

**Clearinghouse Rule 06-006
(Rule Withdrawn 6/23/11)**

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CHIROPRACTIC EXAMINING BOARD
CHIROPRACTIC EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 06-)

PROPOSED ORDER

An order of the Chiropractic Examining Board to amend Chir 6.02 (6) relating to adequate education prior to application of new therapies and treatment modalities.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 446.04, Stats.

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Explanation of agency authority:

The Chiropractic Examining Board licenses and regulates the conduct of chiropractors. The board is authorized under ss. 15.08 (5) and (6), 446.02 (1) (b) and 446.02 (2) (b), Stats., to promulgate rules relating to the educational requirements for licensure and the requirements for continuing education of chiropractors and unprofessional conduct.

Related statute or rule:

There are no other related statutes or rules other than those listed above.

Plain language analysis:

This proposed rule-making order makes changes to reflect the need for chiropractors to receive adequate training, education and experience prior to the introduction, or application, of new therapies and treatment modalities in their chiropractic practice application.

New therapies and treatment modalities, such as cold laser therapy and other potential new high-visibility therapies, are being introduced into the practice of chiropractic treatment on a regular basis. To ensure that these new therapies and treatment modalities being made available by advancements in the field are administered appropriately, and to adequately educate chiropractors on the treatment of their patients, a rule change specifying that the chiropractor should have adequate education and training prior to patient application will be required.

SECTION 1 amends the rules to specify that chiropractors need adequate training, education and experience relating to the use of new therapies and treatment modalities in the chiropractic profession to assure competence prior to application.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois:

Illinois's administrative code has no mention specifically of training requirements; however, the conduct of chiropractors is governed under Section 1285.240 Standards (Illinois Admin. Code). Interestingly, the rules governing the conduct of chiropractors are those of the medical profession and treat chiropractors as members of the medical profession (referring to them as chiropractic physicians). The rules do require that chiropractors act in ways that will not harm the public, breaches the physician's responsibility to a patient in accordance to medical standards of practice and not use any equipment on patients that have not been authorized for use in an approved research program pursuant to rules of the Illinois Department of Public Health authorizing research programs or as otherwise expressly authorized by law. More may be found at: <http://www.ildpr.com/WHO/ar/medicalr.asp>

Iowa:

Iowa's administrative code governing conduct has no specific language requiring education prior to the use of a new therapy; however, there are requirements for chiropractors to be competent in their practice. Excerpts from their administrative code are as follows:

45.2(2) Professional incompetence. Professional incompetence includes, but is not limited to:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.
- b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other chiropractic physicians in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average chiropractic physician acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a chiropractic physician in this state.

More may be found at:

<http://www2.legis.state.ia.us/Rules/Current/645iac/65545/64545.pfd>

Michigan:

Michigan's administrative code relating to rules governing the practice of chiropractic has no specific rules regulating professional conduct. The rules relating to actions against a Michigan chiropractic license holder are covered under Michigan Statutes: Chapter 333.16221 – 16226. More may be found at:

<http://www.legislature.mi.gov/mileg.asp?page=executearch>

Minnesota:

Minnesota's statutes governing conduct has no specific language requiring education prior to the use of a new therapy; however, there are requirements for chiropractors to be competent in their practice. Excerpts from their administrative code are as follows:

From Minnesota statutes: 148.10 Licenses Revoked; New Licenses.

(11), unprofessional conduct means any unethical, deceptive or deleterious conduct or practice harmful to the public, any departure from or the failure to conform to the minimal standards of acceptable chiropractic practice, or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a chiropractor:

(1) gross ignorance of, or incompetence in, the practice of chiropractic

More may be found at: <http://www.mn-chirboard.state.mn.us>

Summary of factual data and analytical methodologies:

No study resulting in the collection of factual data was used in reference to this rule-making effort. The primary methodology for revising the rule is the board's ongoing analysis and determination that a rules change is necessary.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The Department of Regulation and Licensing has a small business review advisory committee (SBRAC) consisting of representatives of a variety of small business and geographic locations. This proposed rule was reviewed by the SBRAC and found that the rule would not have a significant economic impact on small business.

This conclusion is supported by an analysis by department staff. Licensed chiropractors are required to follow the Standards of Conduct Rules under ch. Chir 6 of the Wisconsin administrative code. The existing rules prevent licensed chiropractors from performing professional services inconsistent with their training, education or experience. Given the current pace of technological advancement, and the resulting marketing effort targeting practitioners, the existing rules governing professional conduct is amended by the board to clarify education and training requirements of chiropractors prior to application and/or incorporation of new technology-based therapies and treatments into their practice.

The incorporation and use of modern technology has always been and will be a part of patient care; however, the rules governing conduct should keep up with those applications, especially where they relate to existing rules of conduct for the protection of the public.

This proposed rule does not mandate any additional education or training with regards to new technology or treatments, unless chiropractors wish to incorporate those new treatments into their practice.

Anticipated costs incurred by private sector/fiscal estimate:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The proposed rule will have no impact on the department's funds.

Effect on small business:

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must

be received on or before March 6, 2006, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chir 6.02 (6) is amended to read:

Chir 6.02 (6) Performing professional services inconsistent with training, education or experience. Prior to application to patients of new therapies or treatment modalities, a chiropractor shall obtain adequate and appropriate training and education. Such training and education may be obtained from coursework at an accredited college of chiropractic, or from a board-approved continuing education program or from a program sponsored by an organization listed in s. Chir 5.02 (1) (a).

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____
Chairperson
Chiropractic Examining Board

Chir 6.02(6) CR06- (New therapies/treatment modalities) Draft to CH 1-17-06