

## 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.2001 d.257, effective June 26, 2001.  
See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

## Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 44E, State Board of Chiropractic Examiners, expires on December 23, 2006. See: 38 N.J.R. 3235(a).

## 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(a), 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, State Board of Chiropractic Examiners, was readopted as R.1996 d.344, effective June 28, 1996. See: 28 N.J.R. 1592(a), 28 N.J.R. 3803(b).

Subchapter 3, Determinations with Respect to the Validity of Certain Diagnostic Tests, Special Requirements for Electrodiagnostic Tests and Other Special Examinations, was adopted as R.1999 d.76, effective March 1, 1999. See: 30 N.J.R. 3925(a), 31 N.J.R. 662(a).

Pursuant to Executive Order No. 66(1978), Chapter 44E, State Board of Chiropractic Examiners, was readopted as R.2001 d.257, effective June 26, 2001, and Subchapter 1A, Licensure, was adopted by R.2001 d.257, effective August 6, 2001. See: Source and Effective Date. See, also, section annotations.

## CHAPTER TABLE OF CONTENTS

## SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:44E-1.1 Scope of practice

## SUBCHAPTER 1A. LICENSURE

13:44E-1A.1 Licensing requirements for a chiropractor  
13:44E-1A.2 Application for license: chiropractor  
13:44E-1A.3 Applicants licensed in other states  
13:44E-1A.4 Biennial license renewal

## SUBCHAPTER 2. GENERAL RULES OF PRACTICE

13:44E-2.1 Advertising  
13:44E-2.2 Patient records  
13:44E-2.3 Sexual misconduct  
13:44E-2.4 Chiropractor of record; fee reimbursement  
13:44E-2.5 Fee schedule  
13:44E-2.6 Referral fees  
13:44E-2.6A Patient record review  
13:44E-2.7 Delegable tasks or functions of unlicensed assistants  
13:44E-2.7A Ordering of electro-therapy devices for home use  
13:44E-2.8 Notification of change of address; service of process  
13:44E-2.9 Display of license  
13:44E-2.10 Right to a hearing  
13:44E-2.11 Overutilization; excessive fees  
13:44E-2.12 Referral of patients to physical therapists  
13:44E-2.13 Chiropractic examination  
13:44E-2.14 Independent chiropractic examinations  
13:44E-2.15 (Reserved)

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

13:44E-3.1 Definitions  
13:44E-3.2 Recognized diagnostic tests; permissible billing  
13:44E-3.3 Referable tests  
13:44E-3.4 Basic pre-test prerequisites and standards for patient evaluation applicable to electrodiagnostic tests and special examinations  
13:44E-3.5 Educational prerequisites applicable to electrodiagnostic tests and special examinations; certificate requirement  
13:44E-3.6 Informed consent; equipment; preparation for and performance of the electrodiagnostic test  
13:44E-3.7 Use of testing assistant  
13:44E-3.8 Preparation of test report; follow-up  
13:44E-3.9 Limitations on referrals  
13:44E-3.10 Fees  
13:44E-3.11 Application of prohibitions and limitations

## SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

## 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 and document a clinical condition warranting chiropractic care. 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 examination indicate abnormality not generally recognized as amendable to chiropractic care, 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) consistent with chiropractic practice;

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, invasive electromyography (EMG) and chest x-ray;

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;

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; and

7. In conjunction with a chiropractic adjustment, the ordering and/or administering of physical modalities where clinically indicated.

(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.

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.

Amended by R.2001 d.257, effective August 6, 2001.

See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

In (a), inserted "and document" following "shall identify" and substituted "care" for "treatment"; in (b), substituted "examination" for "evaluation and "care" for "treatment"; rewrote (c); deleted (e).

Petition for Rulemaking.

See: 36 N.J.R. 589(a), 1615(a).

Public Notice: Withdrawal of Petition for Rulemaking.

See: 38 N.J.R. 2745(d).

#### 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 1A. LICENSURE

##### 13:44E-1A.1 Licensing requirements for a chiropractor

(a) To be eligible for licensure as a chiropractor in New Jersey, an applicant shall:

1. Be at least 18 years of age;
2. Be of good moral character as demonstrated on the application;
3. Have successfully completed high school or its equivalent;
4. Have successfully:
  - i. Completed two years of study in an accredited college or university with at least one and one-half of the two years of study prior to commencing study in a chiropractic college or university within a course of study which meets the requirements set forth in N.J.S.A. 45:9-41.5; and
  - ii. Graduated from a chiropractic college or university, which meets the requirements set forth in N.J.S.A. 45:9-41.5 during the applicant's entire course of study;
5. Have passed the National Board of Chiropractic Examiners Examination pursuant to N.J.A.C. 13:44E-2.13; and
6. Have passed the New Jersey Chiropractic Jurisprudence Examination.

