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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: August 21, 2006 at 38 N.J.R. 3235(a).

Adopted: November 30, 2006 by the State Board of Chiropractic Examiners, Lawrence O'Connor, DC, President.

Filed: December 22, 2006 as R.2007 d.31, with a technical change not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:1-3.2, 45:9-14.5 et seq. and 45:9-41.23.B Effective Date: December 22, 2006, Readoption; February 20, 2007, Amendments. Expiration Date: December 22, 2011.

**Summary of Agency-Initiated Changes:**

The Board has initiated a change to N.J.A.C. 13:44E-2.1(c)10. That paragraph refers to violations of (d) through (m); however, the last provision included in the section is subsection (1).

**Federal Standards Statement**

A Federal standards analysis is not required because the rules readopted with amendments are subject to the 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 (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

**SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS**

**13:44E-1.1 Scope of practice**

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

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

1.-4. (No change.)

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

6. The requesting or performing of electrodiagnostic tests or other special examinations, to the extent and in the manner authorized by N.J.A.C. 13:44E-3.

(d) (No change.)

(e) When clinically indicated, supported and documented in the patient record, a licensee may provide the following procedures in conjunction with chiropractic care to facilitate, enhance and/or prolong the effects of the chiropractic adjustment:

1. The ordering and/or administering of physical modalities; and
2. The ordering and/or administering of therapeutic, rehabilitative and/or strengthening exercises.

## **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.-3. (No change.)

4. Have successfully:

i. (No change.)

ii. Graduated from a chiropractic college or university that meets the requirements set forth in N.J.S.A. 45:9-41.5 during the applicant's entire course of study;

5.-6. (No change.)

### **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.-2. (No change.)

3. Proof of successful completion of the National Board of Chiropractic Examiners Examination pursuant to N.J.A.C. 13:44E-2.13;

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

5. A certification of authorization to perform and cooperate in a criminal history background check conducted pursuant to N.J.S.A. 45:1-28 et seq.

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

1.-2. (No change.)

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

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

5. The applicant has submitted a certification of authorization to perform and has cooperated in a criminal history background check pursuant to N.J.S.A. 45:1-28 et seq.

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

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

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

(d) An individual whose license has been expired for five years or less for failure to renew pursuant to (c) above may be reinstated by the Board after fulfilling the following:

1. Completion of a reinstatement application;
2. Payment of the reinstatement fee and all past delinquent biennial renewal fees pursuant to N.J.A.C. 13:44E-2.5;
3. Submission of an affidavit of employment listing each job held during the period of license expiration that includes the name, address and telephone number of each employer; and
4. Completion of a criminal history background check as required by N.J.S.A. 45:1-28 et seq., if a criminal history background check has not been completed previously.

(e) An individual whose license has been expired for more than five years, and has been lawfully practicing in another jurisdiction, shall complete the requirements set forth in (d)1 through 4 above.

(f) An individual whose license has been expired for more than five years, and has not been lawfully practicing in another jurisdiction, shall:

1. Complete the requirements set forth in (d)1 through 4 above; and
2. Successfully complete the Special Purposes Examination for Chiropractic administered by the National Board of Chiropractic Examiners.

(g) Renewal applications shall provide the licensee with the option of either active or inactive status. A licensee electing inactive status shall pay the applicable inactive fee set forth in N.J.A.C. 13:44E-2.5 and shall not engage in practice.

(h) A licensee who elected inactive status and has been on inactive status for five years or less may be reinstated by the Board after fulfilling the following:

1. Payment of both the reinstatement and current fees as set forth in N.J.A.C. 13:44E-2.5;
2. Submission of an affidavit of employment listing each job held during the period the licensee was on inactive status including the name, address and telephone number of each employer; and
3. Completion of a criminal history background check as required by N.J.S.A. 45:1-28 et seq., if a criminal history background check has not been completed previously.

(i) A licensee who has been inactive for five or more years, and has been lawfully practicing in another jurisdiction, shall complete the requirements set forth in (h)1 through 3 above.

(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 (g)1 through 3 above; and
2. Successfully complete the Special Purposes Examination for Chiropractic administered by the National Board of Chiropractic Examiners.

(k) (No change in text.)

## **SUBCHAPTER 2. GENERAL RULES OF PRACTICE**

### **13:44E-2.1 Advertising**

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

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

1.-9. (No change.)

10. Any violations of (d) through \*[(m)]\* \*(l)\* below.

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

(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 that are routinely or ordinarily performed free of charge, shall be clearly and conspicuously stated in the body of the advertisement as such.

1.-4. (No change.)

(h)-(l) (No change.)

### **13:44E-2.2 Patient records**

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

(c) All radiographs shall be labeled, as a minimum, with the following identifying information:

1.-3. (No change.)

4. The name of facility; and

5. Right or left identity.

(d)-(g) (No change.)

### **13:44E-2.3 Sexual misconduct**

(a) By this section, the State Board of Chiropractic Examiners is identifying for its licensees conduct that it shall deem to be violative of law.

(b) (No change.)

