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☞ Details: Complaints

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

7th of PV

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH__

DANE COUNTY

WISCONSIN CHIROPRACTIC ASSOCIATION
521 East Washington Avenue
Madison, WI 53703,

Plaintiff,

v.

**WISCONSIN CHIROPRACTIC
EXAMINING BOARD,**
1400 East Washington Avenue
Madison, WI 53708,

Defendants.

Case No. 03CV1491

Declaratory Judgment: 30701

B
Am I A MEMBER
OF THIS BOARD?
J.

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

2003 AUG -8 PM 2:19
DANE COUNTY, WI
Clerk of Circuit Court

SUMMONS

THE STATE OF WISCONSIN to each person named above as a defendants:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of this legal action.

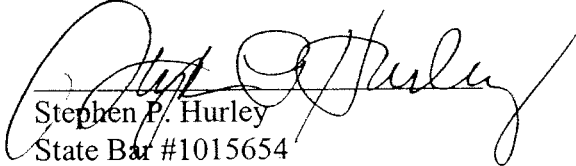
Within forty-five (45) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 210 Martin Luther King Jr. Boulevard, Madison, Wisconsin 53709, and to Stephen P. Hurley, Plaintiff's attorney, whose address is Hurley, Burish & Milliken, S.C., 301 North Broom Street, Madison, Wisconsin 53703. You may have an attorney help or represent you.

If you do not provide an answer within forty-five (45) days, the court may grant judgment

against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICE BECAUSE OF A DISABILITY, CALL 266-4678 (TDD 266-4625) AND ASK FOR THE COURT ADA COORDINATOR.

Dated this 8 day of August, 2003


Stephen F. Hurley
State Bar #1015654

301 N. Broom Street
Madison, WI 53703-2067
(608)257-0945

WISCONSIN CHIROPRACTIC ASSOCIATION

521 East Washington Avenue
Madison, WI 53703,

Plaintiff,

v.

Case No. 03CV1491

Declaratory Judgment: 30701

**WISCONSIN CHIROPRACTIC
EXAMINING BOARD,**

1400 East Washington Avenue
Madison, WI 53708,

Defendants:

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COUNTY CLERK OF CIRCUIT COURT.

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

2003 JUN -8 PM 2:19
DANE COUNTY, WI
CIRCUIT COURT

AMENDED COMPLAINT

NOW COMES the Wisconsin Chiropractic Association by its attorneys, Hurley, Burish & Milliken, S.C., by Stephen P. Hurley, and for an amended complaint against the Wisconsin Chiropractic Examining Board states the following:

1. The Wisconsin Chiropractic Association is an association of chiropractors who have been licensed by the state of Wisconsin to practice chiropractic, and the purpose of which are to develop and enhance the professional services of chiropractors to the public; and to ensure that the delivery of those services does not endanger the public.

2. The Wisconsin Chiropractic Examining Board is a governmental entity established in Chapter 446, Wis. Stats., the responsibilities of which include, among others, the licensure and regulation of the practice of chiropractic.

3. Section 440.035, Stats., empowers the Chiropractic Examining Board to independently exercise its powers, duties and functions prescribed by law with regard to rule-making, credentialing and regulation.

4. Section 446.02, Stats., states, *in pari materia*:

§ 446.02(2) (a) The examining board shall grant a license to practice chiropractic to a qualified person who submits an application for the license to the department on a form provided by the department, accompanied by satisfactory evidence of completion of the educational requirements established in the rules promulgated under par. (b), passes the examination described under sub. (3) and pays the license fee specified in s. 440.05 (1). (b) The examining board shall promulgate rules establishing educational requirements for obtaining a license under par. (a). The rules shall require that an application for the license that is received by the department after June 30, 1998, be accompanied by satisfactory evidence that the applicant has a bachelor's degree from a college or university accredited by an accrediting body listed as nationally recognized by the secretary of the federal department of education, and has graduated from a college of chiropractic approved by the examining board.

§ 446.02(3) Examination shall be in the subjects usually taught in such reputable schools of chiropractic, and shall be conducted at least twice a year at such times and places as the examining board determines. The examination shall include a practical examination of the applicant as prescribed by the examining board. In lieu of its own written examination, the examining board may accept, in whole or in part, the certificate of the national board of chiropractic examiners.

