

Senate Bill 275...relating to: the definition of the practice of chiropractic; chiropractic evaluations, treatments, and referrals to physicians; unprofessional conduct by chiropractors; delegations by chiropractors; continuing education for chiropractors; nutritional guidance provided by chiropractors to patients; granting rule-making authority, and providing penalties.

BILL SPONSORS

Sponsored by Senators **Schultz**, Breske, Carpenter, Plale and M. Meyer.
 Cosponsored by Representatives Freese, Hines, Vrakas, LeMahieu, Kreibich, Kestell, Musser, Van Roy and Hahn.

BILL HISTORY

Senate Bill 275 was introduced on October 8, 2003 and referred to the Senate Committee on Health, Children, Families, Aging and Long Term Care. A public hearing was held on October 14, 2003. On March 9, 2004 this bill was passed on a paper ballot 4-1 (**Welch**).

LRB ANALYSIS

Current Law:

Under current law, the "practice of chiropractic" is defined, in part, as the employment or application of chiropractic adjustments and the principles or techniques of chiropractic science in the diagnosis, treatment, or prevention of conditions of human health or disease.

Under current law, the Chiropractic Examining Board may investigate allegations of misconduct against a chiropractor and, following a hearing, may revoke, limit, or suspend the chiropractor's license.

Under current law, a chiropractor licensed by the Chiropractic Examining Board is allowed to delegate services that are adjunctive to the practice of chiropractic to individuals who are not licensed by the Chiropractic Examining Board, but only if the services are performed under the direct, on-premises supervision of the chiropractor.

Under current law, a chiropractor licensed by the Chiropractic Examining Board must complete any continuing education that the board requires in order to renew his or her license, which must be renewed every two years. This bill creates additional requirements regarding continuing education.

Proposed Changes:

Under this bill, the "practice of chiropractic" has the same definition, except that the chiropractic adjustments and principles or techniques of chiropractic science must be those that are taught at a college or university approved by the Council on Chiropractic Education or any successor organization.

This bill requires a chiropractor to evaluate a patient to determine whether the patient has a condition that is treatable by chiropractic means. The evaluation must be based on an examination that is appropriate to the patient. Also, a chiropractor must utilize chiropractic science, as defined by rule by the Chiropractic Examining Board, and the principles of education and training of the chiropractic profession.

Under the bill, a chiropractor must discontinue treatment if, at any time, the

who is required to be identified to complete a training program or course of instruction to perform the delegated work, the chiropractor must also provide in his or her application for renewal the name, date, and sponsoring organization for the training program or course of instruction that the employee completed.

Finally, the bill changes the definitions of "practical nursing" and "professional nursing" to include actions taken under the supervision or direction of a chiropractor, in addition to actions taken under the supervision or direction of other health care professionals that are specified under current law.

Under the bill, the Chiropractic Examining Board must establish the minimum number of hours of continuing education courses that must be completed during the two-year licensure period. As under current law, a chiropractor does not have to begin complying with continuing education requirements under the bill until the first two-year licensure period beginning after he or she initially receives his or her license.

Also under the bill, only courses that are approved by the Chiropractic Examining Board may be used to satisfy the minimum hours required. The Chiropractic Examining Board may only approve a course if the organization that sponsors the course (sponsoring organization) satisfies certain requirements. The sponsoring organization must be the Wisconsin, American, or International Chiropractic Association, or an accredited chiropractic, medical, or osteopathic college or university. Also, the sponsoring organization must carry out specified duties, including selecting the course instructor, preparing course materials, evaluating the course, maintaining transcripts, performing financial administration, proctoring attendance, providing attendance vouchers, and supplying a list of attendees to the Chiropractic Examining Board. The sponsoring organization is also allowed to delegate these duties to another organization. The Chiropractic Examining Board must withdraw or withhold approval from a sponsoring organization for a 90-day period if the sponsoring organization fails to carry out any of the duties, or if an organization to which a duty is delegated fails to carry out any of the duties.

The bill requires the Chiropractic Examining Board periodically to publish an updated list of approved courses. A chiropractor who applies to renew his or her license must identify the courses used to satisfy the minimum hour requirement on a form provided by the Department of Regulation and Licensing. The bill requires the Department of Regulation and Licensing to audit a percentage, as determined by the department, of the renewal applications received during each 90-day licensure period to determine whether an applicant has attended the courses that he or she identifies on the form.

