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Department of Regulatory Agencies

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Notice of Proposed Rulemaking and Rulemaking Hearing

Pursuant to section 24-4-103 of the Colorado Revised Statutes (“C.R.S.”), you are hereby notified that the Colorado Board of Chiropractic Examiners (“Board”) will be holding a public rulemaking hearing as follows:

Date: August 9, 2012

Time: 9:00 AM

Location: 1560 Broadway
Conference Room 110 D
Denver, Colorado 80202

The rulemaking concerns amendments to Rules 6, 7, and 8, the repeal of Rule 26, and the addition of Rules 28 and 29. The basis and purpose of the rules is to carry out the provisions of Article 33 of Title 12, C.R.S. The statutory authority for the rules is found in section 12-33-107(1)(a), C.R.S.

Please be advised that the proposed rules may be changed after public comment and formal hearing.

At the time and place stated in this notice, the Board will afford interested persons an opportunity to submit written data, views, or arguments, and to submit the same orally. The Board may limit the time allotted for oral submissions in its discretion. Written submissions should be filed with the Board at least ten (10) days prior to the hearing. All submissions will be considered. Written submissions may be filed at the following address:

Colorado Board of Chiropractic Examiners
1560 Broadway
Suite 1350
Denver, CO 80202

Dated this 28th day of June, 2012.

BY ORDER OF THE COLORADO BOARD OF CHIROPRACTIC EXAMINERS

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DEPARTMENT OF REGULATORY AGENCIES

Board of Chiropractic Examiners

COLORADO STATE BOARD OF CHIROPRACTIC EXAMINERS RULES AND REGULATIONS

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Rule 1 Inactive License Status

- A. Inactive status requires that the licensee not engage in the practice of chiropractic within the State of Colorado. The inactive licensee shall pay the renewal fee set by the Board. Such inactive status shall be noted on the face of the license issued.
- B. While on inactive status, the licensee need not complete continuing education requirements. However, to reactivate an inactive license, the licensee shall comply with provisions in § 24-34-102(8), C.R.S. (2004) and the following.
 - 1. Any chiropractor whose application for reactivation indicates that they have been in active practice or teaching in another state which has a comparable continuing education requirement shall submit proof of fulfillment of the continuing education requirements of the other state.
 - 2. If the chiropractor has been in active practice or teaching in a state which has no comparable continuing education requirement, the chiropractor shall submit proof of completion of continuing education to be approved by the Colorado Board.
- C. Any chiropractor whose application for reactivation indicates that they have not been in active practice or teaching during the period of time in which their license has been inactive shall document 15 hours of continuing education completed within the previous year.
- D. Any chiropractor applying for reactivation shall submit proof, in a manner approved by the Board, that a chiropractic license held in any other state or jurisdiction is presently in good standing.
- E. Any chiropractor applying for reactivation may be required, at the discretion of the Board, to take the appropriate national examination.

Rule 2 Reinstatement of an Expired License

- A. An applicant seeking reinstatement of an expired license shall complete the reinstatement application and pay the reinstatement fee.
- B. The Board may deny an applicant for reinstatement upon a finding that the applicant has violated provisions of the Chiropractic Practice Act or rules and regulations.
- C. If the license has been expired for more than two years, the applicant will have to establish competency to practice under § 24-34-102(8)(d)(II), C.R.S.
- D. For the purposes of § 24-34-102(8)(d)(II)(E), C.R.S., successful completion of the Special Purposes Chiropractic Examination offered by the National Board of Chiropractic Examiners demonstrates that the applicant has retained the qualifications equivalent to this state's requirements for licensure.

Rule 3 Professional Liability

- A. A chiropractor who qualifies for one of the following categories is exempt from the professional liability requirements outlined in § 12-33-116.5, C.R.S.:
 - 1. A chiropractor who performs chiropractic services exclusively as an employee of the United States government.
 - 2. A chiropractor who holds an inactive license.
 - 3. A chiropractor who provides uncompensated chiropractic care and who does not otherwise engage in any compensated patient care whatsoever.
 - 4. A chiropractor who holds an active license and does not engage in any patient care whatsoever in the state of Colorado.

5. A chiropractor who provides services for the Olympic Training Center as long as the chiropractor is covered under professional liability required by the Olympic Training Center with the minimal amounts required for a chiropractor licensed in Colorado.
- B. The professional liability insurance must cover all acts within the entire legal scope of practice defined in §12-33-102, C.R.S. Coverage is required for acupuncture and electrotherapy only if the licensee is authorized to perform such acts.
- C. Professional liability insurance shall remain in effect without a lapse in coverage. Licensees shall notify the Board when professional liability insurance policy lapses, and immediately cease the practice of chiropractic until such time that professional liability insurance is reinstated or obtained.

Rule 4 Reporting Criminal Convictions, Judgments, and Administrative Proceedings

- A. A licensee shall inform the Board, in the manner set forth by the Board in this rule, within 60 days of any judgment, award or settlement of a civil action or arbitration in which there was a final judgment or settlement for malpractice of chiropractic.
- B. A licensee shall inform the Board, in the manner set forth by the Board in this rule, within 90 days of any of the following events:
 1. The conviction of a felony under the laws of any state or of the United States, or a crime related to the practice of chiropractic. A guilty verdict, a plea of guilty, a plea of nolo contendere, or the imposition of a deferred sentence accepted by the court is considered a conviction;
 2. A disciplinary action imposed by another jurisdiction that registers or licenses chiropractors including, but not limited to, a citation, sanction, probation, civil penalty, or a denial, suspension, revocation, or modification of a license or registration whether it is imposed by consent decree, order, or in some other manner, for any cause other than failure to pay a license or registration fee by the due date or failure to meet continuing professional education requirements;
 3. Revocation or suspension by another state board, municipality, federal or state agency of any health services related license or registration, other than a license or registration as a chiropractor;
- C. The notice to the Board shall include the following information:
 1. If the event is an action by a governmental agency:
 - a. the name of the agency,
 - b. its jurisdiction,
 - c. the case name,
 - d. the docket, proceeding, or case number by which the event is designated, and
 - e. a copy of the consent decree, order, or decision.
 2. If the event is a conviction of a crime described above:
 - a. the court,
 - b. its jurisdiction,
 - c. the case name,
 - d. the case number,

