

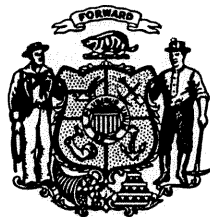
WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-190

AN ORDER to amend Chir 4.03; and to create Chir 6.03, relating to referral of patients to other health care practitioners.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

11-18-98 RECEIVED BY LEGISLATIVE COUNCIL.

12-17-98 REPORT SENT TO AGENCY.

RNS:DD:kjf;jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

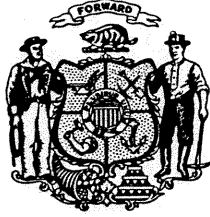
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 98-190

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

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

a. In the second paragraph of the department's analysis, it appears that "recognize" should follow "(2)".

b. In s. Chir 4.03, reference to "other body tissues" is inclusive, i.e., it includes *all* body tissues. Is that the intent? If not, the body tissues that may be adjusted and treated in the practice of chiropractic should be specified.

c. In s. Chir 4.03, it is not clear what the reference to educating and training in the medical profession adds to the last sentence. If the principles of education and training referred to are common to the chiropractic and medical professions, then they will be included in chiropractic education and training. If the concern is that the definitions of chiropractic science and the practice of chiropractic will continue to be interpreted too narrowly, then perhaps a better approach is to give more specificity to those definitions, rather than referring to "principles of education and training common to the chiropractic and medical professions."

d. In s. Chir 6.03 (1), is there any reason to initially refer to a "condition which is treatable by the practice of chiropractic" and then refer to a condition that "will not be responsive to chiropractic treatment"? A reasonable inference from the use of different language is that a different meaning is intended. Is that the intent?

e. In Chir 6.03 (2), should “, or should determine,” follow “determines”? Compare the use of “should know” in subs. (1) and (3).

f. While it may be implicit, s. Chir 6.03 does not expressly require a chiropractor to inform a patient that the patient’s condition will not be responsive to chiropractic treatment; that the correct treatment for the patient’s condition is outside the practice of chiropractic; or that the chiropractor does not have the skill, knowledge or facilities to treat the patient’s condition. Should this be made explicit?

OCT 28 1999

**STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CHIROPRACTIC EXAMINING BOARD
CHIROPRACTIC EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 98-190)**

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the CHIROPRACTIC EXAMINING BOARD is submitting in final draft form rules relating to the duty to evaluate and inform patients of their presenting conditions.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.



Tommy G. Thompson
Governor

State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P. O. BOX 8935
MADISON, WISCONSIN 53708-8935
E-Mail: dorl@mail.state.wi.us
(608) 266-2112
FAX#: (608) 267-0644

Administrative Rules in Final Draft Form

Chiropractic Examining Board

Relating to: Duty to Evaluate and Inform Patients

Rule: Chir 4.03 & Chir 6.03

Clearinghouse Rule: No. 98-190

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors; Professional Geologists, Hydrologists and Soil Scientists; Auctioneer; Barbering and Cosmetology; Chiropractic; Controlled Substances; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Podiatry; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

Committed to Equal Opportunity in Employment and Licensing

**STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 98-190
CHIROPRACTIC EXAMINING BOARD: (s. 227.19 (3), Stats.)**

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

A chiropractor has a responsibility to determine whether a patient presents a problem that is treatable through chiropractic means and refrain from further chiropractic treatment if the patient's condition will not be responsive to chiropractic treatment. This responsibility was recognized in *Kerkman v. Hintz*, 142 Wis. 2d 404, 418 N.W.2d 795 (1988) and is codified in this rule.

In this rule the description of the practice of chiropractic is amended to (1) recognize that chiropractors treat body tissues other than those adjacent to the spine and (2) that diagnosis by a chiropractor involves using chiropractic science and the principles of education and training of the chiropractic profession. This rule establishes a duty requiring a chiropractor to advise a patient to consult another appropriate health care provider if the chiropractor determines that correct treatment for the patient is outside the practice of chiropractic or if the chiropractor knows or should know that he or she does not have the skill, knowledge or facilities to treat the patient's condition.

V. NOTICE OF PUBLIC HEARING:

Public hearings were held on January 7, 1999 and May 20, 1999.

Appearances:

Eric Englund, Madison, WI, representing the Wisconsin Insurance Alliance.

Jeff Wilder, Madison, WI, representing the Wisconsin Chiropractic Association.

Eric Jensen, Madison, WI, representing the State Medical Society.

Daniel D. Lyons, D.C., Oregon, WI.

Christopher J. Meyer, D.C., Fence, WI.

Written comments received by:

Eric B. Jensen, JD, Policy Analyst, State Medical Society of Wisconsin, Madison, WI.

Eric Englund, Wisconsin Insurance Alliance, Madison, WI.

James Polewski, Attorney, Department of Regulation and Licensing, Division of Enforcement, Madison, WI.

Russell A. Leonard, Executive Director, Wisconsin Chiropractic Association, Madison, WI.

Randall Homes, D.C., Holmes Chiropractic, Houston, TX.

Wade E. Anunson, D.C., Anunson Family Chiropractic, Poynette, WI.

Kevin A. Blau, D.C., Blau Chiropractic Clinic, Portage, WI.

Allen E. Macha, D.C., Coulee Chiropractic Clinic, S.C., La Crosse, WI.

Randall J. Hammet, D.C., Preferred Chiropractic Group, Kenosha, WI.