##### 13:44E-1A.2 Application for license: chiropractor

(a) An applicant for licensure as a chiropractor in New Jersey shall submit the following to the Board:

1. A completed application form provided by the Board which shall contain the applicant's name, address, social security number, academic qualifications, licensure information from other states, resume, questions demonstrating moral character, confidential questions concerning the applicant's fitness to practice and child support questions;
2. Official transcripts demonstrating completion of the educational requirements pursuant to N.J.A.C. 13:44E-1A.1(a)4;
3. Proof of successful completion of the National Board of Chiropractic Examiners Examination pursuant to N.J.A.C. 13:44E-2.13; and

4. The application fee set forth in N.J.A.C. 13:44E-2.5.

be granted a license to practice chiropractic in New Jersey without further examination provided that:

**13:44E-1A.3 Applicants licensed in other states**

(a) An applicant who is licensed to practice chiropractic by an examining and licensing board of another state shall

1. The examining and licensing board of the applicant's state of licensure has licensure and examination requirements equivalent to those of this State;

2. The applicant furnishes an official transcript demonstrating that he or she has completed the educational requirements set forth in N.J.A.C. 13:44E-1A.1(a)4;

3. The Board has received evidence of the applicant's good standing in any jurisdiction where he or she is or has been licensed; and

4. The applicant pays the endorsement license fee as set forth in N.J.A.C. 13:44E-2.5.

(b) An applicant for a licensure to practice chiropractic in this State who holds a valid license to practice chiropractic in another state shall be required to successfully complete the New Jersey Jurisprudence Examination.

(c) An applicant who holds a license in good standing to practice chiropractic in another state, who has five years of postgraduate chiropractic clinical experience and who does not satisfy the prerequisite educational requirements of N.J.A.C. 13:44E-1A.1(a)4i, shall be granted a license to practice chiropractic in New Jersey provided that the applicant has passed the National Board of Chiropractic Examiners Special Purposes Examination for Chiropractic.

#### 13:44E-1A.4 Biennial license renewal

(a) Licenses to practice chiropractic shall be issued for a period of two years and be renewed biennially. A licensee who seeks renewal of his or her license shall submit a license renewal application and the license renewal fee set forth in N.J.A.C. 13:44E-2.5 to the Board prior to the expiration of the current license.

(b) If a licensee does not renew his or her license prior to its expiration date, the licensee may renew the license within 30 days of its expiration by submitting a renewal application, a license renewal fee and a late fee, as set forth in N.J.A.C. 13:44E-2.5.

(c) A license that is not renewed within 30 days of its expiration date shall expire. Any individual who continues to practice with an expired license after 30 days following the license expiration date shall be deemed to be engaged in unlicensed practice.

(d) Falsification of any information submitted with the renewal application may result in penalties and/or suspension of the license pursuant to N.J.S.A. 45:1-21 through 25.

## 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. "Advertisement" means 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 care or goods related thereto.

2. "Electronic media" means, but is not limited to, radio, television, telephone, facsimile machine, and computer.

3. "Print media" means 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. "Range of fees" means an expressly stated upper and lower limit on the fee charged for a professional service.

5. "Routine professional service" means 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.”

1. The disclaimer as set forth above shall not be used for treatment where related services are ordinarily required.

2. 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 immediate chiropractic care, the licensee 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 immediate need for services and I sign this waiver.

I have what I believe is a need for immediate chiropractic care. Therefore, I agree to sign this waiver and to pay for the immediate chiropractic care rendered within the 24-hour period. The amount Dr. \_\_\_\_\_ will charge me for chiropractic care 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 PO 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 retain 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 and/or dissemination.

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.

Amended by R.2001 d.257, effective August 6, 2001.

See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

Rewrote the section.

### 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 care 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 patient records, bills and claim forms shall accurately reflect the care 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 care plan;
7. Any orders for tests or consultations including the clinical indications and the results thereof;
8. The dates of each patient visit;
9. A description of care or services rendered at each visit together with the name of the licensee or other person rendering the care;
10. Notation of significant changes in patient's condition and/or significant changes in care 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. In the case of a minor child, records shall be kept for seven years from the date of the last entry or seven years from the date of majority, whichever is later.

(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 accurately reflects the patient's history and care, 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. A licensee may refuse to release a record to a patient 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 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. 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. 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 care to another licensed health care professional who is providing or who has been asked to provide care to the patient, or whose expertise may assist the licensee in his or her rendition of professional services.

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.