- e. a description of the matter or a copy of the indictment or charges,
 - f. any plea or verdict accepted or entered by the court, and
 - g. a copy of the imposition of sentence related to the conviction and the completion of all terms of the sentence;
3. If the event concerns a civil action or arbitration proceeding
- a. the court or arbitrator,
 - b. the jurisdiction,
 - c. the case name,
 - d. the case number,
 - e. a description of the matter or a copy of the complaint or demand for arbitration, and
 - f. a copy of the verdict, the court decision or arbitration award, or, if settled, the settlement agreement and court's order of dismissal.
- D. The licensee notifying the Board may submit a written statement with the notice to be included with the licensee's records.

Rule 5 REPEALED Effective 12/01/2009

Rule 6 Patient Assessment and Electrotherapy/Physical Remedial Measures

A. Electrotherapy

1. In the practice of chiropractic, the implementation of electrotherapy and physical remedial measures as referenced in Sections 12-33-102 (1) and (3), C.R.S., may include, but is not limited to:
 - a. Diagnostic, functional or psychometric patient assessment/evaluation, designed to facilitate the evaluation, administration and modification of patient care and/or case management.
 - b. Patient and/or social, educational or consultation considerations designed to educate the audience as to the nature, incidence and effects of conditions falling within the scope of the Chiropractic Practice Act.
2. Physical agents of electrotherapy, including physiotherapy as defined by the National Board of Chiropractic Examiners Elective Examination Guidelines, include but are not limited to:
 - a. Heat.
 - b. Cold.
 - c. Sound.
 - d. Air.
 - e. Electricity.
 - f. Light.

- g. Compression.
 - h. Vibration.
 - i. Topical, homeopathic and/or herbal agents (e.g., analgesic, anti-inflammatory, healing, astringent, antiseptic, etc.) if used in conjunction with an agent listed in (a) through (h) above.
 - j. Cold or soft laser for uses approved by the Food and Drug Administration.
3. Physical Medicine and Rehabilitation (PMR) includes physical remedial measures as referenced in Section 12-33-102 (1), C.R.S. PMR includes, but is not limited to:
- a. Tests (physical, functional, mechanical, computerized).
 - b. Exercise therapeutics (instruction, passive, active, resistive, cardiovascular).
 - c. Work hardening.
 - d. Gait/locomotion training.
 - e. Manual therapies (massage, mobilization, manipulation).
 - f. Traction.
 - g. Postural drainage.
 - h. Biofeedback (when done to facilitate chiropractic care).
 - i. Functional activities with or without assistive devices.
 - j. Postural re-education.
 - k. Physiotherapy - (as defined above)
 - l. Intramuscular stimulation/Dry Needling
 - 1. Dry needling is a physical intervention that uses a filiform needle to stimulate trigger points, diagnose and treat neuromuscular pain and functional movement deficits; is based on Western medical concepts; requires an examination and diagnosis, and treats specific anatomic entities selected according to physical signs. Dry needling does not include the stimulation of auricular or distal points.
 - 2. Dry needling as defined pursuant to this rule is within the scope of practice of chiropractic.
 - 3. A chiropractor must have an electrotherapy certification, knowledge, skill, ability and documented competency to perform an act that is within the chiropractor's scope of practice.
 - 4. To be deemed competent to perform dry needling a chiropractor holding electrotherapy certification and acupuncture certification must meet the following requirements:
 - a. Documented successful completion of a dry needling course of study. The course must meet the following requirements:
 - i. A minimum of twenty-four (24) hours of face-to-face IMS/dry needling course study; online study is not considered appropriate

training.

- ii. As a licensed chiropractor using acupuncture in your practice for two (2) years prior to using the dry needling technique.
5. To be deemed competent to perform dry needling a chiropractor with electrotherapy certification but without acupuncture certification must meet the following requirements:
- a. Documented successful completion of a dry needling course of study. The course must meet the following requirements:
 - i. A minimum of forty-six (46) hours of face-to-face IMS/dry needling course study; online study is not considered appropriate training.
 - ii. Two (2) years of practice as a licensed chiropractor prior to using the dry needling technique.

~~6. A provider of a dry needling course of study must meet the educational and clinical prerequisites as defined in Rules 4 (1) (a) and (b) or Rules 5 (1) (a) and (b) and demonstrate a minimum of two (2) years of dry needling practice techniques. The provider is not required to be a chiropractor.~~

7. A chiropractor performing dry needling in his/her practice must have written informed consent for each patient where this technique is used. The patient must sign and receive a copy of the informed consent form. The consent form must, at a minimum, clearly state the following information:

a. Risks and benefits of dry needling

8. When dry needling is performed this must be clearly documented in the procedure notes and must indicate how the patient tolerated the technique as well as the outcome after the procedure.
9. Dry needling shall not be delegated and must be directly performed by a qualified, licensed chiropractor with electrotherapy certification who meets the standards in this rule.
10. Dry needling must be performed in a manner consistent with generally accepted standard of practice, including clean needle techniques, and standards of the center for communicable diseases.
11. The chiropractor must be able to supply written documentation, upon request by the Board, which substantiates appropriate training as required by this rule. Failure to provide written documentation is a violation of this rule, and is prima facie evidence that the chiropractor is not competent and not permitted to perform dry needling.
12. This rule is intended to regulate and clarify the scope of practice for chiropractors.