Mary Ann Pruitt, D.C., (Hon.) F.I.C.A., Pruitt Chiropractic Clinic, Fort Worth, TX.

Joseph E. Lee, D.C., Lee Chiropractic Clinic, Fort Worth, TX.

Dean S. Shepherd, D.C., Heffernan Shepherd Chiropractic Clinic, Waukesha, WI.

Frank J. Jaskowiak, D.C., Jaskowiak Chiropractic Office, Menomonee Falls, WI.

Russell A. Leonard, Executive Director, Wisconsin Chiropractic Association, Madison, WI.

Donn T. Gurske, D.C., The Natural Approach to Family Health Care, Milwaukee, WI.

Sandra K. Chilson, D.C., Chilson Chiropractic Center, Black Earth, WI.

Eric Englund, President, Wisconsin Insurance Alliance, Madison, WI.

Dr. Potisk, Potisk Chiropractic Office, South Milwaukee, WI.

Jared Holthe, D.C., Madison, WI.

Jamie Lynn Settimi, D.C., Settimi Chiropractic Center, Brookfield, WI.

Daniel J. Eoriatti, D.C., Bentz Chiropractic Clinic, La Crosse, WI.

James A. Rosemeyer, D.C. & P. Chris Bierbauer, D.C., Rosemeyer Chiropractic Office, Platteville, WI.

Peter Heffeman, D.C., Jack Masche, D.C. & Tim Sharpe, D.C., Masche Chiropractic Health Center, Greenfield, WI.

W.J. Loofboro, D.C., Loofboro Chiropractors, Wauwatosa, WI.

Peter G. Friedrichs, D.C. & Rebecca L. Friedrichs, D.C., Southern Lakes Chiropractic, S.C., East Troy, WI.

Gregory M. Blau, D.C., Blau Chiropractic Center, Brookfield, WI.

Matthew J. DuMond, D.C., DuMond Chiropractic, S.C., Richland Center, WI.

Jeffrey A. Lynn, D.C., Russell R. Hauser, D.C. & Glendon R. Trigg, D.C., Falls Chiropractic Group, S.C., Menomonee Falls, WI.

Andy Pieren, D.C., St. Francis, WI.

Michael R. Vaughan, Attorney, Murphy & Desmond, S.C., Madison, WI.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

The recommendations suggested in the Clearinghouse Report were discussed and accepted.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CHIROPRACTIC EXAMINING BOARD
CHIROPRACTIC EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 98-190)

PROPOSED ORDER

An order of the Chiropractic Examining Board to **amend** Chir 4.03; and to **create** Chir 6.03, relating to the duty to evaluate and inform patients of their presenting conditions.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats.

Statutes interpreted: ss. 446.01 (2) and 446.03 (5), Stats.

A chiropractor has a responsibility recognized under common law to determine whether a patient presents a problem that is treatable through chiropractic means and refrain from further chiropractic treatment if the patient's condition will not be responsive to chiropractic treatment. This responsibility was recognized in *Kerkman v. Hintz*, 142 Wis. 2d 404, 418 N.W.2d 795 (1988) and is codified in this rule.

In the *Kerkman* decision and more recently in *Goldstein v. Janusz Chiropractic Clinics, S.C.*, 218 Wis. 2d 683, 582 N.W.2d 78, (Ct. App. 1998) rev. den. 220 Wis. 2d 364 (1998) the courts have relied on the description of the practice of chiropractic in sec. Chir 4.03, Wis. Adm. Code to limit the responsibility and liability of a chiropractor who does not refer a patient to a medical doctor. In this rule the description of the practice of chiropractic is amended to (1) recognize that chiropractors treat body tissues other than those adjacent to the spine and (2) that diagnosis by a chiropractor involves using chiropractic science and the principles of education and training common to the chiropractic and medical professions. This rule establishes a duty requiring a chiropractor to advise a patient to consult another appropriate health care provider if the chiropractor determines that correct treatment for the patient is outside the practice of chiropractic or if the chiropractor knows or should know that he or she does not have the skill, knowledge or facilities to treat the patient's condition. As established in this rule, the responsibility of a chiropractor to advise a patient to consult another appropriate health care provider is broader than the duty recognized in the *Kerkman* decision.

TEXT OF RULE

SECTION 1. Chir 4.03 is amended to read:

Chir 4.03 Practice. The practice of chiropractic is the application of chiropractic science in the adjustment of the spinal column, skeletal articulations and ~~adjacent tissue~~ the muscle, connective, neurological and associated body tissue related thereto which includes diagnosis and analysis to determine the existence of spinal subluxations and associated nerve energy expression and the use of procedures and instruments preparatory and complementary to treatment of the spinal column, skeletal articulations and ~~adjacent tissue~~ the muscle, connective, neurological and associated body tissue related thereto. Diagnosis and analysis involves the use of chiropractic science as described in s. Chir 4.02 and current principles of education and training of the chiropractic profession, and may include physical examination, specimen analysis, drawing of blood, blood-analysis and the use of x-ray and other instruments.

SECTION 2. Chir 6.03 is created to read:

Chir 6.03 Duty to evaluate and inform. (1) A chiropractor shall evaluate each patient to determine whether the patient presents a condition 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 in s. Chir 4.02 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 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.

(END OF TEXT OF RULE)

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.

Dated _____

Agency _____

Chairperson
Chiropractic Examining Board

Draft of October 15, 1999

Page 2

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

g:\rules\chir1.doc
10/15/99