

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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JUN 27 10 55 AM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Board of Chiropractic Examiners TITLE NUMBER: 4

RULE TYPE: Legislative; CITE AUTHORITY WV CODE §§30-16-1 thru 30-16-18

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Title 4 Legislative Rules-Regulation of
Chiropractic Practice -- WV Board of Chiropractic Examiners

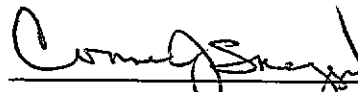
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 31, 1997 AT 5:00 PM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

P. O. Box 153
St. Albans, WV 25177
722-1424

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

BRIEF SUMMARY

These proposed legislative rules establish the regulation of the chiropractic practice by the WV Board of Chiropractic Examiners.

STATEMENT OF CIRCUMSTANCES

Title 4, Series 1, Legislative Rules of WV Board of Chiropractic Examiners is being amended in order to bring antiquated rules up-to-date.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Regulation of Chiropractic Practice

Type of Rule: Legislative Interpretive Procedural

Agency WV Board of Chiropractic Examiners

Address P. O. Box 153

St. Albans, WV 25177

Contact: Connie J. Skaggs - 722-1424
722-1425 (Fax)

(NOT APPLICABLE)

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

3. Objectives of these rules:

Rule Title: Regulation of Chiropractic Practice

N/A

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

C. Economic Impact on Citizens/Public at Large.

Date: 6/24/97

Signature of Agency Head or Authorized Representative



FILED

TITLE 4
LEGISLATIVE RULES
WEST VIRGINIA BOARD OF CHIROPRACTIC EXAMINERS

JUN 27 10 55 AM '97

SERIES 1
REGULATION OF CHIROPRACTIC PRACTICE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§4-1-1. General.

1.1. Scope. -- To protect the health, safety and welfare of the public.

1.2. Authority. -- W. Va. Code 30-1-4.

1.3. Filing Date. -- _____, 19__

1.4. Effective Date. -- _____, 19__

1.5. Repeal and Replace This rule repeals the Board of Chiropractic Practice, 4 C.S.R. 1, filed February 9, 1983.

§4-1-2. Definitions.

2.1. "Chiropractor" means a practitioner of chiropractic.

2.2. "Chiropractic" is that science and art which utilizes the inherent recuperative powers of the body and the relationship between the neuromusculo-skeletal structures and functions of the body, particularly the spinal chord and nervous system and maintenance of health and as further defined in West Virginia Code 30-16.

§4-1-3. Qualifications for Receiving and Maintaining a License to Practice Chiropractic.

3.1. In order to practice chiropractic in this State, an individual shall:

3.1.a. Present evidence to the Board of Chiropractic Examiners that the licensee has attended 18 classroom hours each year of continuing education. The hours shall be through a CCE (Council of Chiropractic Education) approved chiropractic college 6 hours of which may be specified by the Board; and

3.1.b. Remit to the Board of Chiropractic Examiners, an annual license renewal fee of \$200. The annual renewal license requirements are due on or before July 1. License renewal requirements postmarked after July 1 shall incur a \$100 late fee.

3.1.c. Complete and submit a license renewal application as provided by the Board

§4-1-4. Duties of a licensee.

4.1. A licensee shall not engage in conduct outside the scope of chiropractic practice. It is the duty of the licensee to maintain current knowledge of statutes, rules, regulations and Board decisions regarding the practice of chiropractic.

4.1.a. A licensee is required to maintain proper records on all patients, including family and staff members, and to keep the records confidential. The records shall include:

4.1.A. A description of the patient's chief complaint;

4.1.B. A history which includes any significant events related to the chief complaint;

4.1.C. A record of diagnostic and therapeutic procedures including: an examination and results of that examination, a diagnosis; a plan of care, including all therapeutic modalities utilized; frequency of treatment; any changes in the plan of care; as well as the reasons for changes; and a record of the patient's response to treatment; and

4.1.D. A licensee is required to release copies of medical records within 7 days of a written request from the patient.

