiotherapy treatment" in s. Chir 10.01 (1r).

(4) "Practice of chiropractic" has the meaning given in s. 446.01 (2), Stats.

(5) "Treatment" includes any of the following:

- (a) Adjustment or manipulation of the spinal column, skeletal articulations, and adjacent tissue.
- (b) Physiotherapy and exercise rehabilitation.
- (c) Education, lifestyle modification, and counseling.

SECTION 6. Chir 4.03 is repealed.

SECTION 7. Chir 4.04 (2) (a) is amended to read:

Chir 4.04 (2) (a) X-ray procedures that require introduction of drugs, clinical dyes, or radioactive substances;

SECTION 8. Chir 4.04 (Note) is repealed.

SECTION 9. Chir 4.05 (1) (intro.) is renumbered Chir 4.05 (intro.) and amended to read:

Chir 4.05 (intro.) ~~SCOPE OF PRACTICE. A person who holds a license to practice chiropractic licensed under ch. 446, Stats., may engage in the practice of chiropractic, as described in s. Chir 4.03. A license to practice chiropractic does not authorize the license holder to engage in practice beyond the scope of chiropractic the practice, as described in s. Chir 4.03 of chiropractic. Practice beyond the scope of the practice of chiropractic includes, but is not limited to, all of the following:~~

SECTION 10. Chir 4.05 (1) (a) to (d) and (2) (intro.) and (a) to (d) are repealed.

SECTION 11. Chir 4.05 (2) (e) (intro.) is renumbered Chir 4.05 (1m) and amended to read:

Chir 4.05 (1m) The use of any ~~device~~ instrument in the practice of chiropractic to diagnose, analyze, treat, or prevent the cause of departure from complete health and proper condition of the human patient, which is not employed or applied in accordance with the principles and techniques of chiropractic science ~~is prohibited. Such devices include, but are not limited to:~~

SECTION 12. Chir 4.05 (2) (e) 1. is repealed.

SECTION 13. Chir 4.05 (2) (f) to (h) are renumbered Chir 4.05 (2m) to (4) and amended to read:

Chir 4.05 (2m) Any practice system, analysis, method, or protocol ~~which that~~ that does not include the competent assessment, evaluation, or diagnosis of the condition to be treated before beginning treatment ~~of the patient.~~

(3) Any practice system, analysis, method, or protocol ~~which that~~ that relies upon diagnostic methods that are not generally recognized or accepted within the profession or ~~which~~ do not have scientific validity.

(4) Any practice system, analysis, method, or protocol ~~which that~~ that is represented as a means of attaining spiritual growth, spiritual comfort, or spiritual well-being.

SECTION 14. Chir 4.07 (1) is amended to read:

Chir 4.07 (1) ~~Perform any of the functions in s. Chir 4.03~~ Engage in the practice of chiropractic.

SECTION 15. 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)

This Proposed Order of the Chiropractic Examining Board is approved for submission to the Governor and Legislature.

Dated May 1, 2019

Agency Patricia Schumacher, D.C.
Chairperson *PS*
Chiropractic Examining Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chir 4

3. Subject

Chiropractic practice

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The Board conducted an evaluation and update of ch. Chir 4 to ensure consistency with current professional practices and standards and applicable Wisconsin statutes. As a result, the following updates have been made:

- Section Chir 4.01 is revised to accurately describe the purpose of ch. Chir 4 as revised.
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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.

11. Identify the local governmental units that participated in the development of this EIA.

No local governmental units participated in the development of this EIA.

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)

This 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.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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

The benefit to implementing the rule is providing updated references and terminology and reflecting current chiropractic practice. If the rule is not implemented, it will continue to provide outdated references and terminology and reflect practices that are no longer current.

14. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is updated references and terminology and reflecting current chiropractic practice.

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: The Illinois Medical Practice Act specifies the scope of chiropractic practice through a definition of “chiropractic physician” (225 ILCS 60/2). The Act defines a chiropractic physician as “a person licensed to treat human ailments without the use of drugs and without operative surgery. Nothing in this Act shall be construed to prohibit a chiropractic physician from providing advice regarding the use of non-prescription products or from administering atmospheric oxygen. Nothing in this Act shall be construed to authorize a chiropractic physician to prescribe drugs.”

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- The evaluation of conditions or symptoms related to subluxations, misalignments, and joint dysfunction.
- The chiropractic adjustment of subluxations, misalignments, and joint dysfunction and the treatment of related bones and tissues for the establishment of neural integrity and structural stability.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

- The use of physical measures, analytical instruments, nutritional advice, rehabilitative exercise, and adjustment apparatus.

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- The performance of an invasive procedure involving a body orifice or cavity unless allowed by rule and limited to examinations involving the ears, nose, and throat.
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An individual licensed to practice chiropractic is authorized to perform chiropractic services, acupuncture, and therapeutic services, and to provide diagnosis and to render opinions pertaining to those services for the purpose of determining a course of action in the best interests of the patient, such as a treatment plan, appropriate referral, or both. The practice of chiropractic is not the practice of medicine, surgery, osteopathic medicine, or physical therapy. (Minnesota Statutes 2016, subdivisions 3 and 4 of section 148.01).

Rules of the Minnesota Board of Chiropractic Examiners provide a chiropractor is engaged in the practice of chiropractic when the chiropractor provides examination or treatment services and the patient, or a person authorized to act for the patient, accepts the services provided (Minnesota Rules, part 2500.6000).

17. Contact Name Dale Kleven	18. Contact Phone Number (608) 261-4472
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