5. Pursuant to statute, the Wisconsin Chiropractic Examining Board has

promulgated administrative rules, specifically, the Wisconsin Administrative Code CHIR 2, which define the content and procedure for the examination of applicants for licensure to the practice of chiropractic. Until on or about December 19, 2002, the Wisconsin Chiropractic Examining Board accepted the Certificate of the National Board of Chiropractic Examiners in lieu of its own written examination for applicants; however, it administered its own practical examination of applicants.

6. The procedures and practices employed by the National Board of Chiropractic Examiners in the administration of its practical examination do not comport with the requirements of CHIR 2.

7. Upon information and belief, in the 3 ½ years preceding the filing of the Complaint in the above captioned matter, approximately 40 percent of the applicants administered the Wisconsin Chiropractic Examining Board's practical examination failed that examination. Upon information and belief, during the same time period, only 13 percent of those administered the National Board of Chiropractic Examiners' practical examination failed.

8. On or about December 19, 2002, the Wisconsin Chiropractic Examining Board voted to accept, both prospectively and retrospectively, the Certificate of the National Board of Chiropractic Examiners in lieu of the Chiropractic Examining Board's own practical examination.

9. The Wisconsin Chiropractic Examining Board is not authorized by statute to accept the Certificate of the National Board of Chiropractic Examiners in lieu of the Chiropractic Examining Board's own practical examination.

10. Upon information and belief, as a result of the Wisconsin Chiropractic Examining

Board's decision, it has issued licenses for the practice of chiropractic to applicants who had failed the Wisconsin Chiropractic Examining Board's practical examination, but who had passed the National Board of Chiropractic Examiners' examination.

11. Upon information and belief, the Wisconsin Chiropractic Examining Board has issued licenses for the practice of chiropractic to applicants who have not taken the Wisconsin Chiropractic Examining Board's practical examination.

12. Upon information and belief, the Wisconsin Chiropractic Examining Board will, in the future, issue licenses to applicants who have not taken the Wisconsin Chiropractic Examining Board's practical examination.

13. The Wisconsin Chiropractic Examining Board's issuance of licenses for the practice of chiropractic to applicants who have failed or who have not taken the Wisconsin Chiropractic Examining Board's practical examination, in the past has been, and in the future will be, in violation of statute and of the Wisconsin Administrative Code.

14. Those persons who have been issued licenses for the practice of chiropractic who have failed, or who have not taken, the practical examination of the Wisconsin Chiropractic Examining Board will be eligible for membership in the Wisconsin Chiropractic Association.

15. On June 19, 2003, the Wisconsin Chiropractic Examining Board voted to adopt an emergency administrative rule, which, *inter alia*, removed the requirement in Wisconsin Administrative Code Sections CHIR 2.03(2) and 2.07(3), that applicants who take a practical examination pass "each part" of the practical examination prepared, administered and graded by the Board, repealed Wisconsin Administrative Code Section CHIR 2.09 and amended the portion of Wisconsin Administrative Code Section CHIR 2.11(2) and (3) that allowed certain applicants

to retake only a portion of the practical examination prepared, administered and graded by the Board. The emergency rule was published on June 28, 2003, and the Board treated it as being effective on that date. A true and correct copy of the published so-called emergency rule is attached to this pleading and is identified as Exhibit 1.

16. Wis. Stats. Chapter 227 prohibits the promulgation of an administrative rule without complying with its notice, hearing and publication requirements except:

“... if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.”

17. The emergency which the Board cited in its notice (Exhibit 1), to justify the adoption of new administrative rules without notice, hearing and publication as required by Chapter 227, was the Board’s prior adoption, on December 19, 2002, of the National Practical Examination conducted by the National Board of Chiropractic Examiners. The adoption of the emergency administrative rules were *ultra vires*; in violation of the requirements of Chapter 227 and of Section 446.02, Stats.

