

STATE OF WISCONSIN
Chiropractic Examining Board

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE
CHIROPRACTIC EXAMINING BOARD

ORDER OF THE CHIROPRACTIC EXAMINING BOARD
ADOPTING RULES
(CLEARINGHOUSE RULE 17-010)

ORDER

An order of the Chiropractic Examining Board to repeal Chir 10.01 (3) and 10.05; to amend Chir 4.04 (3), ch. Chir 10 (title), 10.01 (1) and (2), and 10.03; to repeal and recreate Chir 10.02; and to create Chir 10.01 (1g) and (1r), 10.015, and 10.025, relating to courses of study for and delegation to chiropractic technicians and chiropractic radiological technicians.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 446.02 (7) (d), 446.025 (2) (a) 3., and 446.026 (2) (a) 3., Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), and 446.02 (7) (c), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides that examining boards, such as the Chiropractic Examining Board, “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, . . .”

Section 227.11 (2) (a), Stats., discusses the parameters of an agency’s rule-making authority, stating an agency “may promulgate rules interpreting the provisions of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation. . .” This section allows an agency to promulgate administrative rules that interpret the statutes it enforces or administers as long as the proposed rule does not exceed proper statutory interpretation. Section 227.01 (1), Stats., defines agency as a board. The Chiropractic Examining Board falls within the definition of agency and is therefore allowed to apply s. 227.11 (2) (a), Stats., to statutes it administers.

Section 446.02 (7) (c), Stats., provides that “[a] chiropractor who delegates the performance of a service that is adjunctive to the practice of chiropractic to a person who is not licensed under this chapter shall verify, according to standards and procedures established by the examining board by rule, that the person has adequate education, training and experience to perform the delegated service safely, and is responsible for that person’s performance of the delegated service.”

Related statute or rule:

None.

Plain language analysis:

Section 446.02 (7) (d) of the Wisconsin Statutes allows the delegation of adjunctive services only to chiropractic technologists (technicians) and the delegation of x-ray services only to chiropractic radiological technologists (technicians). Chapter Chir 10 allows for the delegation of these services to unlicensed persons. The rule amends the Chiropractic Examining Board's administrative rules to align them with section 446.02 (7) (d), Stats. Additionally, under sections 446.025 (2) (a) 3. and 446.026 (2) (a) 3., Stats., chiropractic technicians and chiropractic radiological technicians are required to complete courses of study approved by the Board in order to obtain certification. The Chiropractic Examining Board's administrative rules are currently silent with regards to the specific requirements used to determine whether a course of study is approved. This undefined term has led to an inconsistent application of the statute. The rule defines the requirements for approved courses of study in administrative code, which should result in a more uniform application of the statutes. The rules establish the following requirements:

- Section Chir 10.015 is created to establish the required course of study for certification as a chiropractic technician.
- Section Chir 10.02 (2) and (3) (a) to (g) are created to establish the educational requirements a chiropractic technician must meet in order to perform a delegated adjunctive service other than taking and preparing preliminary patient histories.
- Section Chir 10.025 is created to establish the required course of study for certification as a chiropractic radiological technician.

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

The Consumer-Patient Radiation Health and Safety Act of 1981, 42 USCS 10001, et seq. establishes federal guidelines for standards of accreditation of educational programs for certain occupations that administer radiologic procedures. The standards are in place to protect the public from excessive exposure to radiation by health care professionals who use radiation in the treatment of disease or other medical conditions. The regulations are directed towards radiologic technologists, dental hygienists, nuclear medicine technologists and radiation therapy technologists.

42 USCS §10003 (5) defines, "persons who administer radiologic procedures means any person, other than a practitioner, who intentionally administers radiation to other persons for medical purposes, and includes medical radiologic technologists (including dental hygienists and assistants), radiation therapy technologists, and nuclear medicine technologists." 42 CFR 75.2 defines radiation therapy technologist as "a person other than a licensed practitioner who utilizes ionizing radiation-generating equipment for therapeutic purposes on human subjects." Although chiropractic radiological technicians are not specifically addressed, they could be captured under the broad definition of radiation therapy technologists. The federal statute and regulations are comparable to the proposed rule in that they both set forth a course of study for persons who administer radiologic procedures.

Comparison with rules in adjacent states:

Illinois: Illinois defines a chiropractic radiographer as a person other than a licensed practitioner who performs medical radiation procedures and applies x-radiation to the human body for diagnostic evaluation of skeletal anatomy, while under the general supervision of a licensed chiropractor [32 Ill. Adm. Code 401.20]. Persons seeking accreditation as a chiropractic radiographer must take the exam administered by the American Chiropractic Registry of Radiologic Technologists (ACRRT) [32 Ill. Adm. Code 401.70 b) 4].