(f) Where a third party or entity has requested examination or an evaluation of a person for a purpose unrelated to care 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 patient 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).

Amended by R.2001 d.257, effective August 6, 2001.

See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

Substituted "care" for "treatment" throughout; in (a) and (g)1, substituted "patient" for "treatment" preceding "records"; in (a)(7), inserted "including the clinical indications" following "consultations";

in (b), added "In the case of a minor child, records shall be kept for seven years from the date of the last entry or seven years from the date of majority, whichever is later."; in (d)(2), substituted "accurately" for "adequately"; rewrote (d)4.

Administrative correction.

See: 35 N.J.R. 4083(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, care or a consultation relating to chiropractic care. "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 care.

3. "Patient-chiropractor relationship" means an association between a chiropractor 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 care provided by a licensee in furtherance of chiropractic care 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-chiropractor relationship. The patient-chiropractor relationship is considered ongoing for purposes of this section, unless:

1. Professional services are 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-chiropractor 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).  
Amended by R.2001 d.257, effective August 6, 2001.

See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

Substituted "care" for "treatment", and "chiropractor" for "physician" throughout; in (c)(1), substituted "Professional services are" for "Activity".

**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 care 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 received care.

(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 chiropractor of record establishes the identity of the individual who provided such services.

(d) In a multi-chiropractor practice, the chiropractor of record shall remain the chiropractor for a patient 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 chiropractor 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 render 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).  
 Amended by R.2001 d.257, effective August 6, 2001.  
 See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

In (a), substituted "care" for "treatment"; in (b), substituted "received care" for "was treated"; in (c), substituted "chiropractor of record establishes" for "latter shall establish"; in (d), substituted "chiropractor for a patient" for "same"; in (f), substituted "chiropractor" for "licensee".

**13:44E-2.5 Fee schedule**

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

- 1. Application Fee ..... \$125.00

- 2. Endorsement Fee ..... 75.00  
 (plus initial license fee)
- 3. 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
- 4. Biennial License Renewal Fee..... 350.00
- 5. Duplicate License Fee ..... 25.00
- 6. Verification of Licensure Fee ..... 40.00
- 7. Late Renewal Fee ..... 50.00
- 8. Reinstatement Fee ..... 125.00  
 (plus all past due license fees)

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.  
 Amended by R.2001 d.257, effective August 6, 2001.  
 See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).  
 In (a), deleted 2, and recodified existing 3 through 9 as 2 through 8.

**13:44E-2.6 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. This section 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).  
 Recodified from N.J.A.C. 13:44E-2.7 and amended by R.2001 d.257, effective August 6, 2001.  
 See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).  
 Substituted "This section" for "The within prohibition". Former N.J.A.C. 13:44-2.6 was reserved.  
 Administrative correction.  
 See: 34 N.J.R. 300(a).

**13:44E-2.6A Patient record review**

(a) As used in this section, the term, "patient record review" means an evaluation of all records which are maintained pursuant to N.J.A.C. 13:44E-2.2 and which are relevant to the treatment or condition under evaluation by a non-attending chiropractor with regard to the effectiveness and application of prior treatment or termination of or continuation of the treatment.

(b) A non-attending chiropractor who performs a patient record review which evaluates prior chiropractic care or the need for continued chiropractic care or the necessity for diagnostic testing shall make a reasonable and documented effort to obtain all records of the attending chiropractor relevant to the chiropractic care or condition under evaluation before rendering an opinion concerning the prior chiropractic care, the need for continued chiropractic care or the need for diagnostic testing.

(c) An opinion by a non-attending chiropractor which states that prior chiropractic care was not documented pursuant to N.J.A.C. 13:44E-2.2 shall clearly note the specific deviations from the patient record requirements of N.J.A.C. 13:44E-2.2.

(d) Opinions which state that prior chiropractic care was not necessary, not required or palliative shall clearly state the rationale upon which the opinion is based.

(e) (Reserved)

(f) An opinion by a non-attending chiropractor that diagnostic testing, referrals or consultations were not properly documented or performed in accordance with N.J.A.C. 13:44E-2.2 and 13:44E-3 shall clearly note the specific deviations from those rules.

(g) Opinions which state that prior diagnostic testing, referrals or consultations were not necessary shall clearly state the rationale upon which the opinion is based.

(h) Any opinion rendered regarding the evaluation of prior chiropractic care, the termination of chiropractic care, or the necessity of diagnostic testing and/or referrals or consultation shall be consistent with N.J.S.A. 45:9-14.5 and N.J.A.C. 13:44E-1.1. Violations of any of the provisions set forth in this section shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e) and may subject licensees to penalties as set forth in N.J.S.A. 45:1-22 and 45:1-25.

