



State of Wisconsin
2003 - 2004 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 356**

March 8, 2004 - Offered by Representative UNDERHEIM.

1 **AN ACT** *to renumber* 446.07; *to amend* 441.001 (3) (a), 441.001 (4) (b), 446.01
2 (2) (b), 446.02 (2) (b), 446.02 (4), 446.02 (9) (a), 446.03 (intro.), 446.05 (1) and
3 446.05 (2); *to repeal and recreate* 446.07 (title); and *to create* 446.01 (1k),
4 446.01 (1L), 446.02 (6m), 446.02 (7s), 446.03 (8), 446.04 (6), (7), (8), (9), (10) and
5 (11), 446.05 (3), 446.05 (4) and 446.07 (2) of the statutes; **relating to:** the
6 definition of the practice of chiropractic; chiropractic evaluations and
7 treatments; unprofessional conduct by chiropractors; delegations by
8 chiropractors; nutritional guidance provided by chiropractors to patients;
9 granting rule-making authority, and providing penalties.

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

10 **SECTION 1.** 441.001 (3) (a) of the statutes is amended to read:
11 441.001 (3) (a) "Practical nursing" means the performance for compensation
12 of any simple acts in the care of convalescent, subacutely or chronically ill, injured

1 or infirm persons, or of any act or procedure in the care of the more acutely ill, injured
2 or infirm under the specific direction of a nurse, physician, chiropractor licensed
3 under ch. 446, podiatrist licensed under ch. 448, dentist licensed under ch. 447 or
4 optometrist licensed under ch. 449, or under an order of a person who is licensed to
5 practice medicine, podiatry, dentistry or optometry in another state if that person
6 prepared the order after examining the patient in that other state and directs that
7 the order be carried out in this state.

8 **SECTION 2.** 441.001 (4) (b) of the statutes is amended to read:

9 441.001 (4) (b) The execution of procedures and techniques in the treatment
10 of the sick under the general or special supervision or direction of a physician,
11 chiropractor licensed under ch. 446, podiatrist licensed under ch. 448, dentist
12 licensed under ch. 447 or optometrist licensed under ch. 449, or under an order of a
13 person who is licensed to practice medicine, podiatry, dentistry or optometry in
14 another state if the person making the order prepared the order after examining the
15 patient in that other state and directs that the order be carried out in this state.

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

17 446.01 (1k) “Patient” means an individual who receives treatment or services
18 from a chiropractor or who has received treatment or services under the supervision,
19 direction, or delegation of a chiropractor.

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

21 446.01 (1L) “Pattern of conduct” means more than one occurrence.

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

23 446.01 (2) (b) To employ or apply chiropractic adjustments, and the principles
24 or techniques of chiropractic science, that are taught at a chiropractic college or

1 university approved by the Council on Chiropractic Education or its successor, in the
2 diagnosis, treatment or prevention of any of the conditions described in s. 448.01 (10).

3 **SECTION 6.** 446.02 (2) (b) of the statutes is amended to read:

4 446.02 (2) (b) The examining board shall promulgate rules establishing
5 educational requirements for obtaining a license under par. (a). The rules shall
6 require that an application for the license that is received by the department after
7 June 30, 1998, be accompanied by satisfactory evidence that the applicant has a
8 bachelor's degree from a college or university accredited by an accrediting body listed
9 as nationally recognized by the secretary of the federal department of education, and
10 has graduated from a college or university of chiropractic approved by the examining
11 board accredited by the Council on Chiropractic Education or its successor.

12 **SECTION 7.** 446.02 (4) of the statutes is amended to read:

13 446.02 (4) The renewal date and renewal fee for all licenses granted by the
14 examining board are specified under s. 440.08 (2) (a). In an application for renewal,
15 the applicant shall identify each employee, other than a nurse licensed under ch. 441,
16 physical therapist licensed under subch. III of ch. 448, or athletic trainer licensed
17 under subch. VI of ch. 448, to whom clinical work is delegated. If the examining board
18 has promulgated rules requiring such an employee to complete a training program
19 or course of instruction to perform the delegated work, the applicant shall also
20 provide the name, date, and sponsoring organization for the training program or
21 course of instruction that the employee completed.

22 **SECTION 8.** 446.02 (6m) of the statutes is created to read:

23 446.02 (6m) (a) Except as provided in par. (b), a chiropractor who is granted
24 a license under this chapter on or before January 1, 2003, may provide counsel,
25 guidance, direction, advice, or recommendations to a patient regarding the health

1 benefits of vitamins, herbs, or nutritional supplements only if the chiropractor has
2 completed 48 hours in a postgraduate course of study in nutrition that is approved
3 by the examining board.