B. Patient assessment may include, but is not limited to the following:

1. Physical examination.
2. Neurologic testing (central nervous system, peripheral nervous system, motor, sensory, cranial nerves, long tracts signs, pathological reflexes).
3. Orthopedic testing (provocative/ functional testing).
4. Chiropractic testing.

5. Range of motion examination.
6. Strength testing (manual, mechanical, computerized).
7. Postural examination.
8. Gait/movement analysis.
9. Activities of daily living.
10. Psychometric questionnaires.
11. Nocioception.
12. Cardiac, pulmonary, and vascular examination.
13. Fitness examination.
14. Work site assessment.
15. Home assessment.
16. Photosensitivity testing.
17. Impairment or disability ratings.
18. Functional capacity evaluation.

Rule 7 Scope of Practice

- A. Practices that are not within the scope of chiropractic practice and invoke the duty to refer provision in Section 12-33-117 (1)(bb), C.R.S., include, but are not limited to:
 1. Treatment of the disease cancer. This does not preclude screening and diagnostic procedures for the prevention and early detection of cancer or the chiropractic treatment of other concomitant conditions that the patient may have. In addition, a qualified chiropractor may collaboratively treat cancer in conjunction with, but not replacing, drugs, surgery, or chemotherapy.
 2. Obstetrics.
 3. Surgery.
 4. Administration of anesthetics, with the exception of topical or over-the-counter anesthetics.
 5. Prescription of drugs not referenced in Rule 7 C.
 6. Hypnosis unless used as a procedure to make the adjustment or manipulation more effective and unless the practitioner presents evidence to the Board of having obtained education in hypnosis from an accredited college or Board approved program.
- B. A chiropractor must have the knowledge, skill, ability, and documented competency to perform an act that is within the chiropractic scope of practice. Procedures with specific clinical, didactic requirements and qualifications include, but are not limited to:
 1. Paraspinal Surface Electromyography
 - a. Ten (10) hours of initial training with demonstrated competency.

- b. Procedures may be delegated to a qualified technician and must be supervised and interpreted by an on-site qualified and licensed doctor of chiropractic.
 - c. Procedures must be performed in a manner consistent with generally accepted parameters, including any relevant standards of the Center for Communicable Diseases and meet safe and professional standards.
 - 2. Surface Electromyography excluding paraspinal, Nerve Conduction Velocity (NCV) and Needle Electromyography
 - a. One hundred and twenty (120) hours of initial clinical and didactic training with demonstrated competency in electromyography (paraspinal surface electromyography excluded).
 - b. Procedures may not be delegated to a technician and must be directly performed by a qualified and licensed doctor of chiropractic.
 - c. Procedures must be performed in a manner consistent with generally accepted parameters, including clean needle techniques, and standards of the Center for Communicable Diseases and meet safe and professional standards.
 - 3. Electrocardiography (EKG/ECG)
 - a. One hundred and twenty (120) hours of initial and related clinical with didactic training and demonstrated competency in cardiac medicine.
 - b. Procedures may not be delegated to a technician and must be directly performed by a qualified and licensed doctor of chiropractic.
 - c. Procedures must be performed in a manner consistent with generally accepted parameters, including any relevant standards of the Center for Communicable Diseases and meet safe and professional standards.
 - 4. Manipulation Under Anesthesia (MUA)
 - a. Thirty-six (36) hours of didactic and clinical training, successful completion of a competency examination, and nationally recognized certification.
 - b. Professional liability insurance coverage to specifically include MUA.
 - c. Procedures must be performed in a manner consistent with generally accepted parameters and standards of practice.
 - d. Procedures shall be performed at either an ambulatory surgical center or outpatient hospital facility.
 - e. The role of the chiropractor shall be limited to the scope of chiropractic practice as defined in Section 12-33-102(1), C.R.S.
- C. Nutritional Remedial Measures as referenced in Section 12-33-102(1), C.R.S., means that a doctor of chiropractic may administer, prescribe, recommend, compound, sell and distribute homeopathic and botanical medicines, vitamins, minerals, phytonutrients, antioxidants, enzymes, glandular extracts, non-prescription drugs, durable and non-durable medical goods and devices.

Administer means by Oral Topical Inhalation and Injection.

All chiropractors that choose to administer homeopathic and botanical medicines, vitamins, and minerals, phytonutrients, antioxidants, enzymes and glandular extracts by means of injectable procedures shall be certified by the board. Applications for certification in Injectables shall be made in a manner approved by the Board. Certification in Injectables by

the State Board of Chiropractic Examiners may be obtained by complying with the following:

1. Successfully complete a minimum of a combined total of 24 hours of theoretical study and supervised clinical instruction obtained from a college of chiropractic approved by the Council on Chiropractic Education (CCE) or the equivalent hours of study and clinical supervision obtained from an instructor recognized by the postgraduate facility of a chiropractic institution or approved by CCE to teach this course and
2. Passing a nationally recognized Injectable certification examination recognized by a CCE accredited chiropractic college.

