

2003 SENATE BILL 275

October 8, 2003 – Introduced by Senators SCHULTZ, BRESKE, CARPENTER, PLALE and M. MEYER, cosponsored by Representatives FREESE, HINES, VRAKAS, LEMAHIEU, KREIBICH, KESTELL, MUSSER, VAN ROY and HAHN. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT** *to renumber* 446.07; *to amend* 446.01 (2) (b), 446.02 (1) (b), 446.02 (2)
2 (b), 446.02 (4), 446.02 (9) (a), 446.03 (intro.), 446.05 (1) and 446.05 (2); *to repeal*
3 *and recreate* 446.07 (title); and *to create* 446.01 (1d), 446.01 (1k), 446.01 (1L),
4 446.01 (1m), 446.01 (3), 446.02 (6m), 446.02 (7s), 446.025, 446.03 (8), 446.035,
5 446.04 (6), (7), (8), (9), (10) and (11), 446.05 (3), 446.05 (4) and 446.07 (2) of the
6 statutes; **relating to:** the definition of the practice of chiropractic; chiropractic
7 evaluations, treatments, and referrals to physicians; unprofessional conduct by
8 chiropractors; delegations by chiropractors; continuing education for
9 chiropractors; nutritional guidance provided by chiropractors to patients;
10 granting rule-making authority, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes changes to the regulation of chiropractors regarding all of the following: 1) the definition of the “practice of chiropractic”; 2) patient evaluations, treatments, and referrals; 3) unprofessional conduct by chiropractors; 4) delegations by chiropractors; 5) continuing education requirements; and 6) nutritional guidance provided by chiropractors. These changes are described below.

SENATE BILL 275***Definition of the “practice of chiropractic”***

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 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.

Patient evaluations, treatments, and referrals

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 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.

Unprofessional conduct

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 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

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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.

Delegations by chiropractors

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.

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 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.

Continuing education

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.

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

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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.

Nutritional guidance

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 Chiropractic Examining Board.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 446.01 (1d) of the statutes is created to read:

2 446.01 **(1d)** “Generally accepted standards” means a level of diagnosis, care,
3 skill, and treatment that is recognized by a reasonably prudent chiropractor as being
4 appropriate under similar conditions and circumstances.

5 **SECTION 2.** 446.01 (1k) of the statutes is created to read:

6 446.01 **(1k)** “Patient” means an individual who receives treatment or services
7 from a chiropractor or who has received treatment or services under the supervision,
8 direction, or delegation of a chiropractor.

9 **SECTION 3.** 446.01 (1L) of the statutes is created to read:

10 446.01 **(1L)** “Pattern of conduct” means more than one occurrence.

11 **SECTION 4.** 446.01 (1m) of the statutes is created to read:

12 446.01 **(1m)** “Peer review” means an evaluation based on generally accepted
13 standards, by a peer review panel appointed under s. 446.035 (1), of the
14 appropriateness, quality, and utilization of chiropractic health care provided to a
15 patient or the conduct of a chiropractor alleged to have violated s. 446.04 (11).

16 **SECTION 5.** 446.01 (2) (b) of the statutes is amended to read:

17 446.01 **(2)** (b) To employ or apply chiropractic adjustments, and the principles
18 or techniques of chiropractic science, that are taught at a chiropractic college or
19 university approved by the Council on Chiropractic Education or its successor, in the
20 diagnosis, treatment or prevention of any of the conditions described in s. 448.01 (10).

21 **SECTION 6.** 446.01 (3) of the statutes is created to read:

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1 446.01 (3) “Utilization” means the treatment or services provided to a patient,
2 including the frequency and duration of the treatment or services.

3 **SECTION 7.** 446.02 (1) (b) of the statutes is amended to read:

4 446.02 (1) (b) Meets the requirements of continuing education for license
5 renewal ~~as the examining board may require under s. 446.025.~~ During the time
6 between initial licensure and commencement of a full 2-year licensure period new
7 licensees shall not be required to meet continuing education requirements. Any
8 person who has not engaged in the practice of chiropractic for 2 years or more, while
9 holding a valid license under this chapter, and desiring to engage in such practice,
10 shall be required by the examining board to complete a continuing education course
11 at a school of chiropractic approved by the examining board or pass a practical
12 examination administered by the examining board or both.

