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RULE ADOPTIONS

LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF CHIROPRACTIC EXAMINERS

Readoption with Amendments N.J.A.C. 13:44E

State Board of Chiropractic Examiners Rules

Proposed: January 21, 2014, at 46 N.J.R. 163(a).

Adopted: April 24, 2014, by the State Board of Chiropractic Examiners, David Allen, D.C., President.

Filed: May 30, 2014, as R.2014 d.109, **without change**.

Authority: N.J.S.A. 45:1-3.2, 45:1-15.1, 45:9-14.5 et seq., and 45:9-41.23 et seq.

Effective Dates: May 30, 2014, Readoption;

July 7, 2014, Amendments.

Expiration Date: May 30, 2021.

Summary of Public Comments and Agency Responses:

The official comment period ended March 22, 2014. The Board received comments from the following three individuals for their respective organizations:

1. Melinda R. Martinson, Esq., General Counsel for the Medical Society of New Jersey (MSNJ)
2. Douglas E. Mazzuca, D.O., President, the New Jersey Academy of Ophthalmology (NJAO)
3. Todd P. Stitik, M.D., President, the New Jersey Society of Physical Medicine and Rehabilitation (NJSPM&R)

1. COMMENT: Dr. Stitik objected to the language in the proposed readopted rules concerning electrodiagnostic, or EMG testing. He argued that EMG testing is part of the practice of medicine, and does not fall under the scope of chiropractic care. Dr. Stitik stated that [page=1645] electrodiagnostic medicine consultations include test performance, interpretation, and incorporation of the results in creating a diagnostic assessment and treatment plan for the patient. He believes that chiropractors do not undergo training in this form of diagnostic assessment during their medical education; in contrast, physicians receive formal training in this form of testing during their four years of residency training and additional years of post-graduate studies. He found it impossible to believe that this

type of training can be provided through weekend courses. For this reason, the NJSPM&R strongly believed that an expansion of chiropractors' privileges to include electrodiagnostic testing is not in the best interest of patients.

RESPONSE: The New Jersey Board of Chiropractic Examiners (Board) disagrees that surface EMG testing does not fall under the scope of chiropractic care. Chiropractors often use electrodiagnostic testing to determine or confirm whether a nerve is compromised, a condition that may be treatable through chiropractic. The Board's enabling statute and existing rules already permit licensees to perform electrodiagnostic tests and special examinations. N.J.S.A. 45:9-14.5.c(1) permits chiropractors to conduct computer-aided neuromuscular testing and nerve conduction studies. N.J.A.C. 13:44E-1.1(c)6 states that the requesting or performing of electrodiagnostic tests or other special examinations is within the chiropractor's scope of practice, to the extent, and in the manner authorized by N.J.A.C. 13:44E-3. Existing N.J.A.C. 13:44E-3.1 defines an "electrodiagnostic test" as a diagnostic test utilizing electrical current to measure and record electrical irritability. Because surface electromyography (SEMG) is specifically excluded from the existing definition of "electrodiagnostic test," a chiropractor may perform this test without completing the additional training set forth at N.J.A.C. 13:44E-3.5.

The Board disagrees with the commenter's assertion that chiropractors do not receive education comparable to physicians in electrodiagnostic testing. Like medical students who study diagnostic skills while in medical school, chiropractic students study diagnostic skills as part of their curriculum in chiropractic college. Like physicians who study electrodiagnostic testing in their residency or in post-graduate work, chiropractors who make electrodiagnostic testing a part of their practice must first successfully complete post-graduate training in electrodiagnostic testing and satisfy the other requirements of N.J.A.C. 13:44E-3.5.