WHEREFORE, pursuant to the Court’s authority under Section 804.04(1), Stats., it is respectfully requested that this Court declare:

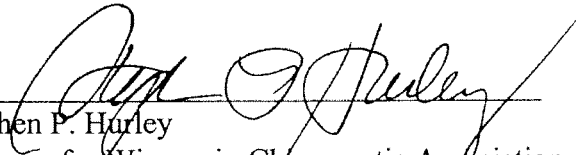
a. that the Wisconsin Chiropractic Examining Board’s issuance of licenses for the practice of chiropractic to persons who have failed or who have not taken the Wisconsin Chiropractic Examining Board’s practical examination, has been, is, and will be in violation of statute and Administrative Rule; and

b. that its adoption of emergency rules (as set forth in Exhibit 1) was *ultra vires* and in violation of Chapter 227 and Section 446.02, Stats.

Dated this 8th day of August, 2003.

Respectfully submitted,

HURLEY, BURISH & MILLIKEN, S.C.

By: 
Stephen P. Hurley
Attorney for Wisconsin Chiropractic Association
State Bar #1015654

301 N. Broom Street
Madison, WI 53703-2067
(608)257-0945



State of Wisconsin Legal Notices

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

<http://www.madison.com>

General Notices

STATE OF WISCONSIN'S CHIROPRACTIC EXAMINING BOARD IN THE MATTER OF RULE-MAKING PROCEEDINGS BEFORE THE CHIROPRACTIC EXAMINING BOARD

ORDER ADOPTING EMERGENCY RULES

An order of the Chiropractic Examining Board to repeal Chir. 2.09 and to amend Chir. 2.03 (2) (intro.), 2.07 (3) and 2.11 (2) and (3), relating to passing and retaking the practical examination. Analysis prepared by the Department of Regulation.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 446.02 (2) and (3g), Stats. Statutes interpreted: s. 446.02 (1) (b), (2) (a) and (3), Stats.

These rule changes will conform the terminology in the current rules with the textual description of the national practical examination conducted by the National Board of Chiropractic Examiners, adopted in December 2002 by the Chiropractic Examining Board, and resolve doubts about the examination scores issued to applicants who complete the national practical examination.

TEXT OF RULE

SECTION 1: Chir. 2.03 (2) (intro.) is amended to read:

Chir. 2.03 (2) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL COMPETENCE (intro.): An applicant shall pass each part of a practical examination demonstrating clinical competence which includes the following parts:

SECTION 2: Chir. 2.07 (3) is amended to read: Chir. 2.07 (3) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL COMPETENCE. To pass the practical examination demonstrating clinical competence, an applicant shall receive a grade determined by the board to represent minimum competence to practice on each part of the examination.

SECTION 3: Chir. 2.09 is repealed.

SECTION 4: Chir. 2.11 (2) and (3) are amended to read: Chir. 2.11 (2) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL COMPETENCE. An applicant who fails the practical examination demonstrating clinical competence due to the failure of one part of examination may retake the failed part only. An applicant who fails the practical examination demonstrating clinical competence due to the failure of 2 or more parts of the practical examination shall be required to retake the entire practical examination demonstrating clinical competence.

(3) LIMITATION ON REEXAMINATION. If an applicant does not pass all parts of the examination under subs. (1) and (2) within 2 years of the first attempt, the applicant shall retake and

General Notices

pass the entire practical examination demonstrating clinical competence and state law examination in order to be licensed.

FINDING OF EMERGENCY

The Chiropractic Examining Board finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments described into effect prior to the time the amendments would take effect if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the National Board of Chiropractic Examiners as the board's practical examination for determining clinical competence in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. The rule changes herein conform the terminology used in the board's rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in Chir. 3.02, although the national practical examination covers the practice areas described in the existing rule. The rule amendments to s. Chir. 2.03 (2) (intro.) resolve this difference.

This order deletes the reference in the board's current rule to passing "each part" of the examination. The national practical examination has one part and an applicant receives one grade for the part. In utilizing the national examination, the board approves the grading and grading procedures of the National Board of Chiropractic Examiners. Grade review procedures in s. Chir. 2.09 are superfluous and the rule is repealed. The rule requiring reexamination is modified to avoid confusion over examination parts. The board is proceeding with promulgating these rule changes through a proposed permanent rule-making order. The emergency rules adopted in this order shall take effect on June 28, 2003.

Dated June 25, 2003.

