

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.

(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).
Petition for Rulemaking.
See: 31 N.J.R. 2659(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.

(d) In a multi-chiropractor practice, the chiropractor of record shall remain the same until a subsequent chiropractor affirmatively notes in the patient record that he or she is currently the chiropractor of record. In the event that the chiropractor of record leaves the practice, a successor chiropractor shall be designated if the patient elects to continue treatment in the facility.

(e) A new chiropractor of record shall review the patient's history and chiropractic records, examine the patient, if necessary, and either develop a new treatment plan or continue the pre-existing plan.

(f) Any licensee found to have rendered services in violation of N.J.S.A. 45:1-21 and the owner of the facility in which the licensee renders such services shall be jointly and severally responsible for any restoration of patient fees as may be ordered by the Board.

New Rule, R.1991 d.427, effective August 19, 1991.
See: 23 N.J.R. 1280(a), 23 N.J.R. 2517(a).

13:44E-2.5 Fee schedule

(a) The following fees shall be charged by the Board:

1. Application Fee	\$125.00
2. Examination Fee	200.00
3. Endorsement Fee	75.00
	(plus initial license fee)
4. Initial License Fee:	
i. During the first year of a biennial renewal period	350.00
ii. During the second year of a biennial renewal period	175.00
5. Biennial License Renewal Fee	350.00
6. Duplicate License Fee	25.00
7. Verification of Licensure Fee	40.00
8. Late Renewal Fee	50.00
9. Reinstatement Fee	125.00
	(plus all past due license fees)

10. Board certificate of competency in electrodiagnostic testing, one-time fee 50.00

Amended by R.1997 d.287, effective July 21, 1997.
See: 29 N.J.R. 734(a), 29 N.J.R. 3261(a).
In (a)4 and 5, raised license fees.
Amended by R.1999 d.76, effective March 1, 1999.
See: 30 N.J.R. 3925(a), 31 N.J.R. 662(a).
In (a), added 10.

13:44E-2.6 (Reserved)

13:44E-2.7 Referral fees

It shall be professional misconduct for a licensee to pay, offer to pay, or to receive from any person any fee or other form of compensation for the referral of a patient. The within prohibition shall not prohibit the division of fees among licensees engaged in a bona fide employment, partnership or corporate relationship for the delivery of professional services.

New Rule, R.1992 d.507, effective December 21, 1992.
See: 24 N.J.R. 1470(a), 24 N.J.R. 4557(a).

13:44E-2.8 Delegable tasks or functions of unlicensed assistants

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

1. "Direct supervision" means the ongoing process performed by a licensed chiropractor who monitors the performance of the unlicensed assistant and provides regular consultation, guidance and instruction with respect to the tasks and functions performed by the unlicensed assistant. Direct supervision requires that the licensed chiropractor be physically present on the premises from which chiropractic services are rendered at all times during which an unlicensed individual is engaged in delegated tasks or functions.
2. "Unlicensed assistant" means any person including a student or graduate of a chiropractic institution, who does not hold a valid New Jersey chiropractic license, or a license, certification or registration issued pursuant to law which authorizes the performance of acts which, absent such authorization, would be unlawful.

(b) Under the direct supervision of, and when delegated by, a licensed chiropractor, an unlicensed assistant, including a graduate of a recognized program of study in chiropractic, may perform tasks or functions including, but not limited to, the following:

1. Completing a medical history with the patient;
2. Preparing the patient for chiropractic treatment;
3. Writing into the patient record subjective complaints from the patient and objective findings provided by the licensee;
4. Performing a urinary dipstick analysis;

5. Taking and recording vital signs;
6. Preparing and developing X-ray films;
7. Providing patient education activities;
8. Providing instruction in activities of daily living; and
9. Administering cryotherapy, hot packs, mechanical traction and non-invasive surface screening.

(c) A licensee shall not permit an unlicensed assistant to:

1. Examine, diagnose or analyze a patient;
2. Perform massage;
3. Take X-rays (unless permitted by license issued by the Department of Environmental Protection);
4. Perform a chiropractic adjustment;
5. Administer the following physical modalities:
 - i. Ultraviolet (B and C bands) or electromagnetic rays including, but not limited to, deep heating agents, microwave diathermy, short-wave diathermy and ultrasound; or
6. Perform any task or function for which the skill, training and judgment of a licensed chiropractor is required to safely and competently perform such task or function.