New Rule, R.2001 d.448, effective December 3, 2001.  
See: 32 N.J.R. 3970(a), 33 N.J.R. 4140(a).  
Administrative correction.  
See: 34 N.J.R. 300(a).

### **13:44E-2.7 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 of a patient;
2. Preparing the patient for chiropractic care;
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
  - ii. Electro-therapy devices powered by an alternating current or any interferential devices, as set forth in N.J.A.C. 13:44E-2.7A; 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 neces-

sary 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).

Recodified from N.J.A.C. 13:44E-2.8 and amended by R.2001 d.257, effective August 6, 2001.

See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

In (b)1, substituted "of a" for "with the"; in (b)2, substituted "care" for "treatment". Former N.J.A.C. 13:44E-2.7, Referral fees, recodified to N.J.A.C. 13:44E-2.6.

Administrative correction.

See: 34 N.J.R. 2844(a).

Amended by R.2004 d.141, effective April 5, 2004.

See: 35 N.J.R. 4828(a), 36 N.J.R. 1820(a).

Added (c)5ii.

#### **13:44E-2.7A Ordering of electro-therapy devices for home use**

(a) For purposes of this section and N.J.A.C. 13:44E-2.7(c)5ii, "electro-therapy devices" such as "TENS" (transcutaneous electric nerve stimulation), "MES" (micro-ampere electric stimulation), or "EMS" (electric muscle stimulation) devices, means devices which generate an electrical current that is applied to the skin via electrodes to cause a physiological effect.

(b) A licensee may not order an electro-therapy device for home use which:

1. Uses AC electrical current; or
2. Is an interferential device which crosses two medium frequency alternating currents through the body.

(c) A licensee may order a battery operated electro-therapy device for home use provided that the patient:

1. Is not using a cardiac pacemaker;
2. Is not epileptic;
3. Does not suffer from any cognitive impairment which affects the patient's ability to follow instructions;
4. Is willing and able to assume responsibility in writing for use of the electric therapy device;

5. Will have adequate home assistance where such assistance may be necessary in the opinion of the treating chiropractor, especially when the electrodes are to be placed paraspinally;

6. Is provided with a complete set of instructions for home use which includes:

- i. The operation of the unit;
- ii. Battery charging or changing;
- iii. Care of the unit and supplies;
- iv. The preferred and alternative electrode placements and stimulation parameters;
- v. The suggested schedule of treatment times and rest periods;
- vi. Precautions against misuse of the unit including using the device for any purpose other than that for which it was ordered;
- vii. The avoidance and treatment of skin irritation;
- viii. The address and phone number of an information source for troubleshooting; and
- ix. The chiropractor's name and phone number; and

7. Has provided a written acknowledgment that a complete set of instructions for home use has been received.

(d) A battery operated electro-therapy device may be ordered for home use, provided that the chiropractor has instructed the patient that the electro-therapy device should not be applied over:

1. The carotid sinus;
2. Blood vessels with thrombosis or emboli;
3. Tissue or blood vessels vulnerable to hemorrhage or inflammation;
4. Lumbar or abdominal areas of pregnant women;
5. The eyes or internally;
6. A malignancy; or
7. Trans-thoracic applications in asthenic patients.

(e) The licensee shall document the ordering of care using an electro-therapy device in the patient record pursuant to N.J.A.C. 13:44E-2.2, which shall also include the following:

1. A specific treatment protocol, including the specific electro-modality to be used, the electrode type, and the electrode placement;
2. An evaluation of the patient's response and documentation of any necessary adjustments to the treatment;
3. The estimated period of time necessary to achieve the treatment goals of the electro-stimulation device;

4. Regular follow-up evaluations of the patient's participation in the at-home electro-therapy device program; and

5. The acknowledgment from the patient that a complete set of instructions for home use has been received pursuant to (c)7 above.

New Rule, R.2004 d.141, effective April 5, 2004.  
See: 35 N.J.R. 4828(a), 36 N.J.R. 1820(a).

#### 13:44E-2.8 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).  
Recodified from N.J.A.C. 13:44E-2.9 by R.2001 d.257, effective August 6, 2001.  
See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).  
Former N.J.A.C. 13:44E-2.8, Delegable tasks or functions of unlicensed assistants, recodified to N.J.A.C. 13:44-2.7.

#### 13:44E-2.9 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 duplicate issued by the Board 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).  
Recodified from N.J.A.C. 13:44E-2.10 and amended by R.2001 d.257, effective August 6, 2001.  
See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).  
Substituted "duplicate issued by the Board" for "copy". Former N.J.A.C. 13:44E-2.9, Notification of change of address; service of process, recodified to N.J.A.C. 13:44E-2.8.