13 **SECTION 8.** 446.02 (2) (b) of the statutes is amended to read:

14 446.02 (2) (b) The examining board shall promulgate rules establishing
15 educational requirements for obtaining a license under par. (a). The rules shall
16 require that an application for the license that is received by the department after
17 June 30, 1998, be accompanied by satisfactory evidence that the applicant has a
18 bachelor’s degree from a college or university accredited by an accrediting body listed
19 as nationally recognized by the secretary of the federal department of education, and
20 has graduated from a college or university of chiropractic approved by the examining
21 board accredited by the Council on Chiropractic Education or its successor.

22 **SECTION 9.** 446.02 (4) of the statutes is amended to read:

23 446.02 (4) The renewal date and renewal fee for all licenses granted by the
24 examining board are specified under s. 440.08 (2) (a). In an application for renewal,
25 the applicant shall identify each employee, other than a nurse licensed under ch. 441,

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1 physical therapist licensed under subch. III of ch. 448, or athletic trainer licensed
2 under subch. VI of ch. 448, to whom clinical work is delegated. If the examining board
3 has promulgated rules requiring such an employee to complete a training program
4 or course of instruction to perform the delegated work, the applicant shall also
5 provide the name, date, and sponsoring organization for the training program or
6 course of instruction that the employee completed. Except as provided in sub. (1) (b),
7 the examining board may not renew a license unless the applicant for renewal
8 identifies on a form provided by the department the continuing education courses
9 approved under s. 446.025 (2) that the applicant has completed to satisfy the
10 minimum number of hours required under s. 446.025 (1).

11 **SECTION 10.** 446.02 (6m) of the statutes is created to read:

12 446.02 **(6m)** (a) Except as provided in par. (b), a chiropractor who is granted
13 a license under this chapter on or before January 1, 2003, may provide counsel,
14 guidance, direction, advice, or recommendations to a patient regarding the health
15 benefits of vitamins, herbs, or nutritional supplements only if the chiropractor has
16 completed 48 hours in a postgraduate course of study in nutrition that is approved
17 by the examining board.

18 (b) Paragraph (a) does not apply to a chiropractor licensed under this chapter
19 who is certified as a dietitian under subch. V of ch. 448.

20 **SECTION 11.** 446.02 (7s) of the statutes is created to read:

21 446.02 **(7s)** (a) A chiropractor shall evaluate each patient to determine whether
22 the patient has a condition that is treatable by chiropractic means. An evaluation
23 shall be based on an examination that is appropriate to the patient. In conducting
24 an evaluation, a chiropractor shall utilize chiropractic science, as defined by rule by
25 the examining board, and the principles of education and training of the chiropractic

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1 profession. A chiropractor shall discontinue treatment by chiropractic means if, at
2 any time, the chiropractor determines, or reasonably should have determined, that
3 the patient's condition will not respond to further treatment by chiropractic means,
4 except that a chiropractor may provide supportive care to a patient being treated by
5 another health care professional.

6 (b) If a chiropractor determines, or reasonably should have determined, at any
7 time, that a patient has a condition that is not treatable by chiropractic means, or
8 will not respond to further treatment by chiropractic means, the chiropractor shall
9 inform the patient and refer the patient to a physician licensed under subch. II of ch.
10 448. In making a referral under this paragraph, a chiropractor shall do one of the
11 following:

12 1. Make a written referral to the physician that describes the chiropractor's
13 findings, provide a copy of the written referral to the patient, and maintain a copy
14 of the written referral in the patient record under sub. (7m) (a).

15 2. Make an oral referral to the physician or the physician's staff that describes
16 the chiropractor's findings, notify the patient about the referral, make a written
17 record of the referral, including the name of the physician or staff member and date
18 of the referral, and maintain the written record in the patient record under sub. (7m)
19 (a).