Rule 8 Continuing Education

- ~~A. The Board will accept continuing education (CE) that falls within these regulations and relies upon each individual chiropractor's integrity in complying with this requirement.~~
- ~~B. Continuing chiropractic education program sponsors need not apply for nor expect to receive prior Board approval for a formal continuing chiropractic education program. The number of credit hours may be determined by counting the credit hours of instruction and rounding to the nearest quarter hour. The Board relies upon the integrity of the program sponsors to present continuing chiropractic education that constitutes a meritorious learning experience and complies with §§ 12-33-116 and 12-33-111, C.R.S. If the Board discovers that a sponsor has falsified information regarding the course, the sponsor may be required to have all future courses pre-approved.~~
- ~~C. Each chiropractor with an active license in Colorado is required to attend 15 hours per year of scientific clinics, forums, or chiropractic educational study consisting of subjects basic to the field of the healing arts as set forth in § 12-33-111, C.R.S.~~
- ~~D. At least four of the 30 required hours per renewal period shall be in recordkeeping and documentation.~~
- ~~E. CE hours may only be applied to one renewal period.~~
- ~~F. Each licensed Colorado chiropractor is required to maintain "Health Provider Level Cardiopulmonary Resuscitation" (CPR) as is necessary to keep current and maintain valid certification, as provided by the American Heart Association or other organizations deemed equivalent by the Board. All current licensees must maintain proof of such certification. The hours necessary to maintain this CPR certification may be used towards the CE hours required.~~
- ~~G. The CE requirements for the licensee's first renewal period is ARE as follows:~~
- ~~1. Licensed less than 12 months — no CE required to renew license.~~
 - ~~2. Licensed more than 12 months — 15 hours of CE required to renew license, two of which must be in recordkeeping or documentation.~~
- ~~H. Course content is limited to scientific subject matter basic to the field of the healing arts and includes, but is not limited to: anatomy, embryology, histology, physiology, psychology, biochemistry, pathology, bacteriology, toxicology, pharmacology, public health, hygiene, sanitation, first aid, diagnosis (including but not limited to physical, laboratory and all other recognized diagnostic procedures), x-rays, obstetrics and gynecology, and principles and practice of chiropractic including but not limited to professional boundary issues, ethics, and adjustive technique.~~
- ~~I. Offerings in the promotion of practice building or office management shall not be approved for CE.~~
- ~~J. Offerings dealing with practices designated as untrue, misleading, and deceptive pursuant to~~

~~Rule 14 and offerings dealing with practices outside the chiropractic scope of practice shall not be approved for CE.~~

~~K. Instructors must be qualified, as determined by the Board, to teach the course outlined.~~

~~L. Up to ten hours per renewal period of CE credit may be obtained by distance learning including, but not limited to, video and audio tapes or internet education programs. To obtain CE credit for distance learning, successful completion of a proficiency testing component is required.~~

~~M. The Board may conduct a random compliance audit of renewal applicants to verify course content, instructor qualifications, and number of hours completed. If the Board determines that the applicant has not obtained CE that falls within the subject matter defined in § 12-33-111, C.R.S. or the applicant fails to submit proof of CE satisfactory to the Board, the Board may consider disciplinary action for failure to comply with § 12-33-116, C.R.S.~~

~~N. The licensee must maintain in their own file, the dates of the program, certificate of attendance that includes hours in attendance, synopsis of the course content, identity of the course sponsor, and the qualifications of the instructor.~~

The purpose of this rule is to establish the continuing education requirements for a chiropractor as required in Section 12-33-116, C.R.S.

A. Every chiropractor with an active license shall complete a minimum educational requirement of 15 hours of continuing education (CE) annually. The requirement of 15 CE hours annually runs from November 1st through October 31st of each year. Because the renewal period is every two years, at renewal time every chiropractor will attest to the 15 CE hours during each of the two years in the renewal period.

B. Inactive licensees need not complete CE requirements. Upon reactivation of a chiropractic license, CE requirements must be met as outlined in Rule 1.

C. Continuing education must have as its primary objective the increase of professional competence of licensed chiropractors, and include scientific clinics, forums, or chiropractic educational study consisting of subjects basic to the field of the healing arts. A licensee is responsible for ensuring that CE courses comply with the requirements and 12-33-116, C.R.S. The Board does not pre-approve CE courses, curriculum or programs.

D. The number of credit hours may be determined by counting the credit hours of instruction and rounding to the nearest quarter hour, except as otherwise indicated below for college/university courses. The CE conversion table for college/university courses which meet the CE requirements in this Rule is as follows:

1 semester hour = 15 CE credit hours

1 quarter hour = 8.5 CE credit hours

E. Program sponsors shall present continuing chiropractic education that constitutes a meritorious learning experience and complies with §§ 12-33-116 C.R.S. If a sponsor falsified information regarding the course, the Board may require the sponsor's future courses be pre-approved.

F. Any excess CE hours above the minimum educational requirement in any applicable compliance period may not be "carried over" in order to meet the minimum educational requirements in any succeeding compliance period. A licensee shall only count CE hours completed for the renewal period.

G. Each actively licensed Colorado chiropractor is required to maintain "Health Provider Level Cardiopulmonary Resuscitation" (CPR), as provided by the American Heart Association. All active

licensees must maintain proof of current and valid CPR certification. The hours necessary to maintain this CPR certification may be used towards the CE hours required by this Rule.