#### 13:44E-2.10 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).  
Recodified from N.J.A.C. 13:44E-2.11 by R.2001 d.257, effective August 6, 2001.  
See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).  
Former N.J.A.C. 13:44E-2.10, Display of license, recodified to N.J.A.C. 13:44E-2.9.

#### 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-2.11 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 care, 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 chiropractic care;
  - iii. The skill required to perform the procedure or chiropractic care 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; or

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.

New Rule, R.1994 d.122, effective March 7, 1994.

See: 25 N.J.R. 3937(a), 26 N.J.R. 1231(b).

Recodified from N.J.A.C. 13:44E-2.13 and amended by R.2001 d.257, effective August 6, 2001.

See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

In (a)3, substituted "care" for "treatments"; in (a)4ii and iii, substituted "chiropractic care" for "treatment". Former N.J.A.C. 13:44E-2.11. Right to a hearing, recodified to N.J.A.C. 13:44E-2.10.

### 13:44E-2.12 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 consult with the physical therapist to:

1. Clarify any divergent assessments that the referring chiropractor and physical therapist may have made regarding the patient's needs;
2. Coordinate care and/or treatment programs in the event that the patient receives concurrent chiropractic and physical therapy. Any such concurrent care and/or 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. 3938(a), 26 N.J.R. 1234(a).

Administrative Correction.

See: 26 N.J.R. 2590(a).

Recodified from N.J.A.C. 13:44E-2.14 and amended by R.2001 d.257, effective August 6, 2001.

See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

In (c), rewrote the introductory paragraph, and in 2, inserted "care and/or" preceding "treatment" throughout. Former N.J.A.C. 13:44E-2.12 was reserved.

Petition for Rulemaking.

See: 35 N.J.R. 5623(a).

Petition for Rulemaking.

See: 36 N.J.R. 1616(a).

### 13:44E-2.13 Chiropractic examination

(a) 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.

(b) 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.

(c) 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.

New Rule, R.2000 d.306, effective July 17, 2000.

See: 32 N.J.R. 780(a), 32 N.J.R. 2593(a).

Recodified from N.J.A.C. 13:44E-2.15 and amended by R.2001 d.257, effective August 6, 2001.

See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

Deleted (a); recodified former (b) through (d) as (a) through (c); deleted (e). Former N.J.A.C. 13:44E-2.13, Overutilization; excessive fees, recodified to N.J.A.C. 13:44E-2.11.

### 13:44E-2.14 Independent chiropractic examinations

(a) For the purposes of this section, "independent chiropractic examination" means the taking of a history and the performance of a clinical examination of a patient conducted in this State by a chiropractor, other than the attending chiropractor, at the request of a third party, for the purpose of evaluating the patient's current condition and the preparation of a written report.

(b) A chiropractor performing an independent chiropractic examination in the State of New Jersey shall:

1. Hold a valid license to practice chiropractic in the State of New Jersey pursuant to N.J.S.A. 45:9-41.8 or 45:9-41.10; and
2. Have at least two years of clinical experience post-licensure if licensed after August 2, 2004.

(c) A licensed chiropractor performing an independent chiropractic examination shall:

1. Complete a patient record pursuant to N.J.A.C. 13:44E-2.2;

2. Document in the patient record and report the nature and extent of records reviewed including other information presented such as results of diagnostic imaging and/or diagnostic testing;

3. Perform and document in the patient record and in any resulting report a history, clinical examination and a chiropractic analysis or diagnosis, pursuant to N.J.A.C. 13:44E-1.1(b), which includes the specific tests, examinations or observations performed, and the results and evaluation of these specific tests, examinations or observations together with a review of the patient's response to prior care.

4. Document the clinical rationale for an opinion expressed with respect to the patient's present condition in the patient record and report;

5. Not make any recommendations directly to the patient for alterations in care by the attending chiropractor except with respect to the advice required by N.J.A.C. 13:44E-2.2(f)3. If such advice of an abnormality or condition is given to the patient and referral to another health care professional is recommended, such findings shall be documented in the patient record and report;

6. Not solicit the patient for care; and

7. Author and sign the independent chiropractic examination report.

Recodified to N.J.A.C. 13:44E-2.12 by R.2001 d.257, effective August 6, 2001.

See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

Section was "Referral of patients to physical therapists".

Former section, "Referral of patients to physical therapists" was recodified to N.J.A.C. 13:44E-2.12 by R.2001 d.257 effective August 6, 2001.

See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

New Rule, R.2004 d.307, effective August 2, 2004.

See: 35 N.J.R. 3753(a), 36 N.J.R. 3557(a).