(d) A licensee who permits an unlicensed assistant to perform any task or function incidental to the rendering of chiropractic care shall:

1. Be responsible for the performance of all delegated tasks or functions performed by such individual;
2. Directly supervise the unlicensed assistant; and
3. Ensure that such individual is competent to perform all delegated tasks or functions. The licensee shall provide any instruction or training necessary to ensure competence and shall make such inquiry as may be necessary to ensure that a satisfactory level of education exists so as to conclude that the unlicensed individual may render any delegated tasks or functions with reasonable skill and safety.

(e) The licensee shall write all instructions for duties to be performed by unlicensed assistants on the patient's chart and shall make the chart available at all times to the unlicensed assistant carrying out the instructions.

(f) Prior to the performance of any delegated tasks or functions by an unlicensed assistant, the unlicensed assistant shall determine whether the patient's physical status has materially changed since the patient's prior office visit. In such event, the unlicensed assistant shall not proceed with the performance of any delegated tasks or functions until the licensee has reexamined the patient or authorized the performance of a delegated task or function.

New Rule, R.1996 d.344, effective August 5, 1996.
See: 28 N.J.R. 1592(a), 28 N.J.R. 3803(b).

13:44E-2.9 Notification of change of address; service of process

(a) A licensee of the Board of Chiropractic Examiners shall notify the Board in writing of any change of address from the address currently registered with the Board and shown on the most recently issued certificate. Such notice shall be sent to the Board by certified mail, return receipt requested, not later than 10 days following the change of address.

(b) Service of an administrative complaint or other Board-initiated process at a licensee's address currently on file with the Board shall be deemed adequate notice for the purposes of N.J.A.C. 1:1-7.1 and the commencement of any disciplinary proceedings.

New Rule, R.1994 d.120, effective March 7, 1994.
See: 25 N.J.R. 3936(a), 26 N.J.R. 1230(b).

13:44E-2.10 Display of license

Each person holding a license to practice chiropractic in the State of New Jersey shall display the license and the current renewal certificate in a conspicuous place in his or her principal office or place of practice. In addition, the licensee shall display a copy of the current renewal certificate in all other facilities where the licensee practices.

New Rule, R.1994 d.121, effective March 7, 1994.
See: 25 N.J.R. 3936(b), 26 N.J.R. 1231(a).
Petition for Rulemaking.
See 31 N.J.R. 3537(c).

13:44E-2.11 Right to a hearing

Prior to any suspension, revocation or refusal to renew a license, the licensee shall have the right to request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

New Rule, R.1994 d.121, effective March 7, 1994.
See: 25 N.J.R. 3936(b), 26 N.J.R. 1231(a).

Case Notes

Chiropractor engaged in misrepresentation and deception, professional misconduct, negligence, and absence of good moral character; suspension imposed. Matter of Soriero, 92 N.J.A.R.2d (BDS) 53.

Chiropractor's insensitivity to modesty and privacy requirements of adolescent patients constituted acts of simple negligence; civil penalty assessed. In Matter of Suspension or Revocation of License of Johnson, 92 N.J.A.R.2d (BDS) 33.

Purchase of narcotic analgesics from one patient and giving them to another patient; chiropractor's license suspended for one year and chiropractor required to perform 200 hours of community service. In Matter of Suspension or Revocation of License of Hollenbeck, 92 N.J.A.R.2d (BDS) 8.

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 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).

13:44E-2.15 Chiropractic examination

(a) From July 17, 2000 until December 31, 2000, to obtain a license to practice chiropractic, a candidate shall successfully pass:

1. Parts I, II, III and IV of the National Board of Chiropractic Examiners Examination and a written jurisprudence examination administered by the New Jersey Board of Chiropractic Examiners; or
2. Parts I, II and III of the National Board of Chiropractic Examiners Examination and an examination administered by the New Jersey State Board of Chiropractic Examiners consisting of:
 - i. An objective imaging examination;
 - ii. A written jurisprudence examination;
 - iii. A case management examination; and
 - iv. A technique examination.

(b) Effective January 1, 2001, to obtain a license to practice chiropractic, a candidate shall successfully pass:

1. Parts I, II, III and IV of the National Board of Chiropractic Examiners Examination; and
2. The New Jersey State Board of Chiropractic Examiners written jurisprudence examination.

(c) The Board shall hold the New Jersey State Board of Chiropractic Examiners Jurisprudence Examination no less than twice per year at a date, time, and place designated by the Board.

(d) An applicant licensed in another state who seeks licensure by endorsement shall successfully pass the written jurisprudence examination administered by the New Jersey State Board of Chiropractic Examiners.

(e) Subsection (a) above shall expire on December 31, 2000.

New Rule, R.2000 d.306, effective July 17, 2000.
See: 32 N.J.R. 780(a), 32 N.J.R. 2593(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.