- H. If a licensee has been licensed for a period of twelve (12) months or less before the first license renewal period, the licensee is not required to submit CE for license renewal. If a licensee has been licensed for longer than twelve (12) months before the first license renewal period, the licensee is required to submit one-half (1/2) of the CE credits required for a full license renewal period.
- I. Courses in the promotion of practice building or office management do not satisfy the requirements of this Rule. Courses in practices which are outside the chiropractic scope of practice do not satisfy the requirements of this Rule. At least four of the 30 required hours per renewal period shall be in recordkeeping and documentation.
- J. For every license renewal period, up to ten (10) CE hours may be obtained through distance learning programs. These may include, but are not limited to, internet education programs, CDs, DVDs, video and audio tapes. To obtain CE credit for distance learning, successful completion of a proficiency testing component is required.
- K. Licensees must maintain in their own files the following information: (1) the dates of the CE program; (2) the certificate of attendance, including the hours in attendance; (3) a synopsis of the course content; and (4) the identity of the course sponsor. These records must be kept for a period of four years.
- L. The Board may conduct a random compliance audit of renewal applicants to verify CE course content and number of hours completed. Licensees must comply with the audit process requested by the Board. If a licensee does not comply, disciplinary action for failure to comply with § 12-33-117(f), C.R.S. may be considered by the Board.
- M. If any licensed chiropractor is unable to comply with this section on account of dire emergency and for good cause shown, the Board may waive the provisions of § 12-33-116, C.R.S. A licensee requesting waiver must send a written petition to the Board, outlining the reasons for the request. The licensee will be notified of the Board's decision in writing.

Rule 9 REPEALED Effective 12/01/2009

Rule 10 Electrotherapy/Physiotherapy

- A. Electrotherapy/Physiotherapy certification is required prior to any licensee practicing electrotherapy/physiotherapy. Physiotherapy as used in these rules is defined by the National Board of Chiropractic Examiners' Elective Examination Guidelines.
- B. To receive certification, the chiropractic applicant shall present evidence of the following:
 - 1. Successful completion of a course of not less than one hundred twenty (120) classroom hours in the subject taught by a school having status with the Council on Chiropractic Education or a Board approved program; or
 - 2. Passing a nationally recognized examination.
- C. A clinical component must be present in the coursework to teach and demonstrate competency in the clinical applications of electrotherapy/physiotherapy.

Rule 11 Use of Credentials

- A. Only those titles authorized by statute may be used.
- B. Post-graduate degrees received from an institution accredited by the Council of Chiropractic Education or diplomat status may be used in conjunction with those titles authorized by statute.

Rule 12 Misleading, Deceptive, False, or Unethical Advertising

Doctors of chiropractic should take special care to advertise truthfully and to avoid exploitation of their position of trust. Because of the potential consequences of misinformation regarding healthcare and the importance of the interests affected by the choice of a doctor of chiropractic, chiropractors must avoid misleading the public. Chiropractors are responsible for the contents of their own advertisements and should review such advertisements to assure adherence to ethical standards.

- A. The following types of advertising constitute misleading, deceptive, false, or unethical advertising pursuant to § 12-33-117(1)(i), (p) and (3)(a):
 - 1. The misleading use of a claim regarding board certification or of an unearned or non-health degree in any advertisement that is likely to cause confusion or misunderstanding as to the credentials, education, or licensure of a healthcare professional;
 - 2. Advertising that has the effect of intimidating or exerting undue pressure;
 - 3. Advertising that uses unsubstantiated testimonials;
 - 4. Advertising that creates an unjustified expectation or guarantees a cure;
 - 5. Advertising that offers gratuitous services or discounts, the purpose of which is to deceive the public;
 - 6. Advertising of free or discounted x-ray services; or
 - 7. Advertising that is otherwise misleading, deceptive, or false.
 - 8. It must be clear to the public that the advertisement is from a doctor of chiropractic.
- B. At the time any type of advertisement is placed, the chiropractor must possess information that would substantiate the truthfulness of any assertion, omission, or claim set forth in the advertisement.

Rule 13 Advertisement of Free or Discounted Services

- A. Advertisement by licensee of free or discounted services shall be deemed false or misleading pursuant to Section 12-33-117 (3)(a), C.R.S., unless:
 - 1. Such advertising claims are truthful and detailed as to specific services provided for free or at a discounted price; and
 - 2. Prior to the performance of the free or discounted evaluation and the consultation regarding that evaluation, the licensee shall provide the patient with a legible typed or computer generated written prepaid treatment contract describing what services are being provided free or at a discounted price. This prepaid treatment contract description shall also indicate the price of other services which may be offered for a fee, in conjunction with the free service, but that are not included in the offer for free or discounted services. The licensee shall maintain a signed written prepaid treatment contract typed or computer generated copy in the patient's file.
- B. No separate charge shall be made for the professional evaluation of the free or discounted diagnostic tests whether such professional evaluation is made at the time of the initial office visit or at a later date.
- C. The free service or reduced fee differential shall not be billed to a third-party payer for

reimbursement.

- D. The patient has the right to cancel the purchase of the written prepaid treatment contract for any discounted services for any reason at any time prior to 12:00 midnight of the 30th day after the date of signing the written prepaid treatment contract by providing the doctor of chiropractic written notice of cancellation. The doctor of chiropractic has the right to retain an itemized prorated amount that reflects those services that were rendered at the discounted rate charged in the written prepaid treatment contract. The written prepaid treatment contract shall also include an itemized rate schedule - prorated by visit.

Rule 14 Untrue, Deceptive or Misleading Practices Regarding Unproven and/or Unnecessary Services

Practices which are untrue, deceptive or misleading pursuant to § 12-33-107(1)(h), C.R.S. include but are not limited to the use of promotional materials which have the effect of enticing patients to a provider's office for unproven and/or unnecessary services as listed in Rule 15, unless the advertisement has an adequate disclaimer.