### 13:44E-2.15 (Reserved)

Recodified to N.J.A.C. 13:44E-2.13 by R.2001 d.257, effective August 6, 2001.

See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

Section was "Chiropractic examination".

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

### 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 chiropractor 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.

Amended by R.2001 d.257, effective August 6, 2001.

See: 33 N.J.R. 1329(a), 33 N.J.R. 2683(a).

In “Chiropractic physician”, substituted “chiropractor” for “chiropractic physician” preceding “holding a license”.

### 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.

Petition for Rulemaking.

See: 36 N.J.R. 589(a), 1615(a).

Public Notice: Withdrawal of Petition for Rulemaking.

See: 38 N.J.R. 2745(d).

**13:44E-3.3 Referable tests**

(a) A chiropractic physician shall not perform the following, but may refer a patient to an appropriately trained medical doctor for the purpose of undergoing:

1. Needle electromyography (needle EMG) for the evaluation and diagnosis of neuropathies and radicular syndrome where clinically supported findings reveal a loss of sensation, numbness or tingling; or
2. Any test requiring administration of medication for effective performance.

**13:44E-3.4 Basic pre-test prerequisites and standards for patient evaluation applicable to electrodiagnostic tests and special examinations**

(a) A chiropractic physician performing, requesting or interpreting electrodiagnostic tests and special examinations shall:

1. Adhere to accepted standards of practice applicable to the performance of such tests, relating to clinical justification, reliability, validity, performance technique, interpretation and integration into the plan of treatment;
2. Ensure that tests, if performed by a chiropractic physician, are performed personally or under his or her immediate personal supervision and direction; and
3. Assure that professionally responsible and scientifically sequential pre-testing determinations are followed.

(b) A chiropractic physician contemplating the performance of electrodiagnostic tests and other special examinations with respect to a specific patient shall first:

1. Take and document in the patient record a history of the patient's clinical condition, reflecting:
  - i. Responses to inquiries regarding prior disease, trauma, surgery, prior and current medications prescribed by other practitioners, use of orthopedic devices and other relevant information, as applicable to the patient's situation;
  - ii. Factors which may be contributing to the patient's pain, sensory or motor complaints; and
  - iii. Pertinent information such as the patient's current height and weight, employment (including physical requirements, whether in or outside the home) and relevant aspects of required work effort, known injuries, testing performed and results, care received, response and other factors which may be relevant to the patient's condition;

2. Perform and document in the patient record a clinical examination including subjective complaints, observations, objective findings from a neurologically oriented physical examination, tests performed and their results including x-ray interpretation, interpretive reports of im-

aging studies acquired from any source, and interpretive reports of any other testing;

3. Establish and document in the patient record a provisional diagnosis and plan of care;
4. Prepare and document in the patient record ongoing progress notes reflecting subjective complaints, objective findings, treatment provided, and the patient's objective and subjective response to the treatment provided; and
5. Discuss with the patient appropriate alternatives and options, including referral to another practitioner or specialist for consultation and evaluation.

(c) A chiropractic physician who has complied with the requirements of (b)1 through 5 above may perform electrodiagnostic tests or special examinations, if the results of tests selected are expected to:

1. Alter the course of the patient's treatment;
2. Aid in determining the extent of functional deficit present; and
3. Be useful in the assessment of deterioration or improvement of a condition for the purpose of continued care.

(d) A chiropractic physician who has complied with the requirements of (b)1 through 5 above may refer a patient to another chiropractic physician or other appropriately licensed and trained practitioner to determine the need for, and the performance and interpretation of, an electrodiagnostic test or a special examination by means of a request for professional consultation, provided the referring chiropractic physician:

1. Thoroughly documents in the patient record an appropriate scientific rationale for the referral; and
2. Directly communicates with the practitioner who is to perform the test prior to the referral, as is professionally appropriate in the circumstances.

**13:44E-3.5 Educational prerequisites applicable to electrodiagnostic tests and special examinations; certificate requirement**

(a) A chiropractic physician seeking to perform electrodiagnostic tests and special examinations shall:

1. Be trained and skilled in the knowledge of:
  - i. The physiology and topographical anatomy of the peripheral and trunk musculature and of the peripheral and central nervous systems;
  - ii. Pathology as contrasted with normal presentation of peripheral nerve and muscle tissue;
  - iii. Clinical presentation of various neurological disorders and of neuropathological dysfunction of central

and peripheral pathways and in the treatment protocols of tests pertinent to such conditions;

iv. Electrodiagnosis as pertinent to an understanding of instrumentation and laboratory parameters for the testing and interpretation of the test in question;

v. Laboratory hygiene and sterile technique to prevent transmission of infectious diseases;

vi. Technical procedures necessary to ensure proficiency in performance of the test to be utilized; and

vii. The precepts of ethical practice so as to limit test utilization to the patient's best interests.

