

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #2

**FILED**

JUN 24 10 42 AM '96

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 through 30-16-17

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: REGULATION OF CHIROPRACTIC PRACTICE.

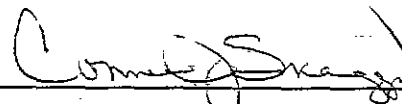
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 31, 1996 AT 5:00 PM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

WV Board of Chiropractic Examiners

P. O. Box 153

St. Albans, WV 25177

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.60

BRIEF SUMMARY

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

WV BOARD OF CHIROPRACTIC EXAMINERS  
P.O. BOX 153  
ST. ALBANS, WV 25177

## STATEMENT OF CIRCUMSTANCES

The circumstance for proposing these legislative rules is to update our rules and regulations regarding the regulation of the Chiropractic practice by the WV Board of Chiropractic Examiners.

WV BOARD OF CHIROPRACTIC EXAMINERS  
P.O. BOX 153  
ST. ALBANS, WV 25177

**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

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: 6-24-96

Signature of Agency Head or Authorized Representative

*Cornie J. Skaggs*

TITLE 4  
LEGISLATIVE RULES  
WEST VIRGINIA BOARD OF CHIROPRACTIC EXAMINERS

SERIES 1  
REGULATION OF CHIROPRACTIC PRACTICE

**§4-4-1. General.**

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

1.2. Authority. -- W. Va. Code §§ 30-16-1 through 30-16-17.

1.3. Filing Date. -- \_\_\_\_\_, 19\_\_

1.4. Effective Date. -- \_\_\_\_\_, 19\_\_

1.5. Repeal and Replace. These rules will replace Series 1, filed April 12, 1988.

**§4-4-2. Definitions.**

2.1. "Chiropractor" shall mean 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 musculo-skeletal structures and functions of the body, particularly the spinal chord and nervous system and maintenance of health.

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

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

- a. Be 18 years of age;
- b. Have graduated from an accredited 4 year high school program or have an educational equivalent of the same;
- c. Completed a certified chiropractic doctorate training program recognized by the Board of Chiropractic Examiners and Counsel of Chiropractic Education (CCE) or its successors;
- d. Maintain a foundation of knowledge and skills which assure competence in the practice of chiropractic;
- e. Present evidence to the Board of Chiropractic Examiners that the licensee has attended 12 of 18 each year of continuing education hours which are through a CCE approved chiropractic college and 6 hours as mandated by the Board; and

- f. Remit to the Board of Chiropractic Examiners, an annual license renewal fee of an amount to be determined by the Board.

**§4-4-4. 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.

(a) A licensee is required to maintain proper records on all patients, including family and staff members, and to keep these records confidential. These records shall include:

(i) A description of the patient's chief complaint;

(ii) A history which includes any sufficient events related to the chief complaint or general history;

(iii) 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

(iv) A licensee is required to release copies of medical records within 7 days of a written request.

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

(i) X-rays must be of diagnostic quality;

(ii) Appropriate shielding and collimation must be used;

(iii) Patient exposure to radiation must be based on clinical necessity as documented by patient record;

(iv) Interpretation of x-rays must be in writing, part of the patient's record, and demonstrative of competence in reading films, and;

(v) Equipment must meet Board and manufacturer's specifications for safety and use and properly maintained.

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

(i) Therapeutic modalities must be properly applied;

(ii) The modality must be appropriate for the treatment of the patient as documented by the patient record, and;

(iii) Case Management must be supported by patient record.

(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.

#### §4-4-5. Disciplinary action.

5.1. Professional Misconduct -- is an act or omission which may be subjected to disciplinary action. It is related to the practice of chiropractic, or criminal misconduct which reflects on the capacity of the licensee to safely engage in the practice of chiropractic.

(a) A licensee must report a criminal conviction or a compromise, settlement, 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.

(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.

(i) 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.

(ii) Patient consent should not be viewed as a legal defense.

