

**STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD**

IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CR 20-085
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 Chiropractic Examining Board evaluated dry needling treatment as it relates to the scope of the practice of chiropractic, and determined no updates to ch. Chir 4 are needed based on the results of their evaluation.

As specified in the objective of the proposed rule described in scope statement SS 022-20, the definition of “examination” under s. Chir 4.02 (1m) has been revised to clarify that lab analysis includes drawing blood and blood analysis.

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 January 28, 2021.

Dr. Steven Conway, representing the Chiropractic Society of Wisconsin, and Mr. John Murray, representing the Wisconsin Chiropractic Association, provided comments in support of the proposed rule. Dr. Conway’s testimony emphasized that drawing blood and blood analysis have been a long-standing and widely recognized component of chiropractic practice, and until recently were specified in ch. Chir 4 as being part of a patient examination.

The following individuals provided comments in opposition of the proposed rule:

- Mr. Matthew O’Neill of Fox, O’Neill, Shannon, S.C., representing the Midwest College of Oriental Medicine
- Mr. William Dunbar, PhD, President of the Midwest College of Oriental Medicine
- Dr. Louis Jin, representing the Wisconsin Society of Acupuncturists

- Dr. Sean Tsang, L.Ac.
- Dr. Robert Fox, Doctor of Acupuncture and Chinese Medicine

The comments as a whole oppose the ability of a chiropractor to break the skin with any needle, including for the purpose of drawing blood, and express strong opposition to a chiropractor's use of acupuncture or dry needling.

The Board did not modify the proposed rule in response to the comments received. Drawing blood as part of a patient examination is a long-standing procedure widely recognized as being within the scope of chiropractic. The proposed rule does not expand the scope of patient examination, it provides clarity that drawing blood and blood analysis are an existing component of an examination and are within the scope of chiropractic practice.

With regard to the comments concerning acupuncture and dry needling, the proposed rule does not make any changes related to the practice of acupuncture or dry needling.

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

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| IN THE MATTER OF RULEMAKING | : | PROPOSED ORDER OF THE |
| PROCEEDINGS BEFORE THE | : | CHIROPRACTIC EXAMINING |
| CHIROPRACTIC EXAMINING | : | BOARD |
| BOARD | : | ADOPTING RULES |
| | : | (CLEARINGHOUSE RULE 20-085) |

PROPOSED ORDER

An order of the Chiropractic Examining Board to amend Chir 4.02 (1m) (c), relating to chiropractic practice.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

None.

Statutory authority:

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

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides 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 provisions of any statute enforced or administered by the agency . . .”

Related statute or rule:

None.

Plain language analysis:

The Chiropractic Examining Board evaluated dry needling treatment as it relates to the scope of the practice of chiropractic, and determined no updates to ch. Chir 4 are needed based on the results of their evaluation.

As specified in the objective of the proposed rule described in scope statement SS 022-20, the definition of “examination” under s. Chir 4.02 (1m) has been revised to clarify that lab analysis includes drawing blood and blood analysis.

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 regulate the practice of chiropractic in Illinois. The rules do not address dry needling as it relates to the scope of practice of chiropractic.

Iowa: Rules of the Iowa Board of Chiropractic regulate the practice of chiropractic in Iowa. The rules do not address dry needling as it relates to the scope of practice of chiropractic.

Michigan: The practice of chiropractic in Michigan does not include the performance of any procedure that cuts or punctures the skin (Section 333.16401, Public Health Code). Acupuncture is defined as the insertion and manipulation of needles through the surface of the human body, and by definition includes dry needling (Section 333.16501, Public Health Code).

Minnesota: Rules of the Minnesota Board of Chiropractic Examiners regulate the practice of chiropractic in Minnesota. The rules do not address dry needling as it relates to the scope of practice of chiropractic.

Summary of factual data and analytical methodologies:

The Chiropractic Examining Board evaluated dry needling treatment as it relates to the scope of the practice of chiropractic. This included a review of how adjacent states address dry needling treatment as part of the scope of the practice of chiropractic and how the Wisconsin Physical Therapy Examining Board addresses dry needling treatment as part of the scope of the practice of physical therapy. The Board determined no updates to ch. Chir 4 are needed based on the results of their evaluation.

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

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

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8306; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 8:30 a.m. on January 28, 2021, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chir 4.02 (1m) (c) is amended to read:

Chir 4.02 (1m) (c) Lab analysis, including drawing blood and blood analysis.

SECTION 2. 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 02/03/2021

Agency



Chairperson
Chiropractic Examining Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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|---|---|
| 1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected | 2. Date December 9, 2020 |
| 3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chir 4 | |
| 4. Subject Chiropractic practice | |
| 5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S | 6. Chapter 20, Stats. Appropriations Affected |
| 7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget | |
| 8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A) | |
| 9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0 | |
| 10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| 11. Policy Problem Addressed by the Rule The Chiropractic Examining Board evaluated dry needling treatment as it relates to the scope of the practice of chiropractic, and determined no updates to ch. Chir 4 are needed based on the results of their evaluation. As specified in the objective of the proposed rule described in scope statement SS 022-20, the definition of "examination" under s. Chir 4.02 (1m) has been revised to clarify that lab analysis includes drawing blood and blood analysis. | |
| 12. 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. Comments were received from William Dunbar, PhD, President of the Midwest College of Oriental Medicine (MCOM), and Megan Bielinski, Vice President of the Wisconsin Society of Acupuncturists (WISCA). The comments indicate that the only reason a chiropractor would break a patient's skin would be to perform acupuncture or its equivalent, and as such the proposed rule would have an adverse economic impact on acupuncturists practicing in Wisconsin, students and graduates of MCOM, and the WISCA. As drawing blood for analysis as part of a patient examination does not constitute acupuncture, the proposed rule does not have the potential economic impact described in the comments. | |
| 13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA. | |
| 14. 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

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

The benefit to implementing the rule is clarification of the definition of "examination" under s. Chir 4.02 (1m). If the rule is not implemented, this definition will remain unclear.

16. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is clarification of the definition of "examination" under s. Chir 4.02 (1m).

17. Compare With Approaches Being Used by Federal Government

None

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

Illinois: Rules of the Illinois Department of Financial and Professional Regulation regulate the practice of chiropractic in Illinois. The rules do not address dry needling as it relates to the scope of practice of chiropractic.

Iowa: Rules of the Iowa Board of Chiropractic regulate the practice of chiropractic in Iowa. The rules do not address dry needling as it relates to the scope of practice of chiropractic.

Michigan: The practice of chiropractic in Michigan does not include the performance of any procedure that cuts or punctures the skin (Section 333.16401, Public Health Code). Acupuncture is defined as the insertion and manipulation of needles through the surface of the human body, and by definition includes dry needling (Section 333.16501, Public Health Code).

Minnesota: Rules of the Minnesota Board of Chiropractic Examiners regulate the practice of chiropractic in Minnesota. The rules do not address dry needling as it relates to the scope of practice of chiropractic.

19. Contact Name

Dale Kleven

20. Contact Phone Number

(608) 261-4472

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

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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