Under the existing rules, chiropractors seeking to perform electrodiagnostic tests are required to be trained and skilled in the knowledge of 1. the physiology and topographical anatomy of the peripheral and trunk musculature and of the peripheral and central nervous systems; 2. pathology as contrasted with normal presentation of peripheral nerve and muscle tissue; 3. 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; 4. electrodiagnosis as pertinent to an understanding of instrumentation and laboratory parameters for the testing and interpretation of the test in question; 5. laboratory hygiene and aseptic technique to prevent transmission of infectious diseases; 6. technical procedures necessary to ensure proficiency in performance of the test to be utilized; and 7. the precepts of ethical practice, so as to limit test utilization to the patient's best interests.

Under the proposed amendments, licensees wishing to perform electrodiagnostic tests or specific special examinations would be required to complete a course, preapproved by the Board, that consists of course work and practical, hands-on instruction. Course participants must also successfully complete an examination that demonstrates that the individual is capable of recognizing scientifically supportable and practical indications for the test; has knowledge in the proper administration of the test; possesses skill at proper interpretation of the test; and has obtained training in how to integrate the test results into management of the patient's condition.

Existing N.J.A.C. 13:44E-3.5(d) also requires that a chiropractic physician performing electrodiagnostic tests or special examinations to 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.

The Board believes that the proposed language regarding electrodiagnostic testing does not expand the chiropractor's current scope of practice. The proposed amendments to N.J.A.C. 13:44E-3.5(a)2 would require the Board to evaluate a course based on performance outcome rather than on the number of hours of instruction; however, existing rules already include the performance of electrodiagnostic testing and special examinations in the chiropractors' scope of practice.

2. COMMENT: MSNJ and NJAO objected specifically to the performance of vestibulo-ocular-nystagmus testing (VONT) by chiropractors. One of the commenters argued that VONT does not fall within the scope of practice as described in the chiropractic enabling statute. The commenter contends that the practice of chiropractic is limited to "the reduction of chiropractic subluxation, and ... examination, diagnosis, analysis, assessment, systems of adjustments, manipulation and treatment of the articulations and soft tissue of the body." The commenter argued that N.J.S.A. 45:9-14.5.a confines the practice of chiropractic to the diagnosis, adjustment, and treatment of the articulations of the spinal column and other joints, articulations, and soft tissue, and to the ordering and administration of physical modalities and therapeutic, rehabilitative and strengthening exercises. The commenter believed that the statute cannot be read to support VONT testing because VONT is in no way related to treatment of the soft tissue, the spinal column, or joints.

Rather, the commenters argue that VONT testing is used by physicians to assess vestibulo-ocular reflex dysfunction, to discover inner ear and eye disorders, detect central [nervous system] disorders, and to decide whether further testing should be done. Patients having this test usually complain of imbalance, dizziness, and vertigo. The commenters believed that these symptoms, and diseases related to them, require medications that only a licensed physician can prescribe. The commenters also stated that patients with vestibulo-ocular reflex dysfunctions must first be screened for a number of medical disorders including migraines, depression, and anxiety disorder, which may affect vestibulo-ocular reflex dysfunction. There are a number of different tests that may be used and that are indicated for the underlying medical condition. They may then undergo a series of tests for diagnosis and location of the nerve lesion. Some of the commenters' members have expressed concern that the proposed amendments might expand the types of medical conditions that chiropractors would be allowed to treat.

RESPONSE: The Board disagrees with the commenters' contention that the performance of VONT is beyond the scope of chiropractic. N.J.S.A. 45:9-14.5 is not strictly a limiting provision, it is more open-ended, and where a modality is specifically prohibited, the statute says so. N.J.S.A. 45:9-14.5.b states that a licensed chiropractor shall have the right in the examination of the patient, to use the neurocalometer, X-ray, and **other necessary instruments** (emphasis added) solely for the purpose of diagnosis or analysis. The statute's only diagnostic limitations are on the use of endoscopy and cutting lasers and cutting instruments. Moreover, N.J.S.A. 45:9-14.5.c provides that chiropractors may use methods of treatment including chiropractic practice methods, physical medicine modalities,

rehabilitation, splinting, or bracing consistent with the practice of chiropractic, nutrition, and first aid and may order diagnostic or analytical tests, including diagnostic imaging, bioanalytical laboratory tests, **and may perform such other diagnostic and analytical diagnostic tests including reagent strip tests, X-ray, computer aided neuromuscular testing, nerve conduction studies, and may interpret evoked potentials** (emphasis added).