Rule 15 Procedures which are Unproven and Require Informed Consent

- A. When an unproven procedure is provided, the chiropractor must obtain the written informed consent of the patient or the patient's legal representative.
- B. The following criteria will be used to determine, by a preponderance of evidence, whether a procedure is unproven:
1. Whether the procedure is taught as part of the regular curriculum of at least one college of chiropractic approved by the Council on Chiropractic Education.
 2. Whether the procedure is based upon anatomical, physiological and/or structural relationships which can be verified through standard diagnostic procedures.
 3. Whether the procedure has been supported by a body of evidence using standard scientific research methodology and whether the procedure has had periodic review by the Board based on current research as evidenced by:
 - a. Publication in a peer reviewed professional or scientific journal (e.g. Spine, Journal of Manipulative and Physiological Therapeutics (JMPT), Bone and Joint Surgery).
 - b. Supportive preliminary results in a peer review journal.
 - c. Investigation in progress, sponsored by an agency independent of the procedure's proponents and/or developers (e.g., Federation of Chiropractic Education and Research).
 - d. Hypothesis clearly derived from supportive literature published in peer reviewed journals or texts.
- C. Informed consent shall consist of the following: the patient shall be notified in writing that the procedure has been designated "unproven" by the Board and that its effectiveness has not been demonstrated.
- D. The patient shall be required to sign a written consent form before a licensee may use a procedure designated "unproven". The consent form shall indicate conspicuously that the procedure anticipated for use has been designated "unproven" by the Colorado State Board of Chiropractic Examiners and that permission is granted by the patient to proceed. A copy of this signed consent form shall be given to the patient for the patient's retention.
- E. Procedures, protocol, analysis or methodology which are unproven and require informed consent include, but are not limited to:

1. Soft or cold laser for uses not approved by the Food and Drug Administration.
2. Reams Procedure.
3. Iridology.
4. Reflexology.
5. Contact reflex analysis.
6. Diagnostic spinal ultrasound for the use of diagnosing paraspinal muscle inflammation, posterior joint swelling, nerve root inflammation, or other spinal pathology in the adult population.
7. Any practice system, analysis, method, or protocol which does not include the complete assessment, evaluation, or diagnosis of the condition to be treated before beginning treatment of the patient.
8. Any practice system, analysis, method or protocol, which relies upon diagnostic methods that are not generally recognized or accepted within the profession or which do not have scientific validity.
9. Any practice system, analysis, method, or protocol, which is represented as a means of attaining spiritual growth, comfort, or well-being.

Rule 16 Declaratory Orders

- A. Any person licensed pursuant to Article 33, Title 12, C.R.S., may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provisions or of any rule or order of the Board.
- B. The Board will determine, in its discretion and without notice to petitioner, whether to rule upon any such petition. If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the petitioner of its action and state the reasons for such action.
- C. In determining whether to rule upon a petition filed pursuant to this rule, the Board will consider the following matters, among others:
 1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Board.
 2. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more of the petitioners.
 3. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court but not involving any petitioner.
 4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
 5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, C.R.C.P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.
- D. Any petition filed pursuant to this rule shall set forth the following:
 1. The name and address of the petitioner and whether the petitioner is licensed pursuant to

Article 33, Title 12, C.R.S.

2. The statute, rule or order to which the petition relates.
 3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.
- E. If the Board determines that it will rule on the petition, the following procedures shall apply:
1. The Board may rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - a. Any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.
 - b. The Board may order the petitioner to file a written brief, memorandum or statement of position.
 - c. The Board may set the petition, upon due notice to the petitioner, for a non-evidentiary hearing.
 - d. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.
 - e. The Board may request the petitioner to submit additional facts, in writing. In such event, such additional facts will be considered as an amendment to the petition.
 - f. The Board may take administrative notice of facts pursuant to the Administrative Procedure Act, C.R.S., 24-4-105 (8), and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.
 - g. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.
 2. The Board may, in its discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty, and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Board to consider.
- F. The parties to any proceeding pursuant to this rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as required by Paragraph D of this rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Board.
- G. Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to C.R.S. 24-4-106.

Rule 17 Acupuncture

- A. All chiropractors who choose to practice acupuncture as an adjunct to their regular practice of chiropractic and who do not already hold a valid current acupuncture license issued by the Director of the Colorado Division of Registrations, must be certified by the Board. Applications for

certification in acupuncture shall be made in a manner approved by the Board. Certification in acupuncture by the State Board of Chiropractic Examiners may be obtained by complying with the following:

1. Completing a minimum of a combined total of 100 hours of theoretical study and supervised clinical instruction obtained from a school of chiropractic approved by the Council on Chiropractic Education or the equivalent hours of study and clinical supervision obtained from an instructor; and
 2. Passing a nationally recognized acupuncture examination.
- B. The use of needle auriculotherapy or needle meridian therapy is exclusively limited to those licensees certified in acupuncture.

Rule 18 Providing Patient Records

A licensee shall provide patient records pursuant to § 25-1-802 (1), C.R.S. Failure to do so may be deemed to be in violation of § 12-33-117, C.R.S.