4.1.b. A licensee is required to maintain competence in the production and interpretation of x-rays. Competency should be based on the following considerations:

4.1.A. X-rays must be of diagnostic quality;

4.1.B. Appropriate shielding and collimation must be used;

4.1.C. Patient exposure to radiation must be based on clinical necessity as documented by the patient's record;

4.1.D. Interpretation of x-rays must be in writing, part of the patient's record, and demonstrative of competence in reading films; and

4.1.E. Equipment must meet Board and manufacturer's specifications for safety and use and must be properly maintained.

4.1.c. A licensee must maintain competence in the application of chiropractic therapeutics and in the management of patient care. Competence shall be based on the following considerations:

4.1.A. Therapeutic modalities must be properly applied;

4.1.B. The modality must be appropriate for the treatment of the patient as documented by the patient record; and

4.1.C. Case Management must be supported by the patient's record.

4.1.d. The licensee must properly train and supervise staff engaged in patient care. Failure to do so shall be considered negligence on the part of the licensee.

§4-1-5. Disciplinary action.

5.1. Professional Misconduct is an act or omission which may subject the licensee to disciplinary action as it relates to the practice of chiropractic or criminal misconduct which reflects on the capacity of the licensee to safely engage in the practice of chiropractic.

5.1.a. A licensee must report a criminal charge involving a misdemeanor or felony upon conviction—or plea bargain within 30 days of determination of the case. The Board shall review the conduct involved in the criminal proceedings to determine if the conduct poses a threat to the public and take appropriate disciplinary action.

5.1.b. Sexual misconduct may include, doctor/patient relations, whether or not initiated by, or consented to, by the patient, and engaging in any conduct with a patient that is sexual or may be reasonably interpreted as sexual. A licensee is prohibited from using fraud, deception, misrepresentation, or force for the purpose of engaging in sexual contact with the patient in the clinical setting. Patient consent shall not be viewed as a legal defense.

5.1.c. A licensee will be subject to disciplinary action for professional misconduct involving any of the following activities related to licensure:

5.1.A. Aiding and abetting another in the unlicensed practice of chiropractic;

5.1.B. Fraud or deceit in obtaining a license to practice chiropractic;

5.1.C. Aiding another in fraudulently obtaining a professional license;

5.1.D. Making false or misleading statements, or withholding relevant information, regarding the qualifications of

any individual in order to attempt to obtain a license or engage in the practice of chiropractic; and

5.1.E. Cheating on a licensing exam, or attempting to subvert or compromise a licensing exam. For the purpose of this subdivision, examinations given by any private, state, provincial, national or international examining organization recognized by the Board are considered "licensing exams".

5.1.d. Engaging in activities outside of the scope of chiropractic practice in the practice of chiropractic is prohibited.

5.1.e. A licensee may not represent to the public, the possession of special skill, training, knowledge or qualifications unless the Board recognizes the training or certification on which the representation is based.

5.1.f. A licensee shall refrain from any intentional, negligent or reckless conduct in the practice of chiropractic which poses a danger to the public.

5.1.g. Substance Abuse. Evidence that a licensee is not able to treat a patient, competently or safely, due to use of any mind or mood altering substance is a basis for Board intervention.

5.1.A. The Board may act on its own initiative to investigate a licensee's alleged substance abuse.

5.1.B. Board actions must comply with State and Federal Laws, Rules and Regulations, including the Americans with Disabilities Act, 42 U.S.C.A. 12101, et_seq.

5.1.h. The Board may consider repeated violations of this section professional misconduct.

§4-1-6. Negligence or Incompetence.

6.1. It is the responsibility of the licensee to maintain current knowledge of statutes, rules, and Board decisions regarding the practice of chiropractic. Licensees who have questions regarding the scope or standards of practice should address the questions to the Board for resolution.

6.1.a. Any complaint or dispute in the practice of chiropractic must be presented to the Board for review.