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

(i) Aiding and abetting another in the unlicensed practice of chiropractic;

(ii) Fraud or deceit in obtaining a license to practice chiropractic;

(iii) Aiding another in fraudulently obtaining a professional license;

(iv) 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

(v) Cheating on a licensing exam, or attempting to subvert or compromise a licensing exam. For the purpose of this subsection, examinations given by any private, state, provincial, national or international examining organization recognized by the Board shall be considered "licensing exams".

(d) Engaging in activities outside of the scope of chiropractic practice in the delivery of health is prohibited.

(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.

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

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

(i) The Board may act on its own initiative to investigate a licensee(s) alleged substance abuse.

(ii) Board actions must comply with State and Federal Laws and Regulations, including the Americans with Disabilities Act.

(h) Repeated violations of this section may be considered professional misconduct.

#### §4-4-6. Negligence or Incompetence.

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

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

(b) A licensee who fails to maintain a minimal level of competency outlined in these rules shall be subject 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 NBCE

SPEC exam may be used to help the Board reevaluate a doctor's competence.

**§4-4-7. 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.

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

(b) Diagnostic services offered are without charge, such as exams or x-rays, must be necessary and sufficient to reach a diagnosis. X-rays must be diagnostically complete.

(c) Patients receiving free services must sign a disclosure statement which clearly describes the free service, and informs the patient of services for which there is a charge. When the advertisement offers free services for a period of time, the patient must sign a disclosure statement which clearly states when the free service ends. Such 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.

(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 lay-solicitee, or unreasonable interference in the chiropractic-patient relationship.

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

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

**§4-4-8. 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.

**§4-4-9. 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:

- (a) Filing claims for services not rendered;
- (b) Filing claims which misrepresent the service performed;
- (c) Filing multiple claims for a single service;
- (d) Failing to disclose pertinent information on a claim form; and
- (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:

- (a) Disciplinary action by the Board; and
- (b) Action by the State or Federal Government.

#### **§4-4-10. Unlawful Referral.**

10.1. Receiving payment for referral of a patient to or from another facility, health care provider, or business/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 or pharmacy at the prevailing rate under a lease arrangement that is not conditional upon the income or gross receipts of the clinical laboratory or pharmacy.

#### **§4-4-11. Unlawful Inducement.**

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

#### **§4-4-12. Repeated Violations.**

12.1 Repeated violations of sections 9-11 may be considered commercial misconduct.

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

13.1. Upon receipt of a complaint or report 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. Initial notice shall be given to the licensee and shall include:

(a) Notice that a complaint or report of misconduct has been received;

(b) The name of the complainant and simple statement of the allegations which form the basis of the complaint; and

(c) A request for a written response from the licensee.

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

(a) The full Board should be screened from any knowledge of complaint and identities of the licensee during investigative procedure.

(b) Board members who have any involvement with the case before charges are brought should be recused from participation of the final adjudication of the matter.

(c) After the investigation the disciplinary committee will make a recommendation to the Board which may accept or reject the disciplinary committee's 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 a formal hearing may be initiated.

13.5. Following a decision to proceed to a formal disposition of the matter, the Board may appoint a hearing examiner. The hearing examiner shall ensure a fair and impartial hearing and preserve the right of all parties. The hearing examiner will rule on all proceedings, and all proceedings shall be recorded stenographically.

13.6. Notice of the disciplinary hearing shall be sent 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.

**§4-4-14. Appeal.**

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

**§4-4-15. Injunctive Relief.**

15.1. The Board may apply to the circuit 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 the health, safety or welfare of the public.

**§4-4-16. Disciplinary Actions.**

16.1. Any licensee who has violated any provision of this rule is subject to the suspension or revocation of the licensee's 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 individual who violates any provision of these rules, to enter into probation orders, to levy fines not to exceed One Thousand Dollars per day per violation, or any of these singly or in combination. The Board is also authorized to assess administrative costs against the licensee.

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