Agency/s/ James Rosemeyer, D.C.
Chairperson on Chiropractic Examining Board
(WSJ#862571)

gh

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH__

DANE COUNTY

WISCONSIN CHIROPRACTIC ASSOCIATION

521 East Washington Avenue
Madison, WI 53703,

Plaintiff,

03CV1491

Case No. _____

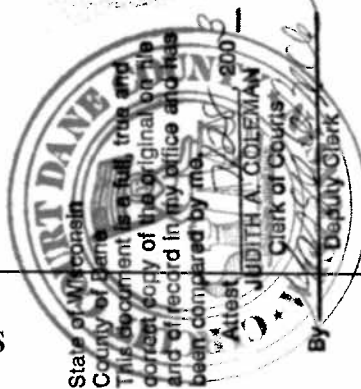
Declaratory Judgment: 30701

v.

**WISCONSIN CHIROPRACTIC
EXAMINING BOARD,**

1400 East Washington Avenue
Madison, WI 53708,

THIS IS AN AUTHENTICATED COPY OF THE ORIGINAL DOCUMENT FILED WITH THE DANE COUNTY CLERK OF CIRCUIT COURT. Defendants.



2003 MAY 16 PM 3:30
DANE COUNTY
CIRCUIT COURT

SUMMONS

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

THE STATE OF WISCONSIN to each person named above as a defendants:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of this legal action.

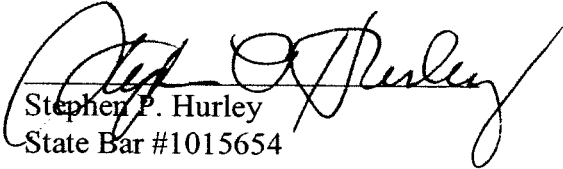
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If you do not provide an answer within forty-five (45) days, the court may grant judgment

against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICE BECAUSE OF A DISABILITY, CALL 266-4678 (TDD 266-4625) AND ASK FOR THE COURT ADA COORDINATOR.

Dated this 16 day of May, 2003


Stephen P. Hurley
State Bar #1015654

301 N. Broom Street
Madison, WI 53703-2067
(608)257-0945

ph

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH__

DANE COUNTY

WISCONSIN CHIROPRACTIC ASSOCIATION

521 East Washington Avenue
Madison, WI 53703,

Plaintiff,

03CV1491

Case No. _____

v.

Declaratory Judgment: 30701

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EXAMINING BOARD,**

1400 East Washington Avenue
Madison, WI 53708,

Defendants.

2003 MAY 16 PM 3:30
DANE COUNTY
CIRCUIT COURT

COMPLAINT

NOW COMES the Wisconsin Chiropractic Association by its attorneys, Hurley, Burish & Milliken, S.C., by Stephen P. Hurley, and for a complaint against the Wisconsin Chiropractic Examining Board states the following:

1. The Wisconsin Chiropractic Association is an association of chiropractors who have been licensed by the state of Wisconsin to practice chiropractic, and the purpose of which are to develop and enhance the professional services of chiropractors to the public; and to ensure that the delivery of those services does not endanger the public.

2. The Wisconsin Chiropractic Examining Board is a governmental entity established in Chapter 446, Wis. Stats., the responsibilities of which include, among others, the licensure and regulation of the practice of chiropractic.

3. Section 440.035, Stats., empowers the Chiropractic Examining Board to independently exercise its powers, duties and functions prescribed by law with regard to rule-making, credentialing and regulation.

4. Section 446.02, Stats., states, *in pari materia*:

§ 446.02(2) (a) The examining board shall grant a license to practice chiropractic to a qualified person who submits an application for the license to the department on a form provided by the department, accompanied by satisfactory evidence of completion of the educational requirements established in the rules promulgated under par. (b), passes the examination described under sub. (3) and pays the license fee specified in s. 440.05 (1). (b) The examining board shall promulgate rules establishing educational requirements for obtaining a license under par. (a). The rules shall require that an application for the license that is received by the department after June 30, 1998, be accompanied by satisfactory evidence that the applicant has a bachelor's degree from a college or university accredited by an accrediting body listed as nationally recognized by the secretary of the federal department of education, and has graduated from a college of chiropractic approved by the examining board.

§ 446.02(3) Examination shall be in the subjects usually taught in such reputable schools of chiropractic, and shall be conducted at least twice a year at such times and places as the examining board determines. The examination shall include a practical examination of the applicant as prescribed by the examining board. In lieu of its own written examination, the examining board may accept, in whole or in part, the certificate of the national board of chiropractic examiners.