Iowa: Iowa does not have a license classification for chiropractic radiological technologists or chiropractic technologists.

Michigan: Michigan does not have a license classification for chiropractic radiological technologists or chiropractic technologists.

Minnesota: Minnesota issues a registration for chiropractic radiologic technologist after the applicant has passed the radiography examination of the American Chiropractic Registry of Radiologic Technologists (ACRRT) [Minn. R. 4732.0585].

Summary of factual data and analytical methodologies:

The methodologies used to develop this rule include reviewing neighboring states' statutes and rules, obtaining feedback from the Chiropractic Examining Board, and reviewing the curriculum from a variety of chiropractic schools.

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

The rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Kirsten.Reader@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 8:30 a.m. on March 30, 2017, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chir 4.04 (3) is amended to read:

Chir 4.04 (3) A chiropractor may ~~employ a technician to operate~~ delegate the operation of x-ray equipment only upon submitting proof satisfactory to the board that the technician has successfully completed a course of instruction approved by the board to a chiropractic radiological technician certified under ch. 446, Stats. ~~Any~~ A chiropractic radiological technician

~~employed may work only~~ shall operate x-ray equipment under the direct supervision and direction of a licensee. The chiropractor shall maintain records or ensure the chiropractor's employer maintains records that verify the chiropractic radiological technician is certified under ch. 446, Stats.

SECTION 2. Chapter Chir 10 (title) is amended to read:

DELEGATION TO UNLICENSED PERSONS CHIROPRACTIC TECHNICIANS AND CHIROPRACTIC RADIOLOGICAL TECHNICIANS

SECTION 3. Chir 10.01 (1) is amended to read:

Chir 10.01 (1) "Adjunctive services" means services which are preparatory or complementary to ~~chiropractic adjustments of the spine or skeletal articulations, or both the practice of chiropractic.~~ "Adjunctive services" include the taking and preparation of a preliminary patient history and providing physiotherapy treatment. "Adjunctive services" does not include making a chiropractic diagnosis, analyzing a diagnostic test, or performing a chiropractic adjustment.

SECTION 4. Chir 10.01 (1g) and (1r) are created to read:

Chir 10.01 (1g) "Massage therapy" or "bodywork therapy" has the meaning given in s. 460.01 (4), Stats.

(1r) "Physiotherapy treatment" means the therapeutic use of physical agents or means, including heat, cold, light, air, water, sound, electricity, massage therapy or bodywork therapy, and physical exercise with and without assistive devices, to treat or manage injury, disease, bodily defects, or bodily weaknesses.

SECTION 5. Chir 10.01 (2) is amended to read:

Chir 10.01 (2) "Preliminary patient history" means the process of taking patient vitals and gathering baseline data regarding a patient, including the nature of the chief complaint, family history, and medical history. The "preliminary patient history" is intended to provide a starting point for further inquiry by the chiropractor into the patient's condition.

SECTION 6. Chir 10.01 (3) is repealed.

SECTION 7. Chir 10.015 is created to read:

Chir 10.015 Chiropractic technician course of study. The board shall grant certification as a chiropractic technician to an applicant who satisfies the requirements under s. 446.026 (2) (a), Stats. The course of study required under s. 446.026 (2) (a) 3., Stats., shall be one of the following:

(1) A course of study meeting all of the following requirements:

(a) The course of study shall include a prerequisite 4 hour therapeutic overview course covering chiropractic technician scope of practice, anatomy, and contraindications followed by all of the following:

1. Four hours of instruction in gathering baseline data regarding a patient.
2. Four hours of instruction in taking patient vitals.

(b) The course of study shall include a final assessment of competency of the didactic and clinical components of the program.

(c) The course of study shall be conducted by individuals who have specialized education, training, or experience by reason of which the individuals should be considered qualified concerning chiropractic technician scope of practice, anatomy, contraindications, and taking and preparing a preliminary patient history.

(2) A course of study the board determines is reasonably equivalent to the course of study under sub. (1).

SECTION 8. Chir 10.02 is repealed and recreated to read:

Chir 10.02 Delegation of adjunctive services to a chiropractic technician. A chiropractor may delegate the performance of adjunctive services only to a chiropractic technician certified under ch. 446, Stats. An adjunctive service may be delegated to a chiropractic technician only if all of the following conditions are met:

(1) The chiropractor maintains records or ensures the chiropractor's employer maintains records that verify the chiropractic technician is certified under ch. 446, Stats.

