

(e) A Board licensee shall not engage directly or indirectly in uninvited, in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence. This subsection shall not prohibit the offering of services by a Board licensee to any bona fide representative of prospective patients including, but not limited to, employers, labor union representatives, or insurance carriers.

(f) Advertising making reference to or setting forth a fee shall be limited to that which contains a fixed or a stated range of fees for a specifically described professional service or class of services. A licensee who advertises shall disclose

all the relevant variables and considerations which are ordinarily included in such a service so that the fees will not be misunderstood. In the absence of such a disclosure, the stated fees shall be presumed to include everything ordinarily required for such a service. No additional charges shall be made for an advertised service unless the advertisement includes the following disclaimer:

“Additional charges may be incurred for related services which may be required in individual cases.” The disclaimer cannot be used for treatment where related services are ordinarily required.

1. In any advertisement in which examination fees are set forth, the cost of x-rays shall also be set forth along with the disclosure: "if needed."

(g) Offers of discounts or fee reductions or free services shall indicate the advertiser's fixed or stated range of fees against which said discount is to be made and/or the value of the free services. Chiropractic services which are routinely or ordinarily performed free of charge, shall be clearly and conspicuously stated in the body of the advertisement as such.

1. The fixed or stated range of fees or value of free services shall mean and be established on the basis of the advertiser's most commonly charged fee for the stated service within the most recent 60 days prior to, or to be charged in the first 60 days following, the effective date of the advertisement.

2. Offers of across-the-board discounts shall include a representative list of services and the fixed or stated range of fees against which discounts are to be made for these services. The list shall include a sampling of the advertiser's most frequently performed services.

i. "Across-the-board discounts" shall mean the offer of a specified discount on an undefined class of services or the offer of a specified discount to a defined class of patients. For example, "15% discount during April on all chiropractic services" or "15% discount to senior citizens on all chiropractic services."

ii. Example of Representative List of Services:

	Regular Fee	Discount Fee
Consultation	\$ _____	\$ _____
Examination	_____	_____
Complete X-Rays	_____	_____
Physical Modality	_____	_____

iii. The effective period during which a fee or discount shall remain in effect shall be set forth on the face of the advertisement. In the absence of such disclosure, the effective period shall be deemed to be 30 days from the date of the advertisement's initial publication.

3. Except as set forth in (g)4 below, a licensee shall not charge any patient responding to an advertisement offering free or reduced fee services for any service rendered during a period of 24 hours from the time the advertised free or reduced fee service was rendered.

4. In the event a patient responding to an advertisement offering free or reduced fee services is in need of services other than those advertised as free or reduced, including extraordinary diagnostic services or emergency treatment services, the license shall not charge for any such services rendered during a period of 24 hours from the time the advertised free service was rendered unless

the practitioner obtains a signed waiver from the patient. The waiver shall be in the following form:

WAIVER

I have responded to an advertisement for a free examination or initial consultation with Dr. _____ D.C. Dr. _____ has explained to me that, pursuant to the regulations of the New Jersey Board of Chiropractic Examiners, he or she cannot charge for any service rendered during a period of 24 hours from the time he or she gives me the free examination or consultation examination or consultation unless there is an emergency need for services and I sign this waiver.

I have what I believe is a need for emergency treatment. Therefore, I agree to sign this waiver and to pay for the emergency treatment rendered within the 24-hour period. The amount Dr. _____ will charge me for treatment is \$_____.00. This figure was written on the line before I signed this waiver.

I have been given a copy of this waiver by Dr. _____ or someone from his or her office. If I have any concerns, I can write to the New Jersey State Board of Chiropractic Examiners at P.O. Box 45004, Newark, NJ 07101.

Patient's signature _____

Patient's name printed _____

Date _____

(h) An advertisement may contain either a lay or expert testimonial, provided that such testimonial is based upon personal knowledge or experience obtained from a provider relationship with the licensee or direct personal knowledge of the subject matter of the testimonial. A lay person's testimonial shall not attest to any technical matter beyond the testimonial giver's competence to comment upon. An expert testimonial shall be rendered only by an individual possessing specialized expertise sufficient to allow the rendering of a bona fide statement or opinion. An advertiser shall be able to substantiate any objective, verifiable statement of fact appearing in the testimonial.

(i) All licensee advertisements and public representations shall contain the name and address or telephone number of the licensee, professional service corporation or trade name under which the practice is conducted and shall also set forth the name of at least one licensee responsible for the chiropractic practice in the facility identified in the advertisement and/or public representation.

(j) A licensee shall be presumed to have approved and shall be personally responsible for the form and contents of an advertisement which contains the licensee's name, office address, or telephone number. A licensee who employs or allows another to employ for his or her benefit an intermediary source or other agent in the course of advertising shall

be personally responsible for the form and contents of said advertisement.

(k) A video or audio tape of every advertisement communicated by electronic media shall be retained by the licensee and made available for review upon request by the board or its designee.