Furthermore, chiropractors are permitted to treat subluxations. N.J.S.A. 45:9-14.5 defines a chiropractic subluxation as "a complex of functional, structural or pathological articular lesions or a local or systemic aberration of the nervous system caused by injury, pressure, traction, stress, torsion, or by chemical or electrical irritation, stimulation, or inhibition of a nerve that compromise neural integrity as determined by chiropractic analytical procedures." Some cases of vertigo or dizziness may be treated chiropractically through vestibular rehabilitation and/or by relieving pressure and stress on the nerves of the upper spine and lower cranium; not all cases require medication.

The Board agrees with the commenter that VONT is used to assess vestibulo-ocular reflex dysfunction, to discover inner ear and eye disorders, and to detect central [nervous system] disorders. However, the [page=1646] Board believes that VONT can be an important chiropractic tool when conducting a differential diagnosis to determine whether a patient suffering from dizziness may be treated chiropractically, by a medical doctor, or by both.

When a patient complaining of dizziness comes to a chiropractor, the chiropractor must determine whether the clinical picture warrants conducting VONT. The chiropractor would complete an assessment of the vestibular system that may incorporate both clinical and electrodiagnostic tests. The chiropractor must take a complete patient history to assess possible causes of the dizziness, for example: medications the patient is taking; whether the patient suffered a blow to the head; whether the patient has a high fever or is vomiting; or whether the patient has been in an accident. If the chiropractor suspects that the dizziness or vertigo may be the result of a subluxation of the upper spine or cranial nerves connected to the balance control of the inner ear, the use of VONT would be appropriate prior to conducting chiropractic treatment. In the course of their practices, Board members have found that the release of pressure and stress on the cranial nerves at the bottom of the skull and upper reaches of the spine can improve a patient's symptoms of dizziness.

It is the Board's view that the amendments would not expand the types of conditions that chiropractors would be allowed to treat. Chiropractors may perform only within the scope of their practice. If, after examining the patient, a chiropractor determines that the patient has symptoms or conditions that require diagnosis, analysis, treatment, or methods beyond the scope of chiropractic, N.J.S.A. 45:9-14.5.e mandates that the chiropractor refer the patient to the appropriate practitioner.

3. COMMENT: Two of the commenters objected to chiropractors performing VONT testing because they believed that chiropractors do not receive sufficient education and training to perform VONT. They argue that nystagmus is a complex medical condition not well understood by many physicians, and which is typically treated by specialists who have received special training above and beyond the training necessary for board certification. Practitioners must have a comprehensive understanding of this testing and be prepared to know what to do with possible complications. Test interpretations are difficult, subject to

interpretation, and it is common for specialists to consult with one another to better understand the test results. Practitioners must also know what further studies are indicated as a result of the testing. The commenters believe that chiropractors do not have sufficient medical education and training to interpret test results that may pose a challenge for physician specialists with far greater education, training, and experience. The commenters believe that chiropractors, taking a short post-graduate course on VONT, lack the years of training necessary to perform and interpret this test.

RESPONSE: The Board disagrees with the commenters' assertions that chiropractors do not receive sufficient education to conduct VONT and interpret the test results. Chiropractors seeking certification in VONT must complete a course consisting of coursework, hands-on instruction, and a final examination that demonstrates that the chiropractor is capable of recognizing scientifically supportable and practical indications for the test; has knowledge in the proper administration of the test; possesses skill at proper interpretation of the test; and has obtained training in how to integrate the test results into management of the patient's condition. The Board believes that all courses in VONT, whether offered by chiropractic or medical educators, teach how to conduct the tests and interpret the results in order to properly diagnose and treat the patient. VONT courses offered by chiropractic colleges may also include instruction on chiropractic treatment when the test results indicate that chiropractic care is appropriate for the patient. Extensive post-graduate courses are also offered by chiropractic colleges in vestibular rehabilitation.