(2) For the delegation of massage therapy or bodywork therapy, the chiropractor maintains records or ensures the chiropractor's employer maintains records that verify the chiropractic technician is licensed under ch. 460, Stats.

(3) For the delegation of adjunctive services other than massage therapy or bodywork therapy and taking and preparing preliminary patient histories, the chiropractor maintains records or ensures the chiropractor's employer maintains records that verify the chiropractic technician has successfully completed a didactic and clinical training program approved by the board and covering the performance of the delegated service. Successful completion of a training program is demonstrated by attaining proficiency in the delivery of that service to minimally competent chiropractic practice standards as measured by objective knowledge and skills testing. The didactic and clinical training program shall meet or be determined by the board to be reasonably equivalent to all of the following criteria:

(a) The program constitutes an organized program of learning that contributes directly to the professional competency of a chiropractic technician to perform the delegated service.

(b) The program pertains to subject matters that integrally relate to the performance of the delegated service.

(c) The program is conducted by individuals who have specialized education, training, or experience by reason of which the individuals should be considered qualified concerning the performance of the delegated service.

(d) The program fulfills pre-established goals and objectives.

(e) The program provides proof of attendance.

(f) The program includes a final assessment of competency of the didactic and clinical components of the program.

(g) If the program includes instruction in one or more of the subject matters under subds. 1. to 7., the instruction shall meet the following requirements:

1. Instruction in the performance of thermotherapy and cryotherapy shall comprise one hour.

2. Instruction in the performance of electrotherapy shall comprise 3 hours.

3. Instruction in the performance of therapeutic ultrasound shall comprise 3 hours.

4. Instruction in the performance of light therapy shall comprise 3 hours.

5. Instruction in the performance of surface electromyography shall comprise 3 hours.

6. Instruction in the performance of mechanical therapy and decompression shall comprise 4 hours and may not include instruction in manual traction or manipulation.

7. Instruction in exercise and rehabilitation shall comprise 24 hours and include all of the following topics:

- a. Basic functional anatomy.
- b. Kinesiology and joint movement.
- c. Indications and contraindications.
- d. Recordkeeping and reporting.
- e. Scope of practice.
- f. Baselines assessment, outcomes, and goals.

(4) The chiropractor exercises direct supervision of the chiropractic technician performing the delegated service.

(5) The chiropractor retains ultimate responsibility for the manner and quality of the service.

SECTION 9. Chir 10.025 is created to read:

Chir 10.025 Chiropractic radiological technician course of study. The board shall grant certification as a chiropractic radiological technician to an applicant who satisfies the requirements under s. 446.025 (2) (a), Stats. The course of study required under s. 446.025 (2) (a) 3., Stats., shall be one of the following:

(1) A course of study meeting all of the following requirements:

(a) The course of study shall comprise 48 hours, including all of the following topics:

1. Introduction to x-ray examination.
2. Physics of x-ray examination.
3. Anatomy.
4. Patient position.
5. Safety measures.
6. Machine operation.
7. Exposure techniques and accessories.
8. Processing and dark room techniques.
9. Film critique and quality assurance.
10. Professionalism.
11. Recordkeeping.
12. Emergency procedures summary.

(b) The course of study shall include a final assessment of competency of the didactic and clinical components of the program.

(c) The certification program shall have a chiropractor licensed under ch. 446, Stats., present in the facility and available to the students of the course of study.

(2) A course of study the board determines is reasonably equivalent to the course of study under sub. (1).

SECTION 10. Chir 10.03 is amended to read:

Chir 10.03 X-ray services. A chiropractor may delegate x-ray examination procedures to ~~an unlicensed person only if the delegation is consistent with s. Chir 10.02 and the unlicensed person has successfully completed a course of instruction comprising at least 48 hours and including the following components: introduction to x ray examination; physics of x ray examination; anatomy; patient positioning; safety measures; machine operation; exposure techniques and accessories; processing and dark room techniques; film critique and quality assurance; professionalism; recordkeeping; emergency procedures, summary; and successful completion of an examination on the content of the course of instruction~~ only to a chiropractic radiological technician certified under ch. 446, Stats. The chiropractor shall comply with s. Chir 4.04 before delegating the performance of x-ray services to ~~an unlicensed person~~ a chiropractic radiological technician.

SECTION 11. Chir 10.05 is repealed.

SECTION 12. EFFECTIVE DATE. The rules 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.

(END OF TEXT OF RULE)
