

## CHAPTER 44E

## STATE BOARD OF CHIROPRACTIC EXAMINERS

## Authority

N.J.S.A. 45:1-3.2, 45:9-14.5 and 45:9-41.23.

## Source and Effective Date

R.1996 d.344, effective June 28, 1996.  
See: 28 N.J.R. 1592(a), 28 N.J.R. 3803(b).

## Executive Order No. 66(1978) Expiration Date

Chapter 44E, State Board of Chiropractic Examiners, expires on June 28, 2001.

## Chapter Historical Note

Chapter 44E, State Board of Chiropractic Examiners, was adopted as R.1991 d.320, effective July 1, 1991. See: 23 N.J.R. 1067, 23 N.J.R. 2023(b). Subchapter 1, Scope of Practice, was adopted as R.1992 d.70, effective February 18, 1992. See: 23 N.J.R. 2100(a), 24 N.J.R. 642(a). Pursuant to Executive Order No. 66(1978), Chapter 44E was readopted as R.1996 d.344, effective June 28, 1996. See: Source and Effective Date.

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## SUBCHAPTER 1. SCOPE OF PRACTICE

## 13:44E-1.1 Scope of practice

(a) The practice of chiropractic is that patient health care discipline whose methodology is the adjustment and/or manipulation of the articulations of the spine and related structures. During the initial consultation and before commencing chiropractic care, a licensee shall identify a clinical condition warranting chiropractic treatment. Nothing herein contained shall be deemed to prohibit a licensee from caring for chiropractic subluxation as determined by chiropractic analytical procedures. Chiropractic analysis which identifies the existence of a subluxation may be the basis for chiropractic care even in the absence of a subjective complaint or other objective findings.

(b) A chiropractic diagnosis or analysis shall be based upon a chiropractic examination appropriate to the presenting patient. Should the evaluation indicate abnormality not generally recognized as amenable to chiropractic treatment, a licensee shall refer the patient to an appropriate health care provider. Nothing herein contained shall preclude a licensee from rendering concurrent and/or supportive chiropractic care to any patient so referred.

(c) The following diagnostic and analytical procedures are within the scope of practice of a licensee:

1. The taking and ordering of X-rays limited to the osseous system;
2. The ordering, but not performing, of bioanalytical laboratory tests consistent with chiropractic practice;
3. The ordering or performing of reagent strip tests (dipstick urinalysis);
4. The ordering, but not performing, of such other diagnostic or analytical tests consistent with chiropractic practice including, but not limited to, computerized axial tomography (CT), magnetic resonance imaging (MRI), bone scan and invasive electromyography (EMG);
5. The requesting or performing of such other diagnostic or analytical tests consistent with chiropractic practice including, but not limited to, non-invasive muscle testing and tests using neurocalometer-type devices; and
6. The requesting or performing of electrodiagnostic tests or other special examinations, to the extent and in the manner authorized by N.J.A.C. 13:44E-3.

(d) A licensee may offer general nutritional advice to a patient when such advice is incidental to the chiropractic

care being provided. A licensee shall not offer nutritional advice as treatment for a specific disease, defect, or deformity. A licensee shall not, incidental to chiropractic care, sell, dispense or derive any financial benefit from the sale of vitamins, food products or nutritional supplements. A licensee shall not represent himself or herself as a nutritional consultant.

(e) A licensee may order and/or administer physical modalities, where indicated, in conjunction with a spinal adjustment.

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

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

Amended by R.1999 d.76, effective March 1, 1999.

See: 30 N.J.R. 3925(a), 31 N.J.R. 662(a).

In (c), substituted "requesting" for "ordering" and substituted "non-invasive muscle testing and tests using neurocalometer-type devices" for "neurocalometer, thermography, and non-invasive muscle testing" in 5, and added 6.

#### Case Notes

Chiropractor was not protected by either due process or fundamental fairness in connection with his application for staff membership at private hospital. *Petrocco v. Dover General Hosp. and Medical Center*, 273 N.J.Super. 501, 642 A.2d 1016 (A.D.1994), certification denied 138 N.J. 264, 649 A.2d 1284.

Private hospital which denied chiropractor's request for staff privileges afforded chiropractor more procedural protection than law required. *Petrocco v. Dover General Hosp. and Medical Center*, 273 N.J.Super. 501, 642 A.2d 1016 (A.D.1994), certification denied 138 N.J. 264, 649 A.2d 1284.

Rule imposes duty on chiropractor to examine and diagnose a patient to determine whether a condition is appropriate for chiropractic treatment, and, if it is not, to refer the patient to another kind of medical practitioner. *Rosenberg by Rosenberg v. Cahill*, 99 N.J. 318, 492 A.2d 371 (1985).

## SUBCHAPTER 2. GENERAL RULES OF PRACTICE

### 13:44E-2.1 Advertising

(a) The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

1. The term "advertisement" shall refer to the attempt, directly or indirectly by publication, dissemination, solicitation, endorsement or circulation in print or electronic media or in any other way, to attract directly or indirectly any person to enter into an expressed or implied agreement to accept chiropractic services or treatment or goods related thereto.