Finally, the bill allows the Chiropractic Examining Board to take disciplinary action against a licensed chiropractor who violates any state law or rule regulating chiropractors, including the continuing education requirements.

This bill requires certain chiropractors licensed by the Chiropractic Examining Board to complete a postgraduate course of study in nutrition before they may provide counsel, guidance, direction, advice, or recommendations to patients regarding the health benefits of vitamins, herbs, or nutritional supplements. However, the requirement applies only to chiropractors who were granted licenses on or before January 1, 2003. In addition, the requirement does not apply to chiropractors who are also certified as dietitians by the Dietitians Affiliated Credentialing Board. The required course of study must consist of 48 hours and must be approved by the

chiropractor determines, or reasonably should have determined, that the patient's condition will not respond to further chiropractic treatment. Also, if a chiropractor makes such a determination, the chiropractor must inform the patient and refer the patient to a physician. If the referral is in writing, the chiropractor must provide a copy to the patient and maintain a copy with the patient's records. If the referral is made orally, the chiropractor must notify the patient about the referral and make a written record of the referral, which must be maintained with the patient's records.

Finally, the bill creates one exception to the requirement to discontinue treatment under the circumstances described above. The exception is that the bill allows a chiropractor to provide supportive care to a patient being treated by another health care professional.

Under this bill, the Chiropractic Examining Board must establish a Peer Review Panel of qualified chiropractors to evaluate a claim that a chiropractor provided inappropriate care to a patient. Under the bill, a finding by the Peer Review Panel that the chiropractor has provided a certain number of inappropriate services to a patient constitutes misconduct for which his or her license may be suspended or revoked. The provisions regarding the Peer Review Panel do not apply 30 months after the bill's effective date.

The bill creates several new categories of misconduct for which a chiropractor may have his or her license suspended, including improper billing and falsifying an insurance claim. In addition, under the bill, the Chiropractic Examining Board must suspend the license of a chiropractor who commits a third misconduct violation, for no less than six months. For a fourth misconduct violation, the bill requires license suspension for no less than two years. The bill also provides grounds for disciplining a chiropractor who is found to provide chiropractic care that is not necessary for treating a patient. In addition, if the Peer Review Panel makes certain findings, the bill requires the Chiropractic Examining Board to assess a forfeiture against a chiropractor who provides inappropriate, unnecessary, or substandard care in an amount equal to three times the amount billed for the care or \$5,000, whichever is less.

Finally, the bill prohibits sexual misconduct by chiropractors. Sexual misconduct is sexual contact, exposure, or gratification, sexually offensive communication, dating a patient while the patient is under the chiropractor's professional care or treatment or within six months after discharge from care or treatment, or other sexual behavior with or in the presence of a patient under the chiropractor's professional care or treatment. Consent is not relevant. A chiropractor who commits sexual misconduct that does not involve physical contact with a patient shall have his or her license suspended for not less than 90 days. A chiropractor who commits a second act of sexual misconduct that does not involve physical contact or a first act of sexual misconduct that does involve physical contact shall have his or her license suspended for one year, and a chiropractor who commits a third act of sexual misconduct that does not involve physical contact or a second act of sexual misconduct that does involve physical contact shall have his or her license revoked.

The bill requires a chiropractor who applies to renew his or her license to identify each employee to whom clinical work is delegated, except that the following do not have to be identified: nurses, physical therapists, and athletic trainers. In addition, if the Chiropractic Examining Board has promulgated rules that require an employee