5. Pursuant to statute, the Wisconsin Chiropractic Examining Board has

promulgated administrative rules, specifically, the Wisconsin Administrative Code CHIR 2, which define the content and procedure for the examination of applicants for licensure to the practice of chiropractic. Until on or about December 19, 2002, the Wisconsin Chiropractic Examining Board accepted the Certificate of the National Board of Chiropractic Examiners in lieu of its own written examination for applicants; however, it administered its own practical examination of applicants.

6. The procedures and practices employed by the National Board of Chiropractic Examiners in the administration of its practical examination to not comport with the requirements of CHIR 2.

7. Upon information and belief, in the 3 ½ years preceeding the filing of this complaint, approximately 40 percent of the applicants administered the Wisconsin Chiropractic Examining Board's practical examination failed that examination. Upon information and belief, during the same time period, only 13 percent of those administered the National Board of Chiropractic Examiners' practical examination failed.

8. On or about December 19, 2002, the Wisconsin Chiropractic Examining Board voted to accept, both prospectively and retrospectively, the Certificate of the National Board of Chiropractic Examiners in lieu of the Chiropractic Examining Board's own practical examination.

9. Upon information and belief, as a result of the Wisconsin Chiropractic Examining Board's decision, it has issued licenses for the practice of chiropractic to applicants who had failed the Wisconsin Chiropractic Examining Board's practical examination, but who had passed the National Board of Chiropractic Examiners' examination.

10. Upon information and belief, the Wisconsin Chiropractic Examining Board has issued licenses for the practice of chiropractic to applicants who have not taken the Wisconsin Chiropractic Examining Board's practical examination.

11. Upon information and belief, the Wisconsin Chiropractic Examining Board will, in the future, issue licenses to applicants who have not taken the Wisconsin Chiropractic Examining Board's practical examination.

12. The Wisconsin Chiropractic Examining Board's issuance of licenses for the practice of chiropractic to applicants who have failed or who have not taken the Wisconsin Chiropractic Examining Board's practical examination, in the past has been, and in the future will be, in violation of statute and of the Wisconsin Administrative Code.

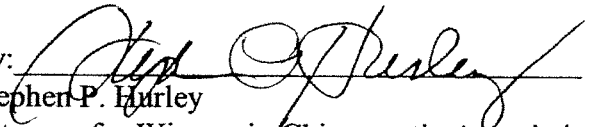
13. Those persons who have been issued licenses for the practice of chiropractic who have failed, or who have not taken, the practical examination of the Wisconsin Chiropractic Examining Board will be eligible for membership in the Wisconsin Chiropractic Association.

WHEREFORE, pursuant to the Court's authority under Section 804.04(1), Stats., it is respectfully requested that this Court declare that the Wisconsin Chiropractic Examining Board's issuance of licenses for the practice of chiropractic to persons who have failed or who have not taken the Wisconsin Chiropractic Examining Board's practical examination, has been, is, and will be in violation of statute and Administrative Rule.

Dated this ___ day of May, 2003.

Respectfully submitted,

HURLEY, BURISH & MILLIKEN, S.C.

By: 
Stephen P. Hurley
Attorney for Wisconsin Chiropractic Association
State Bar #1015654

301 N. Broom Street
Madison, WI 53703-2067
(608)257-0945

fg

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 2

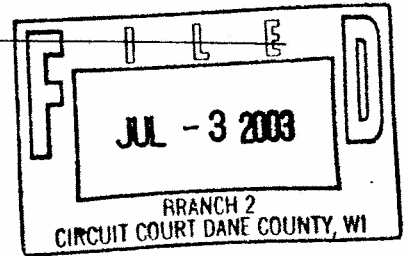
DANE COUNTY

WISCONSIN CHIROPRACTIC
ASSOCIATION,

Plaintiff,

v.

Case No. 03-CV-1491



WISCONSIN CHIROPRACTIC
EXAMINING BOARD,

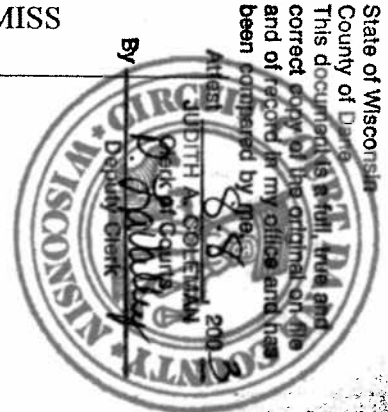
Defendants.