2. The term "electronic media" shall include, but not be limited to, radio, television, telephone, facsimile machine, and computer.

3. The term "print media" shall refer to newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, fliers or other publications, the content of which is disseminated by means of the printed word.

4. The term "range of fees" shall refer to an expressly stated upper and lower limit on the fee charged for a professional service.

5. The term "routine professional service" shall refer to a service which the advertising licensee, professional association or institution providing chiropractic care routinely performs.

(b) A licensed chiropractor who is actively engaged in the practice of chiropractic in the State of New Jersey may provide information to the public by advertising in print or electronic media.

(c) A licensee who engages in the use of advertising which contains the following shall be deemed to be engaged in professional misconduct:

1. Any statement, claim, or format which is false, fraudulent, misleading or deceptive;

2. Claims that the professional service performed or the materials used are superior to that which is ordinarily performed or used unless such claims can be substantiated by the licensee;

3. Promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform;

4. Techniques of communication which appear to intimidate, exert undue pressure or undue influence over a prospective patient;

5. The communication of personally identifiable facts, data, or information about a patient without the patient's signed written permission obtained in advance;

6. The use of any misrepresentation;

7. The suppression, omission or concealment of any material fact under circumstances which a Board licensee knows or should know that the omission is improper or prohibits a prospective patient from making a full and informed judgment on the basis of the information set forth in the advertisement;

8. Any print, language or format which directly or indirectly obscures a material fact;

9. Any guarantee that services rendered will result in a cure; or

10. Any violations of (d) through (m) below.

(d) The Board may require a licensee to provide factual substantiation of the truthfulness of any objective assertion or representation set forth in an advertisement.

**13:44E-2.12 (Reserved)****13:44E-2.13 Overutilization; excessive fees**

(a) A licensee shall not directly or indirectly engage in the rendering of any bill or the submission of any claim for service which:

1. Is not justified by the needs of the patient;
2. Is for any diagnostic or treatment services, goods or appliances which are excessive in quality or quantity;
3. Represents multiple charges for the same chiropractic services or treatments, goods or appliances;

4. Contains an excessive fee. A fee is excessive when, after a review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching under the circumstances. The charging of an excessive fee shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21. Factors which may be considered in determining whether a fee is excessive include, but are not limited to, the following:

- i. The time and effort required;

- ii. The novelty and difficulty of the procedure or treatment;
- iii. The skill required to perform the procedure or treatment properly;
- iv. Any requirements or conditions imposed by the patient or by circumstances;
- v. The nature and length of the professional relationship with the patient;
- vi. The experience, reputation and ability of the licensee performing the services; and/or
- vii. The nature and circumstances under which services are provided.

5. Is for services, goods or appliances which were not rendered or supplied;

6. Is for a charge or claim which, due to the presence of insurance coverage, exceeds the usual and customary charges for such services, goods or appliances for patients who do not have insurance coverage; or

7. (Reserved)

New Rule, R.1994 d.122, effective March 7, 1994.  
See: 25 N.J.R. 3937(a), 26 N.J.R. 1231(b).

#### 13:44E-2.14 Referral of patients to physical therapists

(a) A chiropractor providing physician direction for the initiation of physical therapy treatment by a physical therapist shall supply the physical therapist with the following information in writing:

- 1. The name of the patient;
- 2. The printed name of the referring chiropractor, including office address and phone number;
- 3. The signature of the chiropractor and the date;
- 4. The purpose of referral (for example, "physical therapy examination and treatment"); and
- 5. The spinal component of patient's problem.

(b) The referring chiropractor may verbally supply this information provided that a written confirmation is forwarded to the physical therapist within two weeks.

(c) After the physical therapist has completed the physical therapy examination and evaluation, the referring chiropractor shall participate in consultation with the physical therapist. This consultation shall:

- 1. Clarify any divergent assessments that the referring chiropractor and physical therapist may have made regarding the patient's needs;
- 2. Coordinate treatment programs in the event that the patient receives concurrent chiropractic and physical therapy. Any such concurrent treatment programs shall be compatible; and

3. Jointly determine a schedule of additional consultation that will allow the referring chiropractor to monitor the patient's on-going plan of care.

(d) The referring chiropractor shall document the initial and on-going consultation with the physical therapist in the patient's record.

New Rule, R.1994 d.123, effective March 7, 1994.  
See: 25 N.J.R. 3988(a), 26 N.J.R. 1234(a).  
Administrative Correction.  
See: 26 N.J.R. 2590(a).

### SUBCHAPTER 3. DETERMINATIONS WITH RESPECT TO THE VALIDITY OF CERTAIN DIAGNOSTIC TESTS, SPECIAL REQUIREMENTS FOR ELECTRODIAGNOSTIC TESTS AND OTHER SPECIAL EXAMINATIONS

#### Authority

N.J.S.A. 45:1-3.2, 45:9-14.5, and 45:9-41.23 and P.L. 1998, c.21.