	Chiropractic Examining Board.
AMENDMENT	<p>Senate Substitute Amendment 1 to SB 275 The Senate Committee on Health, Children, Families, Aging and Long Term Care introduced and adopted SSA 1: 8-0-1(Welch absent).</p> <p>A Legislative Council memo was prepared for SSA 1 to SB 275. In short, SSA 1 to SB 275 does not include provisions from SB 275 that relate to:</p> <ul style="list-style-type: none"> • Peer review panels. • Continuing education. • The duty of a chiropractor to make referrals to physicians. • Nutritional counseling.
FISCAL EFFECT	<p>Department of Regulation and Licensing Net change in costs: \$155,208 Net change in revenue: \$167,000 ***This fiscal note does not reflect the substitute amendment adopted by the Committee. SSA 1 to SB 275 should eliminate the estimated fiscal effect.</p>
SUPPORT	<p>The following people testified in favor of this bill: (1) Dr. Wendy Henrichs, WI Chiropractic Association, (2) Russ Leonard, WI Chiropractic Assn, (3) Michael McMahon, WI Chiropractic Assn, (4) Jeff Wilder, Waunakee, and (5) Dr. Sherry Walker, WI Chiropractic Association, New Richmond.</p> <p>The following people registered in favor of this bill:(1) Randall Adams, D.C., Self, Chippewa Falls, (2) Dr. Steven Crottean, Self, Eau Claire, (3) Dawn North, McMahon Chiropractic, Eau Claire, (4) Tom Scherer, D.C., Self, Menasha, (5) Steve Douglas, D.C., Self, Janesville, (6) Debra Bradley, Self, (7) Joseph Bradley, D.C., Self, (8)Shelly Jorandby, D.C., Self, Reedsburg, (9) James Koshick, Self, New Berlin, (10) David Russell, D.C., Self, Milwaukee, (11) Lorraine Henrich, Self, (12) Representative Steve Freese, (13) Dr. Wendy Varish, self, Howards Grove, (14) Leo Bronston, self, Onalaska, (15) Steven Maerz, Self, Madison, (16) Rachel Schraufnagel, Self, Rio, (17) Hillary Conley, Self, Madison, (18) Dr. Arnie Steel, Self, Prairie du Chien, (19) Donn Gurske, Self, Milwaukee, and (20) Joyce Folzut, Self, Rhinelander.</p>
OPPOSITION	<p>The following people testified in opposition to this bill: (1) Dr. Steve Conway, Allied Health Chiropractic Centers, (2) Dr. James Greenwald, Self, Madison (3) Harvey Storm, Self, Madison, (4) Dr. Kenneth Luedtke, Self, Madison, and (5) Dr. Jim Rosemeyer, Chiropractic Examining Board, Platteville.</p> <p>The following people registered in opposition to this bill:(1) Tim Hoven, WI. Academy of Family Physicians, (2) Alice O'Connor, WI Medical Society, Madison, and (3) Kathryn Osborne, Self.</p>
CONTACT	Jennifer Halbur 6-5300
DATE	March 9, 2004



SB 275

WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR CAROL ROESSLER
FROM: ^{end} Richard Sweet, Senior Staff Attorney
RE: LRBs0439/1 - Proposed Senate Substitute Amendment to 2003 Senate Bill 275 (Practice of Chiropractic)
DATE: March 8, 2004

This memorandum summarizes the provisions of LRBs0439/1, relating to the definition of the practice of chiropractic; chiropractic evaluations, and treatments; unprofessional conduct by chiropractors; delegations by chiropractors; granting rule-making authority; and providing penalties.

The substitute amendment *does not include* provisions from Senate Bill 275 that relate to: (1) peer review panels; (2) continuing education; (3) the duty of a chiropractor to make referrals to physicians; and (4) nutritional counseling. (Also, unlike the original Assembly Bill 356, a bill that also relates to the practice of chiropractic, the original Senate Bill 275 did not include provisions that relate to defining the term "physician" to include chiropractors and delegation of services to physician assistants.)

The remainder of the memorandum summarizes the provisions of the substitute amendment.

References to Chiropractic Colleges

Current statutes define the term "practice of chiropractic" as follows:

446.01 (2) "Practice of chiropractic" means:

(a) To examine into the fact, condition, or cause of departure from complete health and proper condition of the human; to treat without the use of drugs as defined in s. 450.01 (10) or surgery; to counsel; to advise for the same for the restoration and preservation of health or to undertake, offer, advertise, announce or hold out in any manner to do any of the aforementioned acts, for compensation, direct or indirect or in expectation thereof; and

(b) To employ or apply chiropractic adjustments and the principles or techniques of chiropractic science in the diagnosis, treatment or prevention of any of the conditions described in s. 448.01 (10).

The substitute amendment modifies par. (b) in the definition above to refer to chiropractic adjustments and the principals or techniques of chiropractic science "that are *taught at a chiropractic college or university* approved by the Council on Chiropractic Education or any successor organization" (emphasis added).