NOTICE OF MOTION AND MOTION TO DISMISS,
ALTERNATIVE ANSWER AND AFFIRMATIVE DEFENSES, AND
REQUEST FOR BRIEFING SCHEDULE ON MOTION TO DISMISS

NOTICE OF MOTION AND MOTION TO DISMISS

TO: Stephen P. Hurley
Hurley, Burish & Milliken, S.C.
301 North Broom Street
Madison, WI 53703-2067

Attorneys for plaintiff, Wisconsin Chiropractic Association



PLEASE TAKE NOTICE that the defendant, Wisconsin Chiropractic Examining Board ("Board"), by its undersigned attorneys, will, at a time, date and place to be determined by the Court, move the Dane County Circuit Court, the Honorable Maryann Sumi, presiding, for an order dismissing the plaintiff's complaint against the Board.

AS GROUNDS FOR THE MOTION, the Board asserts:

1. This Court lacks personal jurisdiction over the defendant agency of the State of Wisconsin, the Board, pursuant to article IV, § 27 of the Wisconsin Constitution, and the Board's sovereign immunity.

2. The Wisconsin Chiropractic Association does not have a legally protected interest in the Board's decision to accept a passing score on the practical examination given by the National Board of Chiropractic Examiners as a demonstration of practical competency to practice chiropractic.

3. The complaint fails to present a justiciable controversy as required by Wis. Stat. § 806.04.

4. The complaint fails to state a claim upon which relief may be granted.

WHEREFORE, the Board demands that plaintiff's complaint be dismissed.

DEFENDANT'S ALTERNATIVE ANSWER AND AFFIRMATIVE DEFENSES

In the alternative to the motion to dismiss, the defendant Board submits the following ANSWER to the plaintiff's complaint, and ADMITS, DENIES and ALLEGES as follows:

1. ADMIT that the Wisconsin Chiropractic Association is an association of chiropractors who have been licensed by the State of Wisconsin to practice chiropractic; DENY knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1, and therefore DENY the same.

2. ADMIT the factual allegations contained in paragraph 2.

3. ALLEGE that paragraph 3 contains no factual allegations but only legal conclusions to which no responsive pleading is required; alternatively ADMIT the allegations contained in paragraph 3 to the extent they accurately reflect the statute cited.

4. ALLEGE that paragraph 4 contains no factual allegations but only legal conclusions to which no responsive pleading is required; alternatively ADMIT the allegations contained in paragraph 4 to the extent they accurately reflect the statute cited.

5. ADMIT that Wisconsin Administrative Code ch. CHIR 2 defines the content and procedure for some but not all examinations of applicants for Wisconsin chiropractic licensure, including practical examinations prepared, administered and graded by the Board; ADMIT that the Board accepts the certificate of the National Board of Chiropractic Examiners in lieu of its own written examination for applicants; ADMIT that the Board prepared, administered and graded its own practical examination for applicants, pursuant to Wis. Stat. § 440.07(2)(a), until some time in December 2002; DENY that Wisconsin Administrative Code ch. CHIR 2 defines the content and procedure that must be followed when the Board elects, pursuant to Wis. Stat. § 440.07(2)(b), to approve examinations prepared, administered and graded by a test service provider; DENY any remaining factual allegations that may be contained in paragraph 5.

6. DENY any factual allegations that may be contained in paragraph 6.

7. ADMIT the factual allegation contained in the first sentence of paragraph 7; DENY knowledge or information sufficient to form a belief as to the truth of any remaining factual allegations that may be contained in paragraph 7, and therefore DENY the same.

8. ADMIT the factual allegations contained in paragraph 8; ASSERT that the Board decided to accept applicants' passing scores on the practical examination prepared, administered and graded by the National Board of Chiropractic Examiners, pursuant to the Board's authority in Wis. Stat. § 440.07(2)(b).

9. DENY knowledge or information sufficient to form a belief as to the truth of any factual allegations that may be contained in paragraph 9, and therefore DENY the same.