Rule 19 Safety Training for Unlicensed Chiropractic Personnel

- A. As provided for in § 12-33-202, C.R.S., the Board hereby establishes standards for unlicensed chiropractic personnel to operate a machine source of ionizing radiation (x-ray machine) or to administer such radiation to a patient for diagnostic purposes.
- B. In order to qualify to operate an x-ray machine or to administer such radiation to a patient, unlicensed chiropractic personnel must successfully complete a Board approved course that satisfies the following requirements:
1. Basic radiological guidelines - 5 hours.
 2. Operator and patient safety - 5 hours.
 3. Practical and clinical experience in radiographic production, beam imaging formation, density, contrast, filtration, collimation, processing techniques, chart selection, positioning, examinations, high speed film selection, film marking, film storage, and darkroom procedures - 14 hours.
- C. Any licensed chiropractor employing unlicensed chiropractic personnel to operate an x-ray machine or to administer such radiation to a patient shall maintain written verification of successful completion and training which must include:
1. A certificate with the name and authorized signature of the agency/educational institution or individual which provided the training;
 2. Name and signature of the unlicensed person who successfully completed the education and training;
 3. Verification of completion of hours specified in subsection B;
 4. Date of completion; and
 5. The original of the written verification shall be maintained in the personnel file and a copy shall be provided to the unlicensed person upon successful completion of the education and training.
- D. No chiropractor shall allow any unlicensed person to operate an x-ray machine or to administer such radiation to any patient unless such unlicensed person has met the standards set forth herein. Any chiropractor who fails to comply with the provision of this rule may be subject to disciplinary action by the Board as provided for in § 12-33-117, C.R.S.

- E. As provided for in § 12-33-128, C.R.S., the Board hereby establishes standards for unlicensed chiropractic assistants to deliver chiropractic services. Any person, under the direct supervision of a chiropractor, assisting a chiropractor in the delivery of chiropractic services is required to have the requisite skills and training in those areas which they are assisting. Appropriate training may be determined by the supervising chiropractor. The supervising chiropractor is responsible for:
1. ensuring chiropractic assistants possess the requisite skills and training to assist in the delivery of the chiropractic services;
 2. all actions of the chiropractic assistants and may be subject to discipline by the Board as a result of those actions as provided for in § 12-33-117, C.R.S.; and
 3. maintaining records of chiropractic assistant's training.

Rule 20 Termination of Practice upon Suspension, Relinquishment or Revocation

- A. Upon suspension of license, the licensee shall immediately stop the practice of chiropractic and shall tender his/her license to practice chiropractic to the Board within twenty-four (24) hours from the effective date of the suspension. The licensee shall notify all patients that the licensee has ceased the practice of chiropractic and must allow patients to make arrangements for the transfer of patient records. The licensee shall make the patient records or copies of the patient records available to a practitioner designated by the patient, or if the licensee's practice is sold, to the chiropractor who purchases the practice. Written notice of the termination of practice must be made to all patients of the practice to the patient's last known address, or by legal notice by publication.
- B. Upon revocation and relinquishment of license, the licensee shall immediately stop the practice of chiropractic and shall tender his/her license to practice chiropractic to the Board within twenty-four (24) hours from the effective date of revocation or relinquishment. The licensee shall notify all patients within 30 calendar days that the licensee has ceased the practice of chiropractic and that the patient must make arrangements for the transfer of patient records. The licensee shall make the patient records or copies of the patient records available to the patient, to a practitioner designated by the patient, or if the licensee's practice is sold, to the chiropractor who purchases the practice. The transfer of patient records must be completed within 60 days. These terms may be set forth in the revocation or relinquishment order. Written notice of the termination of practice must be made to all patients of the practice to the patient's last known address, or by legal notice by publication.
- C. The practitioner who is suspended, relinquished, or revoked cannot be on the premises of the office to observe, monitor, or participate in any way in care given. A practitioner may derive no income from the practice either directly or indirectly during the period of suspension, except for treatment provided before the beginning of the suspension.
- D. Any request to deviate from this rule must be set forth in writing to the Board. The board may review the request and may, upon good cause shown, issue an amended termination order. The decision to amend the terms for the termination of practice is final with the Board. A failure to comply with the provisions of the termination order may be grounds for disciplinary action for violation of a Board Order.

Rule 21 Animals in the Office

If a chiropractor allows animals in his/her office, the chiropractor shall be responsible for their proper care and feeding, shall have them vaccinated and licensed, as appropriate, and shall maintain compliance at all times with the sanitation requirements referenced in § 12-33-117(1)(g), C.R.S.

Rule 22 Record Keeping Requirements

Documentation of the patient's health history, presenting complaint(s), progression of care, diagnosis, prognosis and treatment plan must be reflected in the record keeping and written reports of the patient file. Records are required to be contemporaneous, legible, utilize standard medical terminology or abbreviations, contain adequate identification of the patient, contain adequate identification of the

provider of service and indicate the date the service was performed. All professional services rendered during each patient encounter should be documented. Any addition or correction to the patient file after the final form shall be signed and dated by the person making the addition or correction. The following minimum components must be documented within the patient file:

A. Initial Patient Visit:

1. History:

- a. Chief complaint(s) described in terms of onset, provocative, palliative, quality, radiation, setting, and timing.
- b. Surgical, hospitalization, past/recent illness, trauma, family, social, past/recent system review, and past/recent allergies.
- c. Non-prescription, prescription, botanical, homeopathic medicines, and vitamin supplements.
- d. A reasonable effort should be made to obtain and review pertinent records as clinically indicated from other health care providers, imaging facilities, or laboratories.

2. Examination:

- a. Vital signs as clinically indicated.
- b. Document examinations or tests ordered or performed and the results of each as necessitated by the patient's clinical presentation consistent with common healthcare practices.
- c. Document examinations of neuromusculoskeletal conditions using a format of inspection, palpation, neurological testing, range of motion, and orthopedic testing.
- d. Document prognosis and/or outcome expectations.
- e. When clinically indicated, treatment options/alternatives should be documented. f.

When referring to another healthcare provider, correspondence may be provided for patient care coordination.