In addition, the substitute amendment modifies the current statute that requires an applicant for a chiropractor license to have graduated from a college of chiropractic approved by the Chiropractic Examining Board. The substitute amendment modifies this to refer instead to a college or university of chiropractic accredited by the Council on Chiropractic Education or its successor.

Similarly, the substitute amendment also modifies the current statute that exempts from licensure requirements a student or graduate from a college of chiropractic who practices in a program for the clinical training of students. The current statute refers to clinical practice settings that are connected or associated for training purposes with a college of chiropractic approved by the Chiropractic Examining Board. The substitute amendment instead refers to a college or university of chiropractic that is accredited by the Council on Chiropractic Education or its successor.

Delegation of Duties

Current law provides that a chiropractor may delegate to a person who is not licensed as a chiropractor the performance of services that are adjunctive to the practice of chiropractic if the services are performed under the direct, on-premises supervision of the chiropractor. However, current law states that a chiropractor may not delegate to a person who is not a licensed chiropractor the making of a diagnosis, the performance of a chiropractic adjustment, the analysis of a diagnostic test or clinical information, or any practice or service that the Chiropractic Examining Board, by rule, prohibits a chiropractor from delegating to such a person.

The substitute amendment states that in an application for renewal of a chiropractor's license, the applicant must identify each employee (other than a nurse, physical therapist, or athletic trainer) to whom clinical work is delegated. If the Chiropractic Examining Board has promulgated rules requiring such an employee to complete a *training program or course of instruction* to perform the delegated work, the chiropractor seeking renewal of the license must also provide the name, date, and sponsoring organization for the training program or course of instruction that the employee has completed.

Supervision or Direction of Nurses

The substitute amendment modifies the statutes that define "practical nursing" and "professional nursing." The term "practical nursing" is defined to mean certain care under the specific direction of a nurse, physician, podiatrist, dentist, or optometrist, while the term "professional nursing" is defined to mean certain care under the general or special supervision or direction of a physician, podiatrist, dentist, or optometrist. The substitute amendment adds chiropractors to both statutes.

Evaluations and Referrals

The substitute amendment states that a chiropractor must evaluate each patient to determine whether the patient has a condition that is treatable by chiropractic means and specifies requirements regarding the conduct of the evaluation. A chiropractor is required to discontinue treatment by chiropractic means if, at any time, the chiropractor determines, or reasonably should have determined, that the patient's condition will not respond to further treatment by chiropractic means. However, a chiropractor may still provide supportive care to a patient.

Discipline of Chiropractors

Current law allows the Chiropractic Examining Board to reprimand a licensee or deny, limit, suspend, or revoke a license if the licensee has engaged in certain activities. One of those activities is being guilty of unprofessional conduct, as defined in current statutes.

The substitute amendment adds to the list of activities for which the licensee may be disciplined a provision that the licensee has violated ch. 446, Stats., or any rule promulgated under that chapter.

In addition, the substitute amendment adds the following to the list of circumstances that constitute *unprofessional conduct*:

1. Billing for chiropractic services that were inappropriate, unnecessary, or of substandard quality.
2. Billing for a service that was not performed. This includes billing for a service that was performed by a staff person without the training required by state law. It also includes a pattern of conduct in which a chiropractor bills a Current Procedural Terminology (CPT) Code in a manner inconsistent with certain standards for that Code. Finally, it also includes a pattern of conduct in which a chiropractor bills for a service using a higher level CPT Code than the service that was actually provided to the patient with the intent of obtaining unearned reimbursement.
3. Failure to collect a deductible or copayment required by a patient's insurer. This provision does not apply if the chiropractor has made reasonable efforts to collect the deductible or copayment or in cases where the patient has a financial hardship.
4. Falsifying a claim.
5. A pattern of conduct that involves billing for a unit of service that was not actually performed with the intent of obtaining unearned reimbursement.
6. Sexual misconduct.

The substitute amendment, requires suspension for at least *six months* of a license of a chiropractor who commits a third violation of the statutes dealing with *unprofessional conduct*, and for at least *two years* for a fourth such violation. Different penalties for sexual misconduct are described below.

If the board finds that a chiropractor is guilty of a second or subsequent offense of unprofessional conduct, the board may assess against the chiropractor a forfeiture of three times the amount that the

chiropractor billed a patient for inappropriate, unnecessary, or substandard chiropractic care, or \$5,000, whichever is less.

