

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); and
5. The ordering or performing of such other diagnostic or analytical tests consistent with chiropractic practice including, but not limited to, neurocalometer, thermography, and non-invasive muscle testing.

(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).

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.

(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)

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.

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).

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 not justified by the needs of the patient;
2. Is for any diagnostic or treatment services, goods or appliances which are excessive in quality or quantity;
3. Represents multiple charges for the same chiropractic services or treatments, goods or appliances;
4. Contains an excessive fee. A fee is excessive when, after a review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching under the circumstances. The charging of an excessive fee shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21. Factors which may be considered in determining whether a fee is excessive include, but are not limited to, the following:
 - i. The time and effort required;
 - ii. The novelty and difficulty of the procedure or treatment;
 - iii. The skill required to perform the procedure or treatment properly;
 - iv. Any requirements or conditions imposed by the patient or by circumstances;

- v. The nature and length of the professional relationship with the patient;
 - vi. The experience, reputation and ability of the licensee performing the services; and/or
 - vii. The nature and circumstances under which services are provided.
5. Is for services, goods or appliances which were not rendered or supplied;
 6. Is for a charge or claim which, due to the presence of insurance coverage, exceeds the usual and customary charges for such services, goods or appliances for patients who do not have insurance coverage; or
 7. (Reserved)

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

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

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

1. The name of the patient;
2. The printed name of the referring chiropractor, including office address and phone number;
3. The signature of the chiropractor and the date;

4. The purpose of referral (for example, "physical therapy examination and treatment"); and
5. The spinal component of patient's problem.

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

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

1. Clarify any divergent assessments that the referring chiropractor and physical therapist may have made regarding the patient's needs;
2. Coordinate treatment programs in the event that the patient receives concurrent chiropractic and physical therapy. Any such concurrent treatment programs shall be compatible; and
3. Jointly determine a schedule of additional consultation that will allow the referring chiropractor to monitor the patient's on-going plan of care.

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

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