B. Established Patient Visit:

1. Subjective Complaint: The patient's description of complaints should be recorded at each visit indicating improvement, worsening, or no change.
2. Objective Findings: Changes in the clinical signs of a condition should be described by the chiropractor at each visit.
3. Assessment or Diagnosis: It is not necessary to update this category at each visit. However, periodic clinical re-evaluations should be performed, specifically documented and recorded in the daily entries. Changes in the patient's diagnosis should be recorded in the daily entries when clinically indicated. Prognosis and/or outcome expectations should be updated periodically consistent with the clinical presentation.
4. Plan of Management: A provisional plan of management should be recorded initially and further entries should be made as this plan is modified and/or as a patient enters a new phase of treatment or has a diagnosis change. Changes in procedures should be documented and based on clinical assessment and reasoning.
5. Procedures: Daily recording of procedures performed should include a description of type

and location of procedure. Units of time should be recorded when appropriate.

- C. Ancillary Documentation:
 - 1. Correspondence sent and received.
 - 2. Specialty reports (diagnostic imaging, laboratory results, nerve conduction studies, etc.).
 - 3. Communications (telephone conversations, dialogue with patient guardian or other healthcare providers).
- D. Patient clinical records shall be maintained for a minimum of seven (7) years after the last date of treatment or examination, or at least two years after the patient reaches the age of eighteen, whichever occurs later. If patient records are maintained electronically, then a back-up and data recovery system must be in place.
- E. When the destruction cycle is imminent, written notice to the patient's last known address, or notice by publication, must be made sixty (60) days prior to destruction allowing a thirty (30) day period wherein the patient may claim his/her records. When a patient claims such records, the records must be provided to the patient, or legal guardian, at no charge; however, recovery of appropriate postage and handling costs is permitted.
- F. Records shall be destroyed in a manner that totally obliterates all information contained in the record such as by incinerating or shredding.
- G. Records may not be withheld for outstanding/past due professional fees. A reasonable fee for copying records may be assessed to the requesting party.

Rule 23 Solicitation of Accident Victims

Any licensee, either directly or through an agent, engaging in permissible solicitation under § 12-29.1-102(2), C.R.S. shall fully disclose in writing to the patient, prior to establishing a doctor-patient relationship, the nature of the solicitation as well as the licensee's relationship with other service providers.

Rule 24 General Licensing Provisions

- A. The following provisions shall be in effect relating to change of name and address.
 - 1. The licensee shall submit legal evidence of name change by court record or marriage certificate in order for such change to be made on Board records.
 - 2. The licensee shall submit any change of address within 30 days of such change. The change of address may be submitted in writing, by fax, or electronically. Telephone notification will not be accepted. Failure to notify the Board of the above changes within the guidelines outlined above may result in Board action against the licensee pursuant to § 12-33-114.5, C.R.S.
 - 3. Any notification by the Board to licensees, required or permitted, under § 12-33-101 et seq., C.R.S. or the Colorado Administrative Procedures Act shall be addressed to the last address provided formally to the Board by the licensee and any such mailing shall be deemed proper service on said licensee.
- B. An application for a license or authority not completed within one year of the date of the original application shall be deemed null and void. Such applicant shall be required to complete the entire application process again including payment of the application fee.
- C. Applications that have not been completed within one year of the date of the original application will be purged and destroyed.

Rule 25 Chiropractor Patient Relationships

At no time shall a chiropractor use his/her influence or position of authority as a means to initiate or promulgate a sexual act or relationship with a patient. Sexually intimate acts and relationships that exist between life-partners or in a marriage do not preclude the doctor of chiropractic from providing the partner or spouse with chiropractic healthcare. The Board generally does not interpret § 12-33-117(1)(aa), C.R.S. to include intimate relationships that exist prior to the initiation of treatment.

~~Rule 26 Sanitary and Hygienic Remedial Measures~~

~~Failure to utilize generally accepted standards of sanitary, hygienic, and public health measures may violate section 12-33-102(1), C.R.S., and be subject to disciplinary action under section 12-33-117(b) & (g), C.R.S.~~

Rule 27 Exceptions and Board's Review of Initial Decisions [Repealed].

Rule 28 Licensure & Certification Requirements: Credit for Military Experience

The purpose of this rule is to outline the conditions and procedures governing the evaluation of an applicant's military training and experience under § 24-34-102(8.5), C.R.S.

- A. An applicant for chiropractic licensure may submit education, training, or experience acquired during military service for the Board's consideration in determining eligibility for licensure or certification.
- B. It is the applicant's responsibility to provide timely and complete information for the Board's review.
- C. In order to be considered acceptable toward meeting the requirements for licensure or certification, such education, training, or experience must be equivalent to the qualifications and requirements otherwise applicable at the time the application is submitted to the Board.
- D. The Board, in its sole discretion and on a case by case basis, will determine the equivalence and applicability of the applicant's military education, training, or experience toward the requirements for licensure or certification.

Rule 29 Compliance with Board Investigations

- A. When the Board requests a patient's complete patient record, pursuant to subpoena, the patient chart or record shall include all documentation for that specific patient as required by Rule 22.
- B. The Colorado Department of Regulatory Agencies' (DORA) personnel assigned to the Board of Chiropractic Examiners have the authority to carry out the Board's Orders. Chiropractors must fully cooperate with the requests of DORA personnel.

Editor's Notes

History

Rules 3, 7, 26 eff. 05/30/2007.

Rules 10, 22 eff. 07/30/2007.

Rules 8; 9; 10; 11; 12; 13; 14; 15 eff. 01/30/2008.

Rules 6, 7, 10, 11, 13, 17, 27 eff. 07/30/2009.

Rules 1(D); 2; 4; 8(C); 11; 12; 17(A) eff. 12/01/ 2009. Rules 5; 9 Repealed eff. 12/01/2009.

Rules 8, 19 eff. 03/17/2010.

Rule 27 Repealed eff. 03/17/2011.