20 **SECTION 12.** 446.02 (9) (a) of the statutes is amended to read:

21 446.02 (9) (a) A student or graduate of a college or university of chiropractic
22 that is accredited by the Council on Chiropractic Education or its successor who
23 practices chiropractic, in a program for the clinical training of students and
24 graduates that is reviewed and approved by the examining board, under the
25 supervision of a chiropractor who is approved by the examining board to supervise

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1 the clinical training of the student or graduate and who is licensed under this chapter
2 and is responsible for the student's or graduate's practice in an infirmary, clinic,
3 hospital or private chiropractic office that is connected or associated for training
4 purposes with a college or university of chiropractic ~~approved by the examining~~
5 ~~board~~ that is accredited by the Council on Chiropractic Education or its successor.

6 **SECTION 13.** 446.025 of the statutes is created to read:

7 **446.025 Continuing education. (1)** The examining board shall specify the
8 minimum number of hours of continuing education courses that, except as provided
9 in s. 446.02 (1) (b), an applicant for renewal of a license under this chapter is required
10 to complete during a 2-year licensure period. Only courses approved by the
11 examining board under sub. (2) may be used to satisfy the hours required. The
12 examining board shall periodically publish updated lists of the courses that are
13 approved under sub. (2).

14 **(2) (a)** The examining board may not approve a continuing education course
15 unless the organization that sponsors the course satisfies all of the following:

16 1. The organization is the Wisconsin, American, or International Chiropractic
17 Association or its successor, a college or university of chiropractic accredited by the
18 Council on Chiropractic Education or its successor, or a college or university of
19 medicine or osteopathy accredited by an accrediting body listed as nationally
20 recognized by the secretary of the federal department of education.

21 2. The organization selects the instructor for the course.

22 3. The organization establishes the objectives of the course, prepares course
23 materials, evaluates the subject matter prepared by the instructor, conducts a
24 post-course evaluation, maintains course transcripts, and performs financial
25 administration necessary for the course.

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1 4. The organization proctors course attendance through an on-site
2 representative to whom the organization provides written guidelines.

3 5. The organization provides attendance vouchers to course attendees.

4 6. The organization supplies a list of course attendees to the examining board
5 in a manner prescribed by the examining board.

6 (b) Notwithstanding par. (a), the examining board may approve a continuing
7 education course sponsored by an organization that does not satisfy a requirement
8 under par. (a) 2. to 5. if the organization delegates satisfaction of the requirement to
9 another organization and the other organization satisfies the requirement.

10 **(3)** If an organization that sponsors a course approved under sub. (2) fails to
11 satisfy any requirement under sub. (2) (a) 2. to 5., the examining board shall, for a
12 period of 90 days, withdraw or withhold approval of all continuing education courses
13 sponsored by the organization. If an organization to whom satisfaction of any
14 requirement under sub. (2) (a) 2. to 5. is delegated under sub. (2) (b) fails to satisfy
15 the requirement, the examining board shall, for a period of 90 days, withdraw or
16 withhold approval of all continuing education courses sponsored by the organization
17 that made the delegation.

18 **(4)** During each 2-year licensure period, the department shall audit a
19 percentage, as determined by the department, of the applications for renewal of a
20 license under this chapter to verify that an applicant has completed the continuing
21 education courses identified by the applicant under s. 446.02 (4).

22 **SECTION 14.** 446.03 (intro.) of the statutes is amended to read:

23 **446.03 Reprimand; license revocation, limitation or suspension.**

24 (intro.) The Subject to ss. 446.04 (11) (d) and 446.05 (3), the examining board, by

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1 order, may reprimand a licensee or registrant and may deny, limit, suspend or revoke
2 any license or certificate of registration if the licensee or registrant:

3 **SECTION 15.** 446.03 (8) of the statutes is created to read:

4 446.03 (8) Has violated this chapter or any rule promulgated under this
5 chapter.

6 **SECTION 16.** 446.035 of the statutes is created to read:

7 **446.035 Peer review. (1) APPOINTMENT OF PEER REVIEW PANEL.** (a) The
8 examining board shall appoint a peer review panel of no fewer than 6 nor more than
9 12 members, pursuant to par. (b).