6.1.b. A licensee who fails to maintain a minimal level of competency outlined in this rule is subjected to one (1) or more of the following: remedial measures; disciplinary action; additional continuing educational hours and monitoring by a

competent practitioner. National examinations such as the National Board of Chiropractic Examiners Special Purposes Examination for Chiropractic exam may be used to help the Board reevaluate a doctor's competence.

§4-1-7. Advertising.

7.1. False and deceptive or misleading advertising is prohibited.

7.2. Advertisements offering free or discounted services must include the licensee's usual charge for the service.

7.2.a. In the case where the services are offered without charge, the advertisement must state that there is no charge.

7.2.b. Diagnostic services offered without charge, or at discounted fees such as exams or x-rays, must be necessary and sufficient to reach a diagnosis. X-rays must be diagnostically complete.

7.2.c. Patients receiving free or discounted services must sign a disclosure statement which clearly describes the service, and which informs the patient of services for which there is a charge. When the advertisement offers free or discounted services for a period of time, the patient must sign a disclosure statement which clearly states when the free or discounted service ends. The disclosure statements are part of the patient's medical records, and must be included in any submission of the claims to the party responsible for bill payment. The normal charges for services must be disclosed before services are rendered.

7.2.d. No chiropractic physician may engage in, or knowingly authorize others to engage in, solicitation by telephone, mail, in-person solicitations or otherwise, which involve undue influence, coercion, intimidation, misrepresentation, invasion of the privacy of the person being contacted, or unreasonable interference in the doctor-patient relationship.

Reasonably dignified and reasonably restrained solicitation which does not involve undue influence, coercion, intimidation, misrepresentation, invasion of the privacy of the person being contacted, or unreasonable interference in the chiropractic-patient relationship is permissible.

This rule prohibits solicitations that require an immediate response from the consumer to an offer at the time of the solicitation.

7.2.e. Free or discounted services may not exclude or limit certain classifications of patients.

§4-1-8. Testimonials.

8.1. Testimonials may only be used if the basis for the statements is documented, signed by the patient, and made part of the permanent record.

8.2. Patients should be informed if testimonials are to be used publicly, and told how they will be used.

§4-1-9. Commercial Misconduct.

9.1. A licensee shall not engage in fraud, misrepresentation or deception in business affairs relating to the practice of chiropractic.

9.2. A licensee shall not engage in abusive billing practices which include, but are not limited to:

9.2.a. Filing claims for services not rendered;

9.2.b. Filing claims which misrepresent the service performed;

9.2.c. Filing multiple claims for a single service;

9.2.d. Failing to disclose pertinent information on a claim form; and

9.2.e. Increasing charges when a patient uses a third party payment program.

9.3. A licensee shall not violate the rules or regulations of Federal or State programs. Such action may result in one or both of the following:

9.3.a. Disciplinary action by the Board; and

9.3.b. Action by the State or Federal Government.

§4-1-10. Unlawful Referral.

10.1. Receiving payment for referral of a patient to or from another facility, health care provider, business, or professional entity is prohibited.

10.2. Referral of a patient to a facility in which the licensee has a financial interest is prohibited, unless the patient is informed of the relationship. This does not include an ownership interest in a building in which space is leased to a clinical laboratory, pharmacy, or physician at the prevailing rate under a lease arrangement that is not conditional upon the

income or gross receipts of the clinical laboratory, pharmacy, or physician.

§4-1-11. Unlawful Inducement.

11.1. Offering to a patient payment as an inducement to enter or continued care is prohibited.

§4-1-12. Repeated Violations.

12.1 Repeated violations of sections 9 through 11 of this rule shall be considered commercial misconduct.

§4-1-13. Investigation and Formal Hearings.

13.1. Upon receipt of a complaint or report, or knowledge of a possible statutory infraction, and determination by the Board that the allegations fall under the authority of the Board and that the complaint would constitute a violation if proven true, the Board may initiate an investigation to determine the substantial validity of the allegation. The Board shall give initial notice to the licensee and shall include:

13.1.a. Notice that a complaint, report, or knowledge of a possible act of misconduct has been received;

13.1.b. The name of the complainant and simple statement of the allegations which form the basis of the complaint; and

13.1.c. A request for a written response from the licensee.