(l) A licensee shall be required to keep a copy of all advertisements for a period of three years. All advertisements in the licensee's possession shall indicate the accurate date and place of publication.

New Rule, R.1991 d.440, effective August 19, 1991.

See: 23 N.J.R. 389(a), 23 N.J.R. 2513(b).

Amended by R.1996 d.344, effective August 5, 1996.

See: 28 N.J.R. 1592(a), 28 N.J.R. 3803(b).

Amended (g) and added (g)3, (g)4 and the waiver form.

13:44E-2.2 Patient records

(a) A contemporaneous, permanent patient record shall be prepared and maintained by a licensee for each person seeking chiropractic services, regardless of whether any treatment is actually rendered or whether any fee is charged. Licensees also shall maintain records relating to billings made to patients and third party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment or services rendered. Such records shall include, as a minimum:

1. The name, address, and date of birth of the patient and, if a minor, the name of the parent or guardian;
2. The patient complaint/reason for visit;
3. A pertinent case history;
4. Findings on appropriate examination;
5. Diagnosis/analysis;
6. A treatment plan;
7. Any orders for tests or consultations and the results thereof;
8. The dates of each patient visit;
9. A description of treatment or services rendered at each visit together with the name of the licensee or other person rendering the treatment;
10. Notation of significant changes in patient's condition and/or significant changes in treatment plan;
11. Periodic notation of patient status regardless of whether significant changes have occurred; and
12. An itemized statement of the amount billed and received on patient's account.

(b) Patient records, including all radiographs and other diagnostic findings, shall be maintained for at least seven years from the date of the last entry.

(c) All radiographs shall be labeled, as a minimum, with the following identifying information:

1. The name of patient;
2. The date of radiograph;
3. The age of patient and/or date of birth;
4. The name of facility; and
5. Right or left identity.

(d) Licensees shall provide access to patient records to the patient or the patient's authorized representative in accordance with the following:

1. Upon receipt of a written request from a patient or an authorized representative and within 30 days thereof, legible copies of the patient record including, if requested, copies of radiographs, shall be furnished to the patient or an authorized representative or another designated health care provider. To the extent that the record is illegible or prepared in a language other than English, the licensee shall provide a typed transcription and/or translation at no cost to the patient.

2. Except where the complete record is required by applicable law, the licensee may elect to provide a summary of the record, as long as that summary adequately reflects the patient's history and treatment, where the written request comes from an insurance carrier or its agent with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement.

3. A licensee shall provide copies of records in a timely manner to a patient or another designated health care provider where the patient's continued care is contingent upon their receipt. The licensee shall not refuse to provide a patient record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

4. If, in the exercise of professional judgment, a licensee has reason to believe that the patient may be harmed by release of the subjective information contained in the patient record or a summary thereof, the licensee may refuse to provide such information to the patient. That record or the summary, with an accompanying notice setting forth the reasons for the original refusal, shall nevertheless be provided upon request of and directly to:

- i. The patient's attorney;
- ii. Another licensed health care professional; or
- iii. The patient's health insurance carrier.

5. The licensee may charge a reasonable fee for the reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the cost of copying or transcription.

(e) Licensees shall maintain the confidentiality of patient records, except that:

1. The licensee shall release patient records as directed by a subpoena issued by the Board of Chiropractic Examiners or the Office of the Attorney General, or by a Demand for Statement in Writing under Oath, pursuant to N.J.S.A. 45:1-18. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the licensee, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensee shall also provide a translation. All radiographs and reports maintained by the licensee, including those prepared by other health care professionals also shall be provided.

2. The licensee, in the exercise of professional judgment and in the best interests of the patient (even absent the patient's request), may release pertinent information about the patient's treatment to another licensed health care professional who is providing or who has been asked to provide treatment to the patient, or whose expertise may assist the licensee in his or her rendition of professional services.

3. The licensee, in the exercise of professional judgment, who has a good faith belief that the patient because of a mental or physical condition may pose an imminent danger to himself or herself or to others, may release pertinent information to a law enforcement agency or other health care professional in order to minimize the threat of danger.

(f) Where a third party or entity has requested examination or an evaluation of a person for a purpose unrelated to treatment by the examiner and where a report of the examination is to be supplied to the third party, the licensee rendering those services shall prepare appropriate records and maintain their confidentiality, except to the extent provided by this section. The licensee's report to the third party relating to the patient shall be made part of the record. The licensee shall:

1. Assure that the scope of the report is consistent with the request, to avoid the unnecessary disclosure of diagnoses or personal information which is not pertinent;

2. Forward the report to the individual entity making the request and in accordance with the terms of the patient's authorization; if no specific individual is identified, the report should be marked "Confidential"; and

3. Should the examination disclose abnormalities or conditions not known to the patient, the licensee shall advise the patient to consult another health care professional for treatment.

