

50 N.J.R. 1212(b)

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RULE ADOPTIONS

Reporter

50 N.J.R. 1212(b)

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ADOPTIONS > LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS*

Agency

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

Administrative Code Citation

Adopted Amendments: N.J.A.C. 13:44E-1A.6, 2.1, 2.2, and 2.7

Adopted New Rules: N.J.A.C. 13:44E-1.2 and 4

Text

**Definitions; Malpractice Insurance; Advertising; Patient Records;
Delegable Tasks or Functions of Chiropractic Aides and Licensed
Chiropractic Assistants; Licensed Chiropractic Assistants**

Proposed: September 5, 2017, at 49 N.J.R. 2899(a).

Adopted: April 4, 2018, by the State Board of Chiropractic
Examiners, David A. Allen, D.C., President.

Filed: April 4, 2018, as R.2018 d.098, **with non-substantial changes**
not requiring additional public notice and comment (see N.J.A.C.
1:30-6.3).

Authority: N.J.S.A. 45:9-41.23.

Effective Date: May 7, 2018.

Expiration Date: May 30, 2021.

Summary of Public Comments and Agency Responses:

The official comment period ended November 4, 2017. The Board received six comments on the proposal from:

1. Jean Public, affiliation unknown;
2. Steven G. Clarke, D.C.;
3. Robert Warsak, D.C.;
4. John Schwartzbauer, D.C., Federation of Chiropractic Licensing Boards;
5. Michael J. Miranda, D.C., Future Chiropractic Center, LLC; and
6. Richard M. Sanford, D.C.

1. COMMENT: One commenter expressed concern that the proposed rules allow chiropractors to turn work over to other staff, which in turn permits chiropractors to have less patient interaction. The commenter argues this will not improve matters for patients seeking medical treatments, but instead, allow chiropractors to delegate tasks they should be handling while still charging the same fees for their services.

RESPONSE: The Board disagrees with the conclusion the commenter has drawn from this rulemaking. Currently, chiropractic aides (presently known as "unlicensed assistants") provide a certain degree of assistance in a chiropractic practice. The intent of the law creating licensed chiropractic assistants is to allow for a higher level of training, so these individuals can provide more assistance to a chiropractor than an aide could, but it is not meant to reduce or replace the interaction chiropractors have with their patients. The assistants will be performing activities through the direction and supervision of the chiropractor they work under. N.J.S.A. 45:9-41.19(e) requires supervision and stipulates that a chiropractor be on premises when a licensed assistant works in a chiropractor's office. The rules extend the supervision requirement to chiropractic aides. A chiropractor maintains control and direction over a patient's treatment, which requires maintaining interaction with that patient.

2. COMMENT: One commenter expressed concern over numerous provisions. They believe the minimum amounts of malpractice insurance required of chiropractors at N.J.A.C. 13:44E-1A.6(b) and (c) should be increased for chiropractors and asked if further increases are needed since a chiropractor's policy under the proposed regulations require licensed assistants also to be covered. In addition, they asked which chiropractor will be responsible for providing malpractice insurance if a licensed assistant works for more than one office.

Additionally, the commenter is concerned over language at N.J.A.C. 13:44E-2.7(g) requiring a chiropractor to reexamine a patient if a licensed assistant or an unlicensed aide determines that a patient's status has materially changed. They believe the regulations should require a chiropractor to be consulted if such change is noticed rather than be [page=1213] made to reexamine the patient. The term "reexamine" carries specific weight and responsibility.

The commenter also opposes N.J.A.C. 13:44E-4.1(b), which delays the effective date of the proposed rules. They argue that there is "a distinct possibility" students will be able to take the required curriculum to attain their licensure as a chiropractic assistant as soon as the regulations are finalized.

The commenter also expresses general concern over unforeseen circumstances that would cause cancelation or rescheduling of a continuing education course and asks how the regulated community is to tackle such an issue. In addition, they worry the proposal does not allow a continuing education course to be updated quickly should late-breaking research be found to be helpful to attendees of a course.

The commenter also requested that a licensed assistant be allowed to make a photocopy of their license to operate as a duplicate license if they work in more than one office.

Lastly, the commenter opposes proposed N.J.A.C. 13:44E-4.9(h) to limit continuing education hours earned in one calendar day to five hours. They argue more time could be earned in one day and suggest increasing the amount of hours from five to eight.

RESPONSE: Regarding malpractice insurance rates, the Board retained language at N.J.A.C. 13:44E-1A.6 requiring a New Jersey-licensed chiropractor to maintain malpractice insurance with

coverage of at least \$ 100,000 per occurrence and \$ 300,000 per policy year with extended reporting endorsement coverage for claims made. The Board believes in requiring a minimal amount for chiropractors, but believes the rules also offer flexibility, so chiropractors can determine the coverage appropriate for their practice should they employ licensed chiropractic assistants. However, the Board may revisit the required amounts listed, should it receive additional information that the listed amounts are not sufficient.

In regards to malpractice coverage for a licensed assistant employed by more than one chiropractor, N.J.A.C. 13:44E-1A.6(c) does not delineate between full- and part-time licensed assistants. A chiropractor employing a licensed assistant will need to provide coverage, whether or not that assistant is a full-time staff member. The Board believes that this provides protection to the consumer in knowing licensed staff is covered by the insurance policy of a practice and also protects licensees--both chiropractors and assistants.