#### Source and Effective Date

R.1999 d.76, effective March 1, 1999.  
See: 30 N.J.R. 3925(a), 31 N.J.R. 662(a).

#### 13:44E-3.1 Definitions

As used in this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

"Board" means the New Jersey State Board of Chiropractic Examiners.

"Chiropractic physician" means a chiropractic physician holding a license issued by the New Jersey State Board of Chiropractic Examiners.

"Clinically supported" means that a chiropractic physician, prior to selecting, performing or ordering the administration of a diagnostic test has:

- 1. Personally performed a physical examination, making an assessment of any current and/or historical subjective complaints, observations, objective findings, or neurological indications;
- 2. Considered any and all previously performed tests relating to the patient's clinical condition and the results; and
- 3. Documented in the patient record positive and negative findings, observations and clinical indications to justify the test.

"Diagnostic test" means a professional service utilizing biomechanical, neurological, neurodiagnostic, radiological,

vascular or any means, other than bioanalysis, intended to assist in establishing a diagnosis, for the purpose of recommending a course of treatment for the tested patient to be implemented by a chiropractic physician or other treating practitioner.

“Electrodiagnostic test” means a diagnostic test utilizing electrical current to measure and record electrical irritability, but is not intended to include surface electromyography (SEMG).

“Medical doctor” means an allopathic or osteopathic physician holding a plenary license issued by the New Jersey State Board of Medical Examiners.

“Normal” or “normally” means the usual, routine, customary or common experience and conclusion, which may in unusual circumstances differ from the actual judgment or course of treatment. The unusual circumstances shall be based on clinically supported findings of a chiropractic physician. The use of these terms is intended to indicate some flexibility and avoid rigidity in the application of these rules and to recognize the good faith educated judgment of a chiropractic physician.

“Practitioner” means a licensee of a professional board authorized to render health care services, including, but not limited to, chiropractic physicians, medical doctors, podiatric physicians, physical therapists and registered professional nurses.

“Significant beneficial interest” means any financial interest but does not include ownership of a building wherein the space is leased to a person at the prevailing rate under a straight lease agreement or any interest held in publicly traded securities.

“Special examination” means a diagnostic test, other than electrodiagnostic test, which is not routinely utilized by chiropractic physicians in the course of ordinary practice, such as specialized imaging studies. “Special examination” does not include x-rays, computer-supported range of motion testing, applied kinesiology, gait analysis, postural analysis tests or muscle testing devices, such as Dynatron or Cyber station.

### **13:44E-3.2 Recognized diagnostic tests; permissible billing**

(a) Consistent with the scope of practice, upon the attainment of education and training in the pertinent test and, with respect to electrodiagnostic tests or special examinations, a certificate of competency, a chiropractic physician may perform a diagnostic test and charge a patient or third party payor for that test, except as provided by (b) and (c) below.

(b) A chiropractic physician shall not bill for any diagnostic tests which have not been reliably demonstrated to identify conditions amenable to chiropractic care beyond the information ascertainable from the taking of a patient history and performance of a thorough clinical examination or which otherwise fail to yield data of sufficient clinical value in the development, evaluation or implementation of a plan of treatment, including the following:

1. Spinal diagnostic ultrasonography/ultrasound imaging of the spine;
2. Current perception threshold tests;
3. Iridology;
4. Reflexology; or
5. Surrogate arm mentoring.

(c) A chiropractic physician may bill for any of the following diagnostic tests which have recognized reliability and validity and can yield data of sufficient clinical value in the development, evaluation or implementation of a plan of treatment, when clinically supported, subject to the limitations noted:

1. Repetitive stimulation studies including reflex latency measurements such as F-wave studies, H-reflexes and sympathetic skin responses;
2. Somatosensory evoked potential (SSEP), visual evoked potential (VEP) auditory evoked potentials (AEP), brainstem auditory evoked potential (BAEP) and dermatome evoked potential, or brain evoked potential (BEP) where the extent of response to treatment is not otherwise sufficiently ascertained from subjective reports and by objective findings or other diagnostic tests;
3. Thermography only when used to evaluate pain associated with reflex sympathetic dystrophy (“RSD”) in a controlled setting;
4. Videofluoroscopy only in the evaluation of hypomobility syndrome and wrist/carpal hypomobility, where there are findings of no range or aberrant range of motion or dysymmetry of facets;
5. Surface EMG;
6. Applied kinesiology and gait analysis; and
7. Computer-supported range of motion tests, postural analysis tests or muscle testing devices, such as Dynatron or Cyber station.

(d) Notwithstanding any limitations set forth in (b) above, a chiropractic physician may perform the enumerated diagnostic test, after assuring that written informed consent has been obtained from the patient, but in no case shall the patient or third party payor be billed or charged for the test.