10. ADMIT that the Board has issued chiropractic licenses for applicants who have not taken the practical examination prepared, administered and graded by the Board, but who have achieved a passing score on the practical examination prepared, administered and graded by

the National Board of Chiropractic Examiners; DENY any remaining factual allegations which may be contained in paragraph 10.

11. ADMIT that the Board may, in the future, issue licenses to applicants who have achieved a passing score on the practical examination prepared, administered and graded by the National Board of Chiropractic Examiners but who have not taken the practical examination prepared, administered and graded by the Board; ADMIT that the Board may, in the future, issue licenses to applicants who have achieved a passing score on the practical examination prepared, administered and graded by the National Board of Chiropractic Examiners, and who have also taken the practical examination prepared, administered and graded by the Board if one is offered in the future; ADMIT that the Board may, in the future, vote pursuant to Wis. Stat. § 440.07(2)(intro), to discontinue accepting a passing score on the practical examination prepared, administered and graded by the National Board of Chiropractic Examiners, and instead require applicants to pass the practical examination described in Wisconsin Administrative Code ch. CHIR 2 prepared, administered and graded by the Board; ALLEGE that on June 19, 2003, the Board voted to adopt an emergency administrative rule, which, *inter alia*, removed the requirement in Wisconsin Administrative Code §§ CHIR 2.03(2) and 2.07(3) that applicants who take a Wisconsin practical examination pass "each part" of the practical examination prepared, administered and graded by the Board, repealed Wisconsin Administrative Code § CHIR 2.09 and amended the portion of Wisconsin Administrative Code § CHIR 2.11(2) and (3) that allowed certain applicants to retake only a portion of the practical examination prepared, administered and graded by the Board; ALLEGE further that, pursuant to Wis. Stat. § 227.24(1)(c), the emergency rule was published on June 28, 2003, and became effective that date; ALLEGE that a

true and correct copy of the published emergency rule is attached to this pleading and is identified as Exhibit 1.

12. ALLEGE that paragraph 12 contains no factual allegations but only legal conclusions to which no responsive pleading is required; alternatively DENY the allegations contained in paragraph 12.

13. DENY knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13, and therefore DENY the same.

AFFIRMATIVE DEFENSES

1. This Court lacks personal jurisdiction over the defendant agency of the State of Wisconsin, the Board, pursuant to article IV, § 27 of the Wisconsin Constitution, and the Board's sovereign immunity.

2. The Wisconsin Chiropractic Association does not have a legally protected interest in the Board's decision to accept a passing score on the practical examination given by the National Board of Chiropractic Examiners as a demonstration of practical competency to practice chiropractic.

3. The complaint fails to present a justiciable controversy as required by Wis. Stat. § 806.04.

4. The complaint fails to state a claim upon which relief may be granted.

WHEREFORE, the defendant Board demands judgment that the complaint against it be dismissed, on the merits, together with the Board's costs and fees, and whatever additional relief the Court deems appropriate.

REQUEST FOR BRIEFING SCHEDULE ON MOTION TO DISMISS

PLEASE TAKE NOTICE that the defendant, Wisconsin Chiropractic Examining Board, by its undersigned attorneys, hereby requests the Circuit Court for Dane County, the Honorable Maryann Sumi, issue a schedule for briefing on the Board's motion to dismiss. The Board requests 40 days to file its initial brief in support of the motion to dismiss, and 21 days from the date of the plaintiff's brief to file its reply brief.

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Attorney General



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Wisconsin Chiropractic Examining Board

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July 2, 2003

Chiro/030702-dism-ans



State of Wisconsin Legal Notices

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

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General Notices

STATE OF WISCONSIN CHIROPRACTIC EXAMINING BOARD IN THE MATTER OF RULE-MAKING PROCEEDINGS BEFORE THE CHIROPRACTIC EXAMINING BOARD

ORDER ADOPTING EMERGENCY RULES

ORDER

An order of the Chiropractic Examining Board to repeal Chir. 2.09; and to amend Chir. 2.03 (2) (intro.); 2.07 (3) and 2.11 (2) and (3), relating to passing and retaking the practical examination. Analysis prepared by the Department of Regulation.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 448.02 (2) and (3g); Stats. Statutes interpreted: s. 448.02 (1) (b), (2) (a) and (3); Stats.