4. COMMENT: One of the commenters was concerned that the reference to "vestibulo-ocular- nystagmus testing," without identifying any specific test, type of equipment to be used, or target diagnosis, was impermissibly vague and overbroad. The commenter noted that the chiropractors' enabling statute places limits on the types of instruments and procedures that a chiropractor may utilize.

RESPONSE: As stated in the Board's Response to Comment 2, N.J.S.A. 45:9-14.5 is not a strictly limiting provision, it is somewhat more open-ended than the commenter suggests, and where a modality is specifically prohibited, the statute says so. N.J.S.A. 45:9-14.5.b states that a licensed chiropractor shall have the right in the examination of the patient, to use the neurocalometer, X-ray and **other necessary instruments** (emphasis added) solely for the purpose of diagnosis or analysis. The statute's only diagnostic limitations are on the use of endoscopy, cutting lasers, and other cutting instruments. N.J.S.A. 45:9-14.5.b states that a licensed chiropractor shall have the right in the examination of a patient to use the neurocalometer, x-ray, and other necessary instruments solely for the purpose of diagnosis or analysis. The Board acknowledges that there may be a number of electrophysiological tests of the vestibular and extra vestibular systems geared toward the same objective of determining the cause of an imbalance, but no VONT procedure requires the use of an endoscope, or any cutting instruments. The Board has determined that enumerating the types of permitted VONT testing would not be practical, because technology is constantly changing, and the Board does not want to preclude chiropractors from using a technique that may become standard in the future.

5. COMMENT: One of the commenters expressed concern over the number and types of testing that the amendments might encompass. The commenter was concerned that the amendments would also permit chiropractors to perform other electrodiagnostic tests, such as electronystagmogram; videostagmography; Calorics; HIT Video Recording;

vibromyography; electromyography; and vestibular autorotation testing. The commenter argued that the Board may not expand the scope of chiropractic indirectly by fashioning training for tests that chiropractors are not permitted to utilize. The commenter offered as an example that the Board could not develop training for EMGs because the Supreme Court has ruled that EMGs can be performed only by licensed physicians. The commenter cautioned that authority to conduct a particular electrodiagnostic test must be the subject of separate rulemaking.

RESPONSE: The Board's existing rules permit chiropractors to perform electrodiagnostic tests and special examinations if they meet the requirements of N.J.A.C. 13:44E-3. See also the Board's Response to Comment 4.

The Board believes that the commenter's concern about Board-developed training for EMGs is misplaced, because N.J.A.C. 13:44E-3.3(a)1, which is proposed to be readopted without change, specifically prohibits chiropractors from performing needle EMGs. Existing N.J.A.C. 13:44E-3.2(c)1 and 5 already permit chiropractors to perform nerve conduction studies and surface EMGs.

The Board believes that the commenter may have partly misunderstood the intention of the proposed amendment regarding electrodiagnostic testing and specialized tests. The Board does not intend to develop its own training for the performance of specialized and electrodiagnostic tests. Rather, the Board will assess training that is available through specialized educational providers. The Board does not believe that the availability of training for specialized and electrodiagnostic testing will result in an indirect expansion the chiropractors' scope of practice. For example, that a chiropractor who is also licensed in another state may complete a course on how to perform needle EMGs as part of an electrodiagnosis certificate program does not mean that a chiropractor may perform needle EMGs in New Jersey. The Board is well aware that the chiropractor's scope of practice is prescribed by N.J.S.A. 45:9-14.5. Furthermore, the Board will not approve training for any procedure that does not fall within the permitted scope.

The Board disagrees with the commenter's statement that authority to conduct a particular electrodiagnostic test must be the subject of a separate rulemaking. N.J.S.A. 52:14B-5.1.c(2) states, "In the case of a proposed readoption of an expiring rule with substantive changes, an agency may continue the expiring rule for a seven-year period by duly proposing the readoption with substantive changes and readopting the rule prior to its expiration." The statute permits the Board to make substantive changes in a re adoption notice of proposal, including the clarification that VONT falls within the definition of a special examination.