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

6 **SECTION 9.** 446.02 (7s) of the statutes is created to read:

7 446.02 (7s) A chiropractor shall evaluate each patient to determine whether
8 the patient has a condition that is treatable by chiropractic means. An evaluation
9 shall be based on an examination that is appropriate to the patient. In conducting
10 an evaluation, a chiropractor shall utilize chiropractic science, as defined by rule by
11 the examining board, and the principles of education and training of the chiropractic
12 profession. A chiropractor shall discontinue treatment by chiropractic means if, at
13 any time, the chiropractor determines, or reasonably should have determined, that
14 the patient's condition will not respond to further treatment by chiropractic means,
15 except that a chiropractor may continue to provide supportive care to a patient.

16 **SECTION 10.** 446.02 (9) (a) of the statutes is amended to read:

17 446.02 (9) (a) A student or graduate of a college or university of chiropractic
18 that is accredited by the Council on Chiropractic Education or its successor who
19 practices chiropractic, in a program for the clinical training of students and
20 graduates that is reviewed and approved by the examining board, under the
21 supervision of a chiropractor who is approved by the examining board to supervise
22 the clinical training of the student or graduate and who is licensed under this chapter
23 and is responsible for the student's or graduate's practice in an infirmary, clinic,
24 hospital or private chiropractic office that is connected or associated for training

1 purposes with a college or university of chiropractic ~~approved by the examining~~
2 ~~board~~ that is accredited by the Council on Chiropractic Education or its successor.

3 **SECTION 11.** 446.03 (intro.) of the statutes is amended to read:

4 **446.03 Reprimand; license revocation, limitation or suspension.**

5 (intro.) The Subject to ss. 446.04 (11) (d) and 446.05 (3), the examining board, by
6 order, may reprimand a licensee or registrant and may deny, limit, suspend or revoke
7 any license or certificate of registration if the licensee or registrant:

8 **SECTION 12.** 446.03 (8) of the statutes is created to read:

9 446.03 (8) Has violated this chapter or any rule promulgated under this
10 chapter.

11 **SECTION 13.** 446.04 (6), (7), (8), (9), (10) and (11) of the statutes are created to
12 read:

13 446.04 (6) Billing for chiropractic services that were inappropriate,
14 unnecessary, or of substandard quality.

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

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

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

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

1 **(8)** Failure to collect a deductible or co-payment required by a patient’s insurer.
2 This subsection does not apply if the chiropractor has made reasonable efforts to
3 collect the deductible or co-payment or if the patient has financial hardship and the
4 chiropractor documents the financial hardship.

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

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

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

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

17 (b) “Contact violation” means any violation of par. (a) that involves physical
18 contact with a patient under the chiropractor’s professional care or treatment.

19 (c) “Noncontact violation” means any violation of par. (a) that does not involve
20 physical contact with a patient under the chiropractor’s professional care or
21 treatment.

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

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 14.** 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 15.** 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 16.** 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 17.** 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.

1 **SECTION 18.** 446.07 (title) of the statutes, as affected by 2001 Wisconsin Act
2 109, is repealed and recreated to read:

3 **446.07 (title) Penalties.**

4 **SECTION 19.** 446.07 of the statutes, as affected by 2001 Wisconsin Act 109, is
5 renumbered 446.07 (1).

6 **SECTION 20.** 446.07 (2) of the statutes is created to read:

7 **446.07 (2)** If the examining board finds that a chiropractor is guilty of the
8 unprofessional conduct specified in s. 446.04 (6), the examining board may assess
9 against the chiropractor a forfeiture of 3 times the amount that the chiropractor
10 billed a patient for inappropriate, unnecessary, or substandard chiropractic care or
11 \$5,000, whichever is less. This subsection applies only if the examining board makes
12 a 2nd or subsequent such finding regarding a chiropractor.

13 **SECTION 21. Initial applicability.**

14 (1) **RENEWALS.** The treatment of section 446.02 (4) of the statutes first applies
15 to chiropractors whose licenses expire on January 1, 2007.

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

20 (3) **LICENSE SUSPENSION.**

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

1 (b) The treatment of section 446.05 (1) of the statutes and the creation of section
2 446.05 (4) of the statutes first apply to 4th violations that occur on the effective date
3 of this paragraph.

4 **SECTION 22. Effective dates.** This act takes effect on the first day of the 2nd
5 month beginning after publication, except as follows:

6 (1) The treatment of section 446.02 (6m) of the statutes takes effect on the first
7 day of the 7th month beginning after publication.

8 (END)