10 (b) The examining board may solicit nominations for the peer review panel
11 pursuant to a process developed by the department. The examining board shall
12 consider the recommendations of the Wisconsin Chiropractic Association regarding
13 nominations.

14 (c) A nominee under par. (b) shall:

15 1. Possess a valid license to practice chiropractic in this state.

16 2. Have no less than 10 years in practice for a minimum of 20 hours per week
17 within the preceding 2 years of his or her nomination for the peer review panel or,
18 if the nominee is not in active practice at the time of his or her nomination due to a
19 disability, have at least 5 years of practice for a minimum of 20 hours per week prior
20 to the onset of his or her disability.

21 3. Be diplomate eligible in a specialty that requires at least 300 hours of
22 postgraduate credit hours that are approved by the American Chiropractic
23 Association or the International Chiropractors Association or that are provided
24 through a single unified program at a college or university of chiropractic accredited
25 by the Council on Chiropractic Education or its successor.

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1 4. Not have been subject to disciplinary action under this chapter or by any
2 regulatory or government agency.

3 5. Have completed an annual utilization review course approved by the
4 examining board.

5 (d) The examining board may summarily remove a chiropractor from the peer
6 review panel if the board finds that the reviewer is unqualified or if it finds that the
7 reviewer's methods or practices are unprofessional.

8 **(2) PROCEDURE.** (a) A patient, a chiropractor, an insurer, or the examining
9 board may request a peer review, if the cost of the care in dispute for a course of
10 treatment exceeds \$500, by submitting a written request to the department and any
11 fee required under par. (b). Within 5 business days of submitting the request, the
12 patient, chiropractor, insurer, or examining board shall submit the following
13 documents to the department:

14 1. A written statement of the matter he or she wishes to be reviewed.

15 2. Clinical documentation relating to the course of treatment or the conduct he
16 or she wishes to be reviewed.

17 3. Any other information the patient, chiropractor, insurer, or examining board
18 wishes to include to support his or her request for review.

19 (b) The department shall charge a patient, chiropractor, or insurer that
20 requests a peer review a fee of \$275. The department shall adjust the fee each year
21 to reflect adjustments to the U.S. consumer price index for all consumers, U.S. city
22 average, as determined by the U.S. department of labor.

23 (c) Within 15 business days of receipt of the documents and fee specified under
24 par. (a), the department shall notify each patient, chiropractor, or insurer named in
25 the request for review. Within 10 business days of receiving notification that a review

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1 has been requested, the patient, chiropractor, or insurer shall submit the following
2 to the department:

3 1. A written statement of response to the matter that is being reviewed.

4 2. Clinical documentation relating to the course of treatment or conduct that
5 is being reviewed.

6 3. Any other information the patient, chiropractor, or insurer wishes to include
7 to support his or her response.

8 (d) The department shall remove identifying information regarding a
9 chiropractor named in the request for review and, within 5 business days of receipt,
10 shall forward all of the documents received under pars. (a) and (c) and payment of
11 \$235 to a peer reviewer chosen at random from the peer review panel. The
12 department shall adjust the fee each year to reflect adjustments to the U.S. consumer
13 price index for all consumers, U.S. city average, as determined by the U.S.
14 department of labor.

15 (e) Within 30 business days of receiving the documents specified in par. (d), the
16 peer reviewer shall make a determination of the quality, appropriateness, or
17 utilization of the chiropractic services rendered to the patient. The peer reviewer
18 shall determine that the chiropractor acted unprofessionally if he or she finds that,
19 applying generally accepted standards, 50% or more of the chiropractic services
20 identified in the request for peer review were inappropriate, unnecessary, or of
21 substandard quality. The peer reviewer shall sign, with his or her name and address,
22 and remit his or her findings to the department and the department shall issue a copy
23 of the findings to each patient, chiropractor, or insurer named in the request and to
24 the examining board.

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1 (f) Within 30 days after the date of receipt of the peer reviewer's findings, a
2 patient, chiropractor, insurer, or the examining board may request an appeal. The
3 person requesting the appeal shall submit a written request to the department and
4 pay a fee of \$750. The department shall adjust the fee each year to reflect
5 adjustments to the U.S. consumer price index for all consumers, U.S. city average,
6 as determined by the U.S. department of labor.