2. Successfully complete (and retain certification of completion of) a training course in the pertinent tests, approved by the Board:

i. Offered on the college premises of an accredited college recognized by the New Jersey State Board of Chiropractic Examiners; or

ii. Received in a postgraduate program sponsored by a college of chiropractic recognized by Council of Chiropractic Education; and

3. Within 60 days of the applicant's receipt of an application form, submit to the Board the completed application form seeking approval of the undergraduate or postgraduate course referred to in (a)2 above, along with a one-time fee of \$50.00 pursuant to N.J.A.C. 13:44E-2.5, which the Board shall act upon within 90 days of its receipt of the application.

(b) A chiropractic physician whose training has been obtained prior to March 1, 1999 shall, by March 31, 1999, submit to the Board an application for approval by evaluation of equivalency of training and competency. Chiropractic physicians who have performed electrodiagnostic tests and special examinations prior to March 1, 1999, who have filed a timely application with the Board, may continue to perform such tests pending Board action on the application.

(c) A chiropractic physician performing or offering to perform electrodiagnostic tests or special examinations shall comply with the applicable heightened standards of accepted practice for practitioners engaged in like professional conduct. A chiropractic physician performing or offering to perform electrodiagnostic testing who does not fully comply with all requirements set forth in this section may be found to be engaging in misrepresentation, deception, gross or repeated malpractice or negligence or incompetence, professional misconduct, and/or any other disciplinary ground authorized by applicable law or rules.

(d) A chiropractic physician seeking to utilize experimental equipment or procedures for research purposes shall:

1. Secure the prior written approval of the Board;
2. Obtain the informed consent of the patient; and

3. Not charge or bill the patient or third party payor for the service.

(e) A chiropractic physician performing electrodiagnostic tests or special examinations shall familiarize himself or herself with contemporary professional journals and with scholarly texts to maintain current accepted standards of practice in the profession and in the specialty.

### **13:44E-3.6 Informed consent; equipment; preparation for and performance of the electrodiagnostic test**

(a) Both the chiropractic physician who has requested the performance of an electrodiagnostic test or special examination and the chiropractic physician performing such test shall provide the patient with a written description of the test addressing the risks involved in disorders in homeostasis, infectious diseases, and contraindications for electrodiagnostic testing, for example, the presence of a pacemaker, if pertinent.

(b) A chiropractic physician shall ensure that all equipment used in the performance of electrodiagnostic tests and special examinations:

1. Is capable of performing its designated task efficiently, for the benefit to the patient;
2. Is maintained in proper working order to assure safety; and
3. Is inspected, at least once each year (or more frequently if required by law or recommended by the manufacturer) to maintain quality of performance and calibration, with documentation of such inspections retained for seven years from the date of last entry, or until disposal of the equipment.

(c) A chiropractic physician performing an electrodiagnostic test or special examinations shall:

1. Personally perform a physical examination which examination also specifically focuses on the orthopedic neuromuscular condition for which the testing has been recommended;
2. Ascertain the reliability and validity of the testing performed;
3. Not repeat such testing except when a prior result on the specific limb was positive, that is, demonstrated pathology amenable to chiropractic care, and then only at scientifically reasonable intervals, or when clinically supported by significant objective documentation;
4. Document the decision-making process in the patient record; and
5. Provide a report as required by N.J.A.C. 13:44E-3.8 to the chiropractic physician who requested the performance of the electrodiagnostic test or special examination.

**13:44E-3.7 Use of testing assistant**

(a) When using an assistant or other person, whether or not licensed in a health care profession, to provide technical assistance in performance of an electrodiagnostic test or special examination, a chiropractic physician shall:

1. Ascertain the assistant's competence;
2. Review the appropriateness and quality of services provided by the assistant;
3. Remain in the room during the performance of the test;
4. Make all professional decisions with respect to the testing;
5. Directly supervise the testing at all times;
6. Not be involved in the concurrent testing or supervision of testing of another patient; and
7. Assure that the tasks performed by the assistant are fully documented in the patient record, along with the person's full name legibly printed.

(b) If any fee, other than a regular salary paid to an employee, has been or shall be paid by the chiropractic physician to an assistant or other person, directly or indirectly, a full record of such fee and the basis therefor shall be prepared and maintained for seven years, and shall be subject to inspection by the State Board of Chiropractic Examiners, the Attorney General, or by the Director of the Division of Consumer Affairs.