6. COMMENT: Several commenters expressed concern that permitting VONT will result in a patient safety issue, because without adequate intensive medical training and post-medical school training, [page=1647] VONT may be over-utilized and the results poorly interpreted. Patients with medical conditions that are treatable may be under-diagnosed. Many of the tests are uncomfortable and time-consuming. This can be an unnecessary stressor to patients who might not have had indications for the particular tests. Overutilization of VONT will add costs to an already overburdened and costly health system.

RESPONSE: The Board disagrees that patient safety will be compromised by chiropractors

performing VONT. The education and training that chiropractors receive is designed to enable a chiropractor to assess whether a patient should be treated chiropractically, medically, or both. The Board believes that Board rules assure that chiropractors performing VONT are, and will continue to be, properly educated and trained. As the Board stated in its Response to Comment 2, if, after examining the patient, a chiropractor determines that the patient has symptoms or conditions that require diagnosis, analysis, treatment, or methods beyond the scope of chiropractic, N.J.S.A. 45:9-14.5.e mandates that the chiropractor refer the patient to the appropriate practitioner.

The Board shares some of the same concerns as the Board of Medical Examiners about overutilization, but notes that N.J.A.C. 13:44E-3.5(a)1vii requires that a chiropractic physician seeking to perform electrodiagnostic tests and special examinations be trained and skilled in the knowledge of the precepts of ethical practice, so as to limit test utilization to the patient's best interests. Furthermore, N.J.A.C. 13:44E-2.11(a)1 prohibits a chiropractor from directly or indirectly engaging in the rendering of any bill or the submission of any claim for service that is not justified by the needs of the patient. Any chiropractor who engages in overutilization may be subject to Board discipline.

Federal Standards Statement

A Federal standards analysis is not required because the rules readopted with amendments are subject to State statutory requirements and are not subject to any Federal requirements.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:44E.

Full text of the adopted amendments follows:

SUBCHAPTER 1A. LICENSURE

13:44E-1A.4 Biennial license renewal; license expiration; reinstatement after expiration; inactive status; return from inactive status

(a)-(i) (No change.)

(j) A licensee who has been inactive for five years or more, and has not been lawfully practicing in another jurisdiction, shall:

1. Complete the requirements set forth in (h)1 through 3 above; and

2. (No change.)

(k) (No change.)

13:44E-1A.5 Chiropractic continuing education

(a) (No change.)

(b) A licensee applying for biennial license renewal shall have completed, during the preceding biennial period, 30 continuing educational credits in order to qualify for the renewal of his or her license. One credit is defined as 50 minutes of instruction. A minimum of two credits shall be completed in the study of State laws and rules governing chiropractic professional ethics or recordkeeping and documentation as it pertains to the practice of chiropractic in this State, and a minimum of two credits shall be completed in nutrition education.

Recodify existing (d)-(j) as (c)-(i) (No change in text.)

(j) A provider seeking Board approval to sponsor programs for continuing education credit shall submit an application to the Board, which shall include course and program descriptions, instructor qualifications, locations, dates and times of courses, and other information as required by the Board.

1. Qualified sponsors shall offer courses that meet the following criteria:

i.-iii. (No change.)

iv. Offer subjects enumerated in (c) above.

2. A continuing education sponsor may receive prior approval, valid for the current biennial licensing period in which the approval was issued, for a course of acceptable subject matter, as set forth in (c) above, and be assigned a designated number of continuing education credits by the Board if the program sponsor provides in writing information required by the Board to document the elements of (j)1 above, and in addition, certifies that the sponsor shall:

i.-ii. (No change.)

iii. Comply with the requirements of (j)4 below.

iv.-vii. (No change.)

3. (No change.)