7 (g) Upon receipt of a request for appeal and the fee specified in par. (f), the
8 department shall forward all of the documents received under pars. (a), (c), and (e)
9 and a payment of \$235 each to 3 additional peer reviewers chosen at random from
10 the peer review panel. The department shall adjust the fee each year to reflect
11 adjustments to the U.S. consumer price index for all consumers, U.S. city average,
12 as determined by the U.S. department of labor. The reviewers shall conduct a joint
13 review of the submitted materials. Each peer reviewer shall determine that the
14 chiropractor acted unprofessionally if he or she finds that, applying generally
15 accepted standards, 50% or more of the chiropractic services identified in the request
16 for peer review were inappropriate, unnecessary, or of substandard quality. Each
17 peer reviewer shall sign, with his or her name and address, and remit his or her
18 findings to the department. The department shall forward a copy of the joint review
19 to each patient, chiropractor, or insurer named in the request for peer review. The
20 department shall adopt the determination reached by a majority of the peer
21 reviewers appointed under this paragraph of the quality, appropriateness, or
22 utilization of the chiropractic services rendered to the patient or the conduct of the
23 chiropractor.

24 **(3) CIVIL LIABILITY.** A member of a peer review panel is immune from civil
25 liability for a finding, evaluation, recommendation, or other action he or she makes

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1 or takes while performing a peer review under this section. This subsection does not
2 apply if the member of the peer review panel acts in fraud, conspiracy, or malice.

3 **(4) INSURANCE COVERAGE.** No finding, evaluation, or recommendation reached
4 by a peer reviewer may be used to determine whether insurance coverage or
5 reimbursement is appropriate.

6 **(5) SUNSET.** This section does not apply after the first day of the 30th month
7 beginning after the effective date of this subsection [revisor inserts date].

8 **SECTION 17.** 446.04 (6), (7), (8), (9), (10) and (11) of the statutes are created to
9 read:

10 446.04 **(6)** A determination under s. 446.035 that 50% or more of the
11 chiropractic services identified in a request for peer review were inappropriate,
12 unnecessary, or of substandard quality.

13 **(7) Billing for a service that was not performed.** This includes:

14 (a) Billing for a service that was performed by a staff person without the
15 training required by the laws of this state.

16 (b) A pattern of conduct in which a chiropractor bills a Current Procedural
17 Terminology Code in a manner inconsistent with the published standards of the
18 Current Procedural Terminology Code, the Current Procedural Terminology
19 Assistant, the Wisconsin Chiropractic Association, the American Chiropractic
20 Association, or the International Chiropractic Association.

21 (c) A pattern of conduct in which a chiropractor bills for a service using a higher
22 level Current Procedural Terminology Code than the service that was actually
23 provided to the patient with the intent of obtaining unearned reimbursement.

24 **(8) Failure to collect a deductible or co-payment required by a patient's insurer.**
25 This subsection does not apply if the chiropractor has made reasonable efforts to

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1 collect the deductible or co-payment or if the patient has financial hardship and the
2 chiropractor documents the financial hardship.

3 **(9)** Falsifying a claim.

4 **(10)** A pattern of conduct that involves billing for a unit of service that was not
5 actually performed with the intent of obtaining unearned reimbursement.

6 **(11)** Sexual misconduct. In this subsection, all of the following apply:

7 (a) A chiropractor engages in sexual misconduct if he or she engages in sexual
8 contact, exposure, or gratification, sexually offensive communication, dating a
9 patient while the patient is under the chiropractor's professional care or treatment
10 or within 6 months after the patient has been discharged from care or treatment, or
11 other sexual behavior with or in the presence of a patient under the chiropractor's
12 professional care or treatment and a reasonably prudent chiropractor under similar
13 conditions and circumstances would find the conduct unprofessional. Consent is not
14 an issue under this subsection.

15 (b) "Contact violation" means any violation of par. (a) that involves physical
16 contact with a patient under the chiropractor's professional care or treatment.