For purposes of the above provisions, the term "pattern of conduct" is defined as more than one occurrence.

The provision dealing with *sexual misconduct* states that a chiropractor engages in sexual misconduct if he or she engages in sexual contact, exposure, or gratification, sexually offensive communication, dating a patient while the patient is under the chiropractor's professional care or treatment or within six months after discharge from care or treatment, or other sexual behavior with or in the presence of a patient and a reasonably prudent chiropractor under similar conditions and circumstances would find the conduct unprofessional. Consent is not an issue for purposes of this provision. The substitute amendment distinguishes between contact violations (i.e., violations that involve physical contact with a patient) and noncontact violations.

The substitute amendment provides specific *penalties* for chiropractors who violate the prohibition on *sexual misconduct*. A chiropractor who commits a first noncontact violation must be required to attend training approved by DRL regarding sexual misconduct and the chiropractor's license must be suspended for not less than 90 days. The license of a chiropractor who commits a second noncontact violation or a first contact violation must be suspended for one year. Finally, the license of a chiropractor who commits a third noncontact or a second contact violation must be revoked.

Feel free to contact me if I can be of further assistance.

RNS:all;wu



SB 275

WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR CAROL ROESSLER
FROM: Richard Sweet, Senior Staff Attorney *end*
RE: LRBs0439/1 - Proposed Senate Substitute Amendment to 2003 Senate Bill 275 (Practice of Chiropractic)
DATE: March 8, 2004

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The substitute amendment modifies par. (b) in the definition above to refer to chiropractic adjustments and the principals or techniques of chiropractic science "that are *taught at a chiropractic college or university* approved by the Council on Chiropractic Education or any successor organization" (emphasis added).

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chiropractor billed a patient for inappropriate, unnecessary, or substandard chiropractic care, or \$5,000, whichever is less.

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Feel free to contact me if I can be of further assistance.

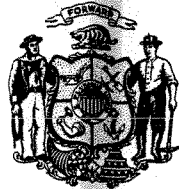
RNS:all;wu

SB 275

David Kunz
Western Health Science
University

612-805-3394

Interested in knowing
of any movement on
SB 275.



Carol Roessler
STATE SENATOR

April 6, 2004

Dr. Kent Belville
1424 Country Meadow Court
Oshkosh, WI 54904-9316

Dear Kent,

Now that the 2003-2004 legislative session is over I am providing you with an update regarding Assembly Bill 356/Senate Bill 275, relating to: the practice of chiropractic.

Assembly Bill 356 passed the Assembly Health Committee 14-1 on March 11, 2004. No further action was taken on this bill prior to the end of the Legislative session.

Senate Bill 275 passed the Senate Health Committee as amended 8-0 on March 9, 2004. No further action was taken on this bill.

I have included the bill histories for you to review which detail the movement of these bills through the Legislature. This information is also available on the Wisconsin Legislature online database named Folio, accessible by visiting <http://folio.legis.state.wi.us>

Thank you for contacting me on this issue and I look forward to hearing your comments, questions, or concerns in the future.

Sincerely,

A handwritten signature in black ink that reads 'Carol'.

CAROL ROESSLER
State Senator
18th Senate District

S:\DOCS\Jennifer\End of 03 session update ltrs\4-6-04 ab 356 sb 275 chiro bills update.doc

Belville, Kent L.

1424 Country Meadow Ct
Oshkosh, WI 54904-9316

Contact Date: 06/11/2003**Contact Type:** Phone Call**Summary:** Support chiro legislation AB 356**Issue:****Position:****Description:** Wed 7:26 pm 920-233-2888

Kent Bellville from OSH

In support of AB 356 legislation for chiropractors - a lot of important stuff in this

Like to speak with you as soon as we can

Status: Done**Closed Date:** 07/01/2003**Assigned:** Jermstad, Sara**Owner:** Jermstad, Sara**Note** **Note Date:** 06/13/2003**Summary:** KA emailed to SS and SJ**Contact Type:** E-mail**Description:** Emailed SS for phone list and SJ for legislation/issue.**Note** **Note Date:** 07/01/2003**Summary:** SJ put on legislative contact list**Contact Type:****Description:**