4. A continuing education sponsor who has qualified as a sponsor pursuant to (j)1 above, or has obtained prior Board approval for a course pursuant to (j)2 above, shall not alter, amend, update, or reconfigure the approved courses for continuing education credit without the permission of the Board. If a continuing education sponsor alters, amends, updates, or reconfigures a course, the continuing education sponsor must resubmit the course to the Board for approval.

(k) A licensee seeking Board approval of a program for continuing education credit, which has not been approved pursuant to (j) above, may submit an application of a form prescribed by the Board, which shall include course and program descriptions, instructor qualifications, locations, dates and times of courses, number of continuing education credits, and other information as required by the Board. The Board shall notify the licensee, in writing, of its determination, which is based upon (d), (e), and (f) above.

(l) All coursework required for certification to perform specialized examinations or electrodiagnostic tests referred to in N.J.A.C. 13:44E-3.5(a)2 must be preapproved by the Board at least 90 days prior to the date the course begins.

1. A program provider seeking preapproval of a course shall follow the approval process set forth at (k) above.

2. A licensee seeking preapproval of a course shall follow the approval process set forth at (k) above.

(m)-(t) (No change.)

SUBCHAPTER 2. GENERAL RULES OF PRACTICE

13:44E-2.7 Delegable tasks or functions of unlicensed assistants

(a)-(b) (No change.)

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

1. Examine, diagnose, or analyze a patient;

2. Notwithstanding (a)2 above, perform massage, unless licensed as a massage and bodywork therapist in this State by the Board of Massage and Bodywork Therapy pursuant to N.J.S.A. 45:11-53 to 79.

3.-7. (No change.)

(d)-(f) (No change.)

13:44E-2.13 Chiropractic examination

(a) To obtain a license to practice chiropractic, a candidate shall successfully pass:

1.-2. (No change.)

(b)-(c) (No change.)

13:44E-2.15 Permissible practice structures

(a)-(b) (No change.)

(c) A chiropractic physician may offer chiropractic services as an employee of a general business corporation in this State only in one or more of the settings in (c)1 through 6 below. Any such setting shall have a designated chiropractic or medical director, licensed to practice chiropractic or medicine in this State, who is regularly on the premises and who, alone or with other persons authorized by the State Department of Health, if applicable, is responsible for verification of licensure and credentialing of chiropractic providers and the

provision of chiropractic services. The settings are as follows:

1. The corporation or other business entity is licensed by the New Jersey Department of Health as a health maintenance organization, hospital, long- or short-term health care facility, ambulatory care facility, or other type of health care facility or health care provider, such as a diagnostic imaging facility. This may include a licensed facility that is a component part of a for-profit corporation employing or otherwise remunerating licensed health care professionals;

2.-6. (No change.)

(d)-(i) (No change.)

[page=1648] 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.

...

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

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

(a)-(b) (No change.)

(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.-5. (No change.)

6. Applied kinesiology and gait analysis;

7. Computer-supported range of motion tests, postural analysis tests, or muscle testing devices, such as Dynatron or Cyber station; and

8. Vestibulo-ocular-nystagmus tests.

(d) (No change.)

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. (No change.)

2. Successfully complete (and retain certification of completion of) a Board-approved course consisting of course work and practical, hands-on instruction, and an examination that demonstrates that the chiropractic physician is capable of recognizing scientifically supportable and practical indications for the test; has knowledge in the proper administration of the test; possesses skill at proper interpretation of the test; and has obtained training in how to integrate the test results into management of the patient's condition. The course shall be:

i.-iii. (No change.)

3. Within 60 days of completion of a course referred to in (a)2 above, submit to the Board a completed application form for certification to perform the test or examination sought, together with the one-time certification fee set forth in N.J.A.C. 13:44E-2.5, which the Board shall act upon within 90 days of its receipt.

(b)-(d) (No change.)

13:44E-3.6 Informed consent; equipment; preparation for and performance of the electrodiagnostic test or special examination

(a)-(c) (No change.)