(g) If a licensee ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months, the licensee or a designee shall:

1. Establish a procedure by which patients can obtain treatment records or acquiesce in the transfer of those records to another licensee or health care professional who is assuming the responsibilities of that practice;

2. If the practice is unattended by another licensee, publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee's practice, at least once each month for the first three months after the cessation;

3. File a notice of the established procedure for the retrieval of records with the Board of Chiropractic Examiners; and

4. Make reasonable efforts to directly notify any patient treated during the six months preceding the cessation in order to provide information concerning the established procedure for the retrieval of records.

New Rule, R.1991 d.441, effective August 19, 1991.

See: 23 N.J.R. 391(a), 23 N.J.R. 2515(a).

Amended by R.1995 d.349, effective July 3, 1995.

See: 26 N.J.R. 2866(a), 27 N.J.R. 2592(a).

13:44E-2.3 Sexual misconduct

(a) By this section, the State Board of Chiropractic Examiners is identifying for its licensees conduct which it shall deem to be violative of law.

(b) As used in this section, the following terms have the following meanings unless the context indicates otherwise:

1. "Licensee" means any person licensed to engage in the practice of chiropractic as regulated by the State Board of Chiropractic Examiners.

2. "Patient" means any person who is the recipient of a professional service rendered by a licensee for the purposes of diagnosis, treatment or a consultation relating to chiropractic treatment. "Patient" for purposes of this section also means a person who is the subject of professional examination even if the purpose of that examination is unrelated to treatment.

3. "Patient-physician relationship" means an association between a physician and patient wherein the licensee owes a continuing duty to the patient to be available to render professional services consistent with his or her chiropractic training and experience. The performance of any professional chiropractic service includes, but is not limited to, any consultation, examination, and treatment provided by a licensee in furtherance of chiropractic treatment or consultation.

4. "Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes, but is not limited

to, the imposition of a part of the licensee's body upon a part of the patient's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or patient's body into or near the genital, anal or other opening of the other person's body. "Sexual contact" does not include the touching of a patient's body which is necessary during the performance of a generally accepted and recognized chiropractic technique.

5. "Sexual harassment" means solicitation of any sexual act, physical advances, or verbal or nonverbal conduct that is sexual in nature, and which occurs in connection with a licensee's activities or role as a provider of chiropractic services, and that either: is unwelcome, offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. "Sexual harassment" may consist of a single extreme or severe act or of multiple acts and may include, but is not limited to, conduct of a licensee with a patient, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee.

6. "Spouse" means the husband, wife or fiancée of the licensee or an individual involved in a long-term committed relationship with the licensee.

i. For purposes of this section, a long-term committed relationship means a relationship which is at least six months in duration.

(c) A licensee shall not engage in sexual contact with a patient with whom he or she has a patient-physician relationship. The patient-physician relationship is considered ongoing for purposes of this section, unless:

1. Activity terminated, by way of written notice to the patient and documentation in the patient record; or
2. The last professional service was rendered more than three months ago.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-physician relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a patient, unless that discussion is related to legitimate patient needs. Such discussion shall not include disclosure by the licensee of his or her own intimate sexual relationships.

(f) A licensee shall provide privacy and examination conditions which prevent the exposure of the unclothed body of the patient unless necessary to the professional chiropractic services being rendered.

(g) A licensee shall not engage in sexual harassment in a professional setting while performing in a professional capacity.

(h) A licensee shall not engage in any other activity which would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or is for the sexual arousal, or sexual gratification of the licensee or patient or which constitutes an act of sexual abuse.

(i) Violation of any of the prohibitions or directives set forth at (c) through (h) above shall be deemed to constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(j) Nothing in this section shall be construed to prevent a licensee from rendering any professional chiropractic service to a spouse, providing that the rendering of such service is consistent with accepted standards of chiropractic care and that the performance of chiropractic services is not utilized to exploit the patient spouse for the sexual arousal or sexual gratification of the licensee.

(k) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the licensee; or
2. The licensee was in love with or had affection for the patient.

New Rule, R.1997 d.531, effective December 15, 1997.
See: 29 N.J.R. 3770(b), 29 N.J.R. 5311(a).

13:44E-2.4 Chiropractor of record; fee reimbursement

(a) Each patient in a chiropractic facility shall have a chiropractor of record who shall remain primarily responsible for assuring the proper implementation of the chiropractic services to be rendered to such patient regardless of whether the services are rendered by the chiropractor of record or by any other person rendering chiropractic services or ancillary treatment to the patient.

(b) The name of the chiropractor of record shall be conspicuously identified on the patient record. If the chiropractor of record is not identified on the patient record, it shall be presumed that the chiropractor of record is the owner of the practice in which the patient was treated.

(c) Each chiropractor or any other person rendering services shall sign or initial each entry on the patient record pertaining to the services he or she provided. If no such entry appears on the patient record, it shall be presumed that such service was rendered by the chiropractor of record, unless the latter shall establish the identity of the individual who provided such services.