13.2. Conduct Of Board Members During Inquiry. The inquiry shall be conducted by the investigative committee, composed of person(s) designated by the Board.

13.2.a. The full Board shall be screened from any knowledge of complaint and identities of the licensee during the investigative procedure.

13.2.b. Board members who have any involvement with the case before charges are brought shall be recused from participation in the final adjudication of the matter.

13.2.c. After the investigation, the investigative committee will make a recommendation to the Board which may accept or reject the investigative committees recommended action.

13.3. The Board is authorized to compel the attendance of witnesses, to issue subpoenas, to conduct investigations and hire an investigator, and to take testimony and other evidence concerning any matter within its jurisdiction.

13.4. At the conclusion of the investigatory process, if the Board finds probable cause that a violation of the statute, rules, regulations or ethical standards governing the procedure of chiropractic has occurred the Board may initiate a formal hearing.

13.5. All contested hearings shall be held pursuant to the procedures outlined in W. Va. Code § 29A-5-1, et seq.

13.6. The Board shall send notice of the disciplinary hearing to all parties at least 30 days prior to the hearing. The notice shall cite the specific rules, regulations and laws which form the basis of the complaint.

§4-1-14. Appeal.

14.1 The licensee may appeal a final Board decision to a circuit court of proper jurisdiction as provided by law.

§4-1-15. Injunctive Relief.

15.1. The Board may apply to the circuit court of proper jurisdiction to apply for injunctive relief on receipt of a complaint or report, or on information which has come to the attention of the Board which indicates a licensee may have engaged in conduct which poses an imminent threat to the health, safety or welfare of the public.

§4-1-16. Disciplinary Actions.

16.1. Any licensee who has violated any provision of this rule is subject to the suspension or revocation of his or her license to practice chiropractic.

16.2. The Board is further authorized to enter into consent decrees, to reprimand, to send cease and desist orders to any licensee who violates any provision of these rules, to enter into probation orders, to levy fines not to exceed Fifty Thousand Dollars per day per violation, or any of these sanctions singly or in combination. The Board is also authorized to assess administrative costs against the licensee.

4-1-17. Chiropractic Corporations.

The West Virginia Board of Chiropractic Examiners requires that chiropractors under its licensing authority must obtain its prior authorization before beginning to act as a chiropractic corporation and requires a fee of one hundred dollars (\$100.00) for each application for authorization to form a chiropractic corporation. See section 17, article 16. chapter 30 of the West Virginia Code.

4-1-18. Fees.

18.1 The annual renewal fee for chiropractors practicing in West Virginia will be \$200, out of state or retired chiropractors will be \$100. The license renewal requirements, including fees, are to be postmarked on or before July 1.

18.2 If the license renewal requirements are postmarked after July 1, there will be a \$100 late fee.

18.3 If the license renewal requirements are postmarked after July 31, there will be an additional \$100 reinstatement fee.

18.4 After a lapse of two (2) years, a license may be issued only after the former certificate holder subsequent to said lapse has fulfilled all other requirements of licensure as set forth in section six and has passed the National Special Purposes Examination for Chiropractic (SPEC) examination.

18.5 The fee for each application for approval for Articles of Incorporation will be \$100 per request. The initial filing fee for a Professional Limited Liability company will be \$100 and an annual renewal fee of \$100.

18.6 The examination fee will be \$150 per applicant and a fee of \$50 per applicant for re-examination.

18.7 The license verification fee will be \$5 per chiropractor.

18.8 There will be a fee of \$.75 per copy for requested photocopies.

18.9 The initial licensing fee will be \$25 per licensee.

18.10 The fee for requests for continuing education courses will be \$35 per course.

18.11 The application fee for preceptorship approval will be \$50 per student.

18.12 Reimbursement of legal fees and court costs from the licensee as incurred by the Board as a result of disciplinary action taken.

18.13 There will be a fee of \$25 per request for address listings.

18.14 Fines levied by the Board against licensees.