17 (c) "Noncontact violation" means any violation of par. (a) that does not involve
18 physical contact with a patient under the chiropractor's professional care or
19 treatment.

20 (d) 1. The examining board shall require a chiropractor who commits a first
21 noncontact violation under this subsection to attend training approved by the
22 department regarding sexual misconduct and shall suspend his or her chiropractic
23 license for not less than 90 days.

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1 2. The examining board shall suspend the chiropractic license of a chiropractor
2 who commits a 2nd noncontact violation or a first contact violation under this
3 subsection for one year.

4 3. The examining board shall revoke the chiropractic license of a chiropractor
5 who commits a 3rd noncontact or a 2nd contact violation under this subsection.

6 **SECTION 18.** 446.05 (1) of the statutes is amended to read:

7 **446.05 Procedure for hearings. (1)** Subject to the rules promulgated under
8 s. 440.03 (1), the examining board may make investigations and conduct hearings
9 in regard to the conduct of any licensed chiropractor who, it has reason to believe,
10 violated s. 446.02 ~~or 446.03 (1), (6), (7), (7m), or (8)~~ or committed any offense listed
11 in s. 446.03. The person complained against may proceed to review any action of the
12 examining board under ch. 227.

13 **SECTION 19.** 446.05 (2) of the statutes is amended to read:

14 446.05 (2) ~~Upon~~ Except as provided in subs. (3) and (4), upon application and
15 satisfactory proof that the cause of such revocation or suspension no longer exists,
16 the examining board may reinstate any license or registration suspended or revoked
17 by it. This subsection does not apply to a license or registration that is suspended
18 under s. 440.13 (2) (c) or that is revoked under s. 440.12.

19 **SECTION 20.** 446.05 (3) of the statutes is created to read:

20 446.05 (3) The examining board shall suspend the license of a chiropractor who
21 commits a third violation of s. 446.04 (1) to (10) for not less than 6 months.

22 **SECTION 21.** 446.05 (4) of the statutes is created to read:

23 446.05 (4) The examining board shall suspend the license of a chiropractor who
24 commits a fourth violation of s. 446.04 (1) to (10) for not less than 2 years.

25 **SECTION 22.** 446.07 (title) of the statutes is repealed and recreated to read:

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1 **446.07 (title) Penalties.**

2 **SECTION 23.** 446.07 of the statutes is renumbered 446.07 (1).

3 **SECTION 24.** 446.07 (2) of the statutes is created to read:

4 446.07 (2) If the examining board finds that a chiropractor is guilty of the
5 unprofessional conduct specified in s. 446.04 (6), the examining board shall assess
6 against the chiropractor a forfeiture of 3 times the amount that the chiropractor
7 billed a patient for inappropriate, unnecessary, or substandard chiropractic care or
8 \$5,000, whichever is less. This subsection applies only if the examining board makes
9 a 2nd or subsequent such finding regarding a chiropractor.

10 **SECTION 25. Initial applicability.**

11 (1) CONTINUING EDUCATION. If the effective date of this subsection is before
12 January 1, 2004, the treatment of sections 446.02 (1) (b) and (4) and 446.025 of the
13 statutes first applies to chiropractors whose licenses expire on January 1, 2005. If
14 the effective date of this subsection is on or after January 1, 2004, the treatment of
15 sections 446.02 (1) (b) and (4) and 446.025 of the statutes first applies to
16 chiropractors whose licenses expire on January 1, 2007.

17 (2) VIOLATIONS AND OFFENSES. The treatment of sections 446.03 (intro.) and
18 446.05 (1) of the statutes and the creation of sections 446.03 (8), 446.04 (6), (7), (8),
19 (9), (10), and (11), and 446.07 (2) of the statutes first apply to violations that occur,
20 and offenses that are committed, on the effective date of this subsection.

21 (3) LICENSE SUSPENSION.

22 (a) The treatment of section 446.05 (2) of the statutes and the creation of section
23 446.05 (3) of the statutes first apply to 3rd violations that occur on the effective date
24 of this paragraph.

