

WISCONSIN LEGISLATIVE COUNCIL STAFF

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FORM 2

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1999

RULES CLEARINGHOUSE

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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 99-040

AN ORDER to create Chir 3.08, relating to use of limited liability in chiropractic practice.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

03-09-99 RECEIVED BY LEGISLATIVE COUNCIL.

03-29-99 REPORT SENT TO AGENCY.

RNS:LR:kjf;rv

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

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CLEARINGHOUSE RULE 99-040

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.]

1. Statutory Authority

Section Chir 3.08 (2) provides that a chiropractor may not practice with or in a business organized so that a person other than a chiropractor has the right to direct or control the chiropractor's professional judgment. The rule states that this does not prohibit working in a business in which someone other than the patient pays the chiropractor's fee or salary.

Would this rule preclude a chiropractor from being employed by a staff model health maintenance organization or a peer review organization?

If the board has specific authority for this rule, it should be cited.

2. Form, Style and Placement in Administrative Code

- a. In s. Chir 3.08 (2), "may not" should replace "shall not." [See s. 1.01 (2), Manual.]
- b. In s. Chir 3.08 (3) and (4), "section" should replace "rule." [See s. 1.07 (1) (a), Manual.]

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 99-)

PROPOSED ORDER

An order of the Chiropractic Examining Board to *create* Chir 3.08 relating to use of limited liability in chiropractic practice.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 446.02 (8), Stats.

Statutes interpreted: s. 446.02 (8), Stats.

Since January 1, 1994, Wisconsin has permitted use of limited liability companies and since December 1995, limited liability partnerships. The law regulating the practice of chiropractic in Wisconsin does not specifically prohibit or authorize a chiropractor to organize a chiropractic practice as a limited liability company or limited liability partnership. The rule proposed is intended to provide a clear statement of the board's position as to whether it is permissible for a chiropractor to organize a practice under any of the limited liability organizations recognized in current state law.

Under the rule a chiropractor may practice with or in a business that is organized as a limited liability organization under Wisconsin law with certain restrictions that are based on current statutory practice requirements. The chiropractor shall not practice with or in a business organized so that a person other than a chiropractor has the right to direct or control the professional judgment of the chiropractor. The chiropractor shall have in effect professional liability insurance in the amounts required by the board in s. Chir 3.07.

The rule explicitly recognizes legal principle that chiropractic practice with or in a business that is organized as a limited liability organization does not relieve the chiropractor from personal liability for any acts, errors or omissions of the chiropractor arising out of the performance of professional services.

TEXT OF RULE

SECTION 1. Chir 3.08 is created to read:

Chir 3.08 Limited liability entities. (1) A chiropractor may practice with or in a business that is organized as a limited liability organization under the laws of this state, including a limited liability partnership, a service corporation, and limited liability company.

(2) A chiropractor shall not practice with or in a business organized so that a person other than a chiropractor has the right to direct or control the professional judgment of the chiropractor. This restriction does not prohibit a chiropractor from working with or in a business organized so that someone other than the patient pays the chiropractor's fee or salary, provided the fee or salary arrangements do not modify the chiropractor's obligation to his or her patient.

*staff
NMB?*

(3) Nothing in this rule shall relieve a chiropractor from personal liability for any acts, errors or omissions of the chiropractor arising out of the performance of professional services.

(4) Nothing in this rule shall relieve a chiropractor from the requirement that every practicing chiropractor shall have in effect professional liability insurance in the amounts required by the board in s. Chir 3.07.

(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

FISCAL EFFECT

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.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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3/9/99

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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 99-040)

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 use of limited liability entities in chiropractic practice.

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.



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

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Governor

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Administrative Rules in Final Draft Form

Chiropractic Examining Board

Relating to: Limited Liability Entities

Rule: Chir 3.08

Clearinghouse Rule: No. 99-040

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 99-040
CHIROPRACTIC EXAMINING : (s. 227.19 (3), Stats.)
BOARD :**

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:

Since January 1, 1994, Wisconsin has permitted use of limited liability companies and since December 1995, limited liability partnerships. The law regulating the practice of chiropractic in Wisconsin does not specifically prohibit or authorize a chiropractor to organize a chiropractic practice as a limited liability company or limited liability partnership. The rule proposed is intended to provide a clear statement of the board's position as to whether it is permissible for a chiropractor to organize a practice under any of the limited liability organizations recognized in current state law.

Under the rule a chiropractor may practice with or in a business that is organized as a limited liability organization under Wisconsin law with certain restrictions that are based on current statutory practice requirements. The chiropractor shall not practice with or in a business organized so that a person other than a chiropractor has the right to direct or control the professional judgment of the chiropractor. The chiropractor shall have in effect professional liability insurance in the amounts required by the board in s. Chir 3.07.

The rule explicitly recognizes legal principle that chiropractic practice with or in a business that is organized as a limited liability organization does not relieve the chiropractor from personal liability for any acts, errors or omissions of the chiropractor arising out of the performance of professional services.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on May 20, 1999. There were no appearances at the public hearing nor were any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 1. The proposed rule does not address the issue of a chiropractor being employed by a staff model health maintenance organization or a peer review organization, and it does not preclude such employment.

Comment 2 was accepted in whole.

VII. 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.

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
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(2) A chiropractor may not practice with or in a business organized so that a person other than a chiropractor has the right to direct or control the professional judgment of the chiropractor. This restriction does not prohibit a chiropractor from working with or in a business organized so that someone other than the patient pays the chiropractor's fee or salary, provided the fee or salary arrangements do not modify the chiropractor's obligation to his or her patient.

(3) Nothing in this section shall relieve a chiropractor from personal liability for any acts, errors or omissions of the chiropractor arising out of the performance of professional services.

(4) Nothing in this section shall relieve a chiropractor from the requirement that every practicing chiropractor shall have in effect professional liability insurance in the amounts required by the board in s. Chir 3.07.

(END OF TEXT OF RULE)

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Dated _____

Agency _____

Chairperson
Chiropractic Examining Board

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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.

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10/12/99