These rule changes will conform the terminology in the current rules with the textual description of the national practical examination conducted by the National Board of Chiropractic Examiners, adopted in December 2002 by the Chiropractic Examining Board, and resolve doubts about the examination scores issued to applicants who complete the national practical examination.

TEXT OF RULE

SECTION 1: Chir. 2.03 (2) (intro.) is amended to read:

Chir. 2.03 (2) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL COMPETENCE (intro.) An applicant shall pass ~~each part of a~~ practical examination demonstrating clinical competence which includes the following parts:

SECTION 2: Chir. 2.07 (3) is amended to read: Chir. 2.07 (3) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL COMPETENCE. To pass the practical examination demonstrating clinical competence, an applicant shall receive a grade determined by the board to represent minimum competence to practice ~~on each part of the examination.~~

SECTION 3: Chir. 2.09 is repealed.

SECTION 4: Chir. 2.11 (2) and (3) are amended to read:

Chir. 2.11 (2) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL COMPETENCE. An applicant who fails the practical examination demonstrating clinical competence ~~due to the failure of one part of the examination may retake the failed part only. An applicant who fails the practical examination demonstrating clinical competence due to the failure of 2 or more parts of the practical examination shall be required to retake the entire practical examination demonstrating clinical competence.~~

(3) LIMITATION ON REEXAMINATION. If an applicant does not pass ~~all parts of the~~ examination under subs. (1) and (2) within 2 years of the first attempt, the applicant shall retake and

General Notices

pass the entire practical examination demonstrating clinical competence and state law examination in order to be licensed.

FINDING OF EMERGENCY

The Chiropractic Examining Board finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments described into effect prior to the time the amendments would take effect if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the National Board of Chiropractic Examiners as the board's practical examination for determining clinical competence in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. The rule changes herein conform the terminology used in the board's rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in Chir. 3.02, although the national practical examination covers the practice areas described in the existing rule. The rule amendments to s. Chir. 2.03 (2) (intro.) resolve this difference.

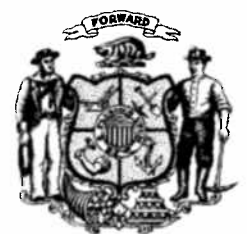
This order deletes the reference in the board's current rule to passing "each part" of the examination. The national practical examination has one part and an applicant receives one grade for the part. In utilizing the national examination, the board approves the grading and grading procedures of the National Board of Chiropractic Examiners. Grade review procedures in s. Chir. 2.09 are superfluous and the rule is repealed. The rule requiring reexamination is modified to avoid confusion over examination parts. The board is proceeding with promulgating these rule changes through a proposed permanent rule-making order. The emergency rules adopted in this order shall take effect on June 28, 2003.

Dated June 25, 2003:

Agency /s/ James Rosemeyer, D.C.
Chairperson on Chiropractic Examining Board
(WS.J#882571)



WISCONSIN STATE LEGISLATURE



STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 7

DANE COUNTY

State of Wisconsin ex rel.
RANDY DOEPKE,

Petitioner,

v.

Case No. 04 CV 1345

Other Extraordinary Writ: 30707

GERALD A. BERGE,

Respondent.

AFFIDAVIT OF PATRICK VANDER SANDEN

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

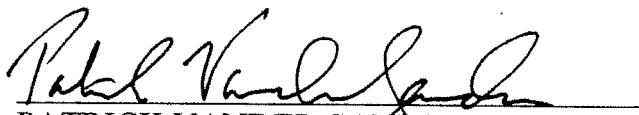
PATRICK VANDER SANDEN, being first duly sworn, on oath deposes and states as follows:

1. I am employed as the Senate Committee Clerk with the Wisconsin Legislature's Joint Committee for Review of Administrative Rules (JCRAR).


2. In this position I am a custodian of the regularly conducted business records of JCRAR concerning court and other legal documents served on JCRAR.

3. I have examined the record of such court and other legal documents served on JCRAR, and as a result of that examination I have concluded that as of this date no

court or other legal documents have been served upon JCRAR in the matter of *State of Wisconsin ex rel. Randy Doepke v. Gerald Berge*, Dane County Circuit Court Case No. 04-CV-1345.


PATRICK VANDER SANDEN

Subscribed and sworn to before me
this 9th day of August, 2004.


Notary Public, State of Wisconsin
My commission: expires 4/8/07

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