(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 written notice to the patient via certified mail return receipt requested and documentation in the patient record; and

2. Three months have elapsed since the last professional service was rendered.

(d)-(k) (No change.)

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

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

1.-8. (No change.)

9. Electrodiagnostic Testing and Special Examination Certification Fee.....50.00

10. Inactive license fee..... (to be determined by the Director by rule)

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

(a) (No change.)

(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)-(h) (No change.)

**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. (No change.)

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 that authorizes the performance of acts that, 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.-7. (No change.)

8. Providing instruction in activities of daily living;

9. Administering cryotherapy, hot packs, non-fulcrum mechanical traction without restraints (such as roller tables and roller chairs) and non-invasive surface screening; and

10. Setup and preparation of the patient for the administration of physical modalities.

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

1. (No change.)

2. Notwithstanding (a)2 above, perform massage, unless certified as a massage, bodywork and somatic therapist certified in this State by the Massage, Bodywork and Somatic Therapy Committee created under the New Jersey Board of Nursing pursuant to N.J.S.A. 45:11-53 to 67 to perform massage therapy.

3.-4. (No change.)

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;

ii. (No change.)

- iii. Decompression therapy devices or mechanical traction, except non-fulcrum mechanical traction without restraints;
- 6. Administer therapeutic, rehabilitative or strengthening exercises; or
- 7. (No change in text.)

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

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

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

(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 or implanted defibrillator;
- 2.-4. (No change.)
- 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.-v. (No change.)
  - vi. Precautions against misuse of the unit, including using the device for any purpose other than that for which it was ordered;
  - vii.-ix. (No change.)
- 7. (No change.)

(d)-(e) (No change.)

#### **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 that:

1.-3. (No change.)

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.-vi. (No change.)

vii. The nature and circumstances under which services are provided;

5.-6. (No change.)

#### **13:44E-2.12 Referral of patients to physical therapists**

(a) A chiropractor providing referral or 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.-5. (No change.)

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

### **13:44E-2.13 Chiropractic examination**

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

1. (No change.)

2. The New Jersey State Board of Chiropractic Examiners jurisprudence examination.

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

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

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

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

1.-2. (No change.)

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), that 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.-7. (No change.)

## **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.

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

1.-3. (No change.)

"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. "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) (No change.)

(b) A chiropractic physician shall not bill for any diagnostic tests that 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 that otherwise fail to yield data of sufficient clinical value in the development, evaluation or implementation of a plan of treatment, including the following:

1.-5. (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. Repetitive stimulation studies and nerve conduction studies inclusive of motor, sensory, F-wave and H-reflex studies;
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.-7. (No change.)

(d) (No change.)

**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 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;
3. Assure that professionally responsible and scientifically sequential pre-testing determinations are followed;
4. Take and document, in the patient's record, a relevant history of the complaints presented by the patient. Chiropractic records shall meet acceptable clinical standards and contain such pertinent information including height, weight, past medical and surgical history and other information that may influence the outcome or interpretation of the testing;
5. Perform, at a minimum, a problem-focused examination;
6. Establish and document in the patient's record, a provisional diagnosis with clinical correlation; and
7. Abide by appropriate standards of informed consent explaining potential risks, potential benefits and other clinical options.

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

1.-5. (No change.)

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

1.-3. (No change.)

(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. (No change.)
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.-iv. (No change.)

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

vi. (No change.)

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) course work consisting of 120 hours of classroom and practical, hands-on instruction and an examination demonstrating competency in the performance of the pertinent tests, approved by the Board:**

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

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

iii. Provided at an accredited medical school or licensed health care facility; 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 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 of the application.**

**(b) A chiropractic physician performing or offering to perform electrodiagnostic tests or special examinations shall comply with the applicable 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.**

Recodify existing (d) and (e) as (c) and (d) (No change in text.)

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

**(a) The chiropractic physician performing an electrodiagnostic test or special examination 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 performing any electrodiagnostic test or special examination shall ensure that all equipment used in the performance of electrodiagnostic tests and special examinations:

1.-3. (No change.)

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

1.-2. (No change.)

3. Consider repeat testing only when:

i. Prior results or current findings are indicative of a deteriorating condition that warrants subsequent monitoring;

ii. The results of the initial test was justifiably suspect; or

iii. There is a change in the patient's clinical condition;

4. (No change.)

5. Provide a report as required by N.J.A.C. 13:44E-3.8 to the practitioner who requested the performance of the electrodiagnostic test or special examination.

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

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

1. (No change.)

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 that shall be:

i.-ii. (No change.)

(b) A chiropractic physician who has requested an electrodiagnostic test or special examination shall obtain from the practitioner who performed the test, in addition to the interpretive report required in (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) (No change.)

(d) A practitioner who requested that a 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) (No change.)**

**(b) Nothing in this section is intended to prevent a chiropractic physician from referring a patient to another practitioner for consultation.**

**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.-2. (No change.)**

**3. That the fee shall not violate N.J.A.C. 13:44E-2.11, which prohibits excessive fees.**