**13:44E-3.8 Preparation of test report; follow-up**

(a) A chiropractic physician who performs an electrodiagnostic test or special examination shall:

1. Prepare and retain a comprehensive report, on professional letterhead bearing the chiropractic physician's full name and license number, office name, address and telephone number, which report shall include at least the following:
  - i. The patient's name, case identification number, age, sex, height and weight, and dominant side;
  - ii. The date on which the test was performed;
  - iii. The location at which the test was performed;
  - iv. The date on which the report was prepared;
  - v. A description of the relevant clinical history, including the patient's problem and indication for the testing including the presenting symptoms and clinical signs, etiology of symptoms, history of other diagnostic tests performed and their outcomes;
  - vi. An identification of the specific test(s) performed and, if applicable, a full description of nerves or muscles sampled, acquisition parameters, appropriate technical attributes of the study such as limb tempera-

ture, sites of stimulation, recording of amplitudes and response, latency, configuration of wave forms, distances and velocities, as well as the criteria utilized to identify the reported abnormality;

vii. Data relevant to the test performance, reported in a manner such that another appropriately trained practitioner would be able to interpret the results or replicate the procedure;

viii. Interpretation and comments regarding normality or abnormality of the data which reflects the clinical significance of the data and describes the differential diagnosis and potential etiology for the findings made; and

ix. A statement of diagnostic conclusions and recommendations for appropriate treatment, to include referral to another specialist, if appropriate;

2. Ensure that if technical difficulties were encountered, the report addresses those difficulties, including but not limited to artifact production, non-compliance or agitation by the patient, edema, presence of deformity or scar tissue; and

3. Retain, as part of the patient record, any raw data or graphs arising out of a diagnostic test administration, in a form which shall be:

i. Appropriate to the test utilized, for example, copies of wave forms from nerve conduction studies and evoked potentials; and

ii. Available for hard copy review or submission to the Board request, as required by N.J.A.C. 13:44E-2.2.

(b) A chiropractic physician who has performed an electrodiagnostic test or special examination shall provide to the chiropractic physician who requested the test, in addition to the interpretive report required by (a) above, a representative sample of the wave forms or other raw data, as applicable to the particular test, for inclusion in the patient record.

(c) A chiropractic physician who has performed an electrodiagnostic test or special examination shall discuss the findings and recommendations with the patient or patient's representative, as applicable.

(d) A chiropractic physician who requested that another chiropractic physician perform electrodiagnostic test or special examination may request, with the patient's consent, a second opinion from another licensed chiropractic physician or medical doctor, trained and skilled in the performance and interpretation of electrodiagnostic tests. The patient shall not be caused to incur an additional charge for the second opinion unless the patient specifically consents or the patient's insurance carrier approves such expense as may be incurred. If the consultant to whom the patient is referred intends to charge for the consultation, neither that consultant nor the referring chiropractic physician shall have a significant beneficial interest in the practice of the other.

**13:44E-3.9 Limitations on referrals**

(a) A chiropractic physician requesting that another chiropractic physician or other practitioner perform any diagnostic tests shall:

1. Comply with the limitations on lawful referral set forth in N.J.S.A. 45:9-22.4 et seq.;
2. Not refer a patient to another practitioner practicing at the same premises or at any space within or outside of the office or building, parking lot or other area in any mobile premises in the environs of the office or building, unless:
  - i. The patient record fully justifies the recommendation for evaluation;
  - ii. That other practitioner is a bona fide partner, fellow shareholder of a professional service corporation or other permitted practice structure, or a regularly salaried practitioner-employee of the chiropractic physician requesting the performance of a diagnostic test; and
  - iii. The bill for professional services reflects the name of the practice entity and identity of the provider of service.

**13:44E-3.10 Fees**

(a) The chiropractic physician performing a diagnostic test for which a charge is authorized, prior to performance of any such test, shall ensure:

1. That the patient has been informed of the anticipated fee for the professional service in a timely manner sufficient to allow the patient, who has the ultimate responsibility, to ascertain the financial responsibility for the procedure;
2. That the fee, whether global or totaled for both technical and professional components, be billed solely under the name of the chiropractic physician performing the test, or his/her office, consistent with billing practices applicable to other chiropractic services; and
3. That the fee shall not violate N.J.A.C. 13:44E-2.13 which prohibits excessive fees.

**13:44E-3.11 Application of prohibitions and limitations**

Prohibitions or limitations on the permissible performance of tests as designated in this subchapter, or regarding billing for tests previously performed, shall be prospective with regard to rule compliance, but shall not limit the Board's authority to enforce the provisions of N.J.S.A. 45:1-14 et seq. and other applicable law and rules.