Regarding the commenter's concern about a required reexamination at N.J.A.C. 13:44E-2.7(g), presently, pursuant to N.J.A.C. 13:44E-2.7(f), chiropractic aides (currently known as "unlicensed assistants") must alert a chiropractor to any material change in a patient, so they can be reexamined by the chiropractor before the aide performs any delegable tasks. The rulemaking extends the reach of the current rule and requires licensed assistants to alert a chiropractor to a material change in a patient before performing any delegable tasks. The Board believes that a material change raises enough concern for a reexamination by a chiropractor before any additional treatment is applied to that patient. A material change could implicate a significant shift in a patient's health that may require an alteration in treatment. The Board believes the best way to confirm if an alteration is needed is reexamination.

The Board proposed N.J.A.C. 13:44E-4.1(b) to delay the effective date of the rules by one year to give schools time to establish programs and obtain accreditation as required by the proposed rules. Currently, there are no programs offered that meet the educational and clinical requirements in the rulemaking. However, at the Board's November 16, 2017 public meeting, where public comments in response to the licensed assistant rulemaking were discussed, it was relayed to the Board by members of the public

that programs are already being established. Given this information and in consideration of the comments received, the Board is changing the proposed language on adoption to change the delayed effective date from one year to six months. Additional public comment is not needed since this change does not increase the burden on potential licensed assistant applicants so as to destroy the value of the original notice. It will allow those seeking licensure as an assistant to enroll in programs more quickly than the current proposed language.

Regarding the commenter's general concern about lack of rules on unforeseen events that could cause the cancelation or rescheduling of a continuing education course, the Board believes policies addressing these matters are best left to the continuing education providers to decide. In terms of the concern expressed over ways to get late-breaking research included as part of a continuing education course's curriculum, the Board notes that so long as the research does not change the subject matter of a course or program, the research can be incorporated without further approval from the Board.

In regard to allowing a true copy (that is, photocopy) of a license to serve as a duplicate license, a State-issued duplicate of a license helps prevent fraud because it ensures that State inspectors, when investigating or reviewing a licensee of any board, is able to see clearly the documentation from the State allowing that licensee to practice in a particular profession in New Jersey. In addition, allowing photocopies to be used could be detrimental to consumers. A licensee could make a copy of their license and give it to someone else who could pass themselves off as a licensed professional when they are actually engaging in unlicensed practice. As a result, if a second copy of a license is required of a State-licensed professional, they are required to make the request to the appropriate board and pay the required fee.

The Board agrees with the commenter's suggestion to allow a licensed assistant to earn more hours of continuing education per calendar day. N.J.A.C. 13:44E-4.9(h) has been changed upon adoption to allow licensed assistants to earn up to eight hours of continuing education in a calendar day instead of the five hours as proposed. Additional public comment is not necessary since this change does not increase the burden on individuals who may become licensed assistants so as to destroy the value of the original

notice. This change helps licensed assistants meet their continuing education requirements more expediently.

3. COMMENT: One commenter opposes N.J.A.C. 13:44E-4.1(b), which delays the effective date of the rules. They argue it is unfair to students waiting to start a program and unfair to chiropractors wanting to hire licensed assistants.

RESPONSE: As noted above in the Response to Comment 2, the Board has changed the proposed language on adoption and has cut the delay of the effective date of the rules from one year to six months.

4. COMMENT: One commenter suggests adding language to N.J.A.C. 13:44E-4.9(c) to allow continuing education classes to be taught by providers approved by both the Board and the Federation of Chiropractic Licensing Boards' Providers of Approved Continuing Education (PACE) program. Currently, the proposal allows a licensed chiropractic assistant to take courses from accredited chiropractic schools, colleges, institutions, and universities that have been approved by the Board. The commenter argues adding their suggested language will align the assistants' regulations with the standards used for chiropractors.

RESPONSE: The Board agrees with the commenter's suggested change and has changed N.J.A.C. 13:44E-4.9(c) on adoption to add language allowing the Board to accept continuing education hours earned by licensed assistants through PACE-approved courses. In addition, language that is currently in the chiropractors' rules at N.J.A.C. 13:44E-1A.5(d), is also being added upon adoption to allow the Board to reject a PACE-approved program if the focus does not have significant intellectual or practical content relating directly to licensed assistants' work and responsibilities. Additional public comment of this change is not needed since the change does not increase the burden on individuals who may become licensed assistants so as to destroy the value of the original notice. It will allow licensed assistants potentially more options to meet continuing education requirements.

5. COMMENT: One commenter opposes the language in N.J.A.C. 13:44E-2.7(g) requiring a chiropractor to reexamine a patient if a licensed assistant or an unlicensed aide determines that a patient's status has materially changed. They believe the proposal should require a chiropractor only to be consulted if such change is noticed rather than be made to reexamine the patient. The

commenter believes the term "reexamine" means a full reexamination of a patient, which the commenter states could be unnecessary and costly to the patient.

In addition, the commenter opposes N.J.A.C. 13:44E-4.1(b) that delays the effectiveness of the rules for 12 months. They argue the delay is an "unnecessary roadblock" for those seeking licensure as an assistant.

[page=1214] RESPONSE: As noted above in the Response to Comment 2, the Board believes a reexamination is best under circumstances where a material change may have occurred to ensure proper treatment is prescribed to the patient.

Also, as noted above in the Response to Comment 2, the Board has changed the rule upon adoption and reduced the delay of the effectiveness of the regulations to six months.

6. COMMENT: One commenter inquires as to what the malpractice insurance requirements in N.J.A.C. 13:44E-1A.6 should be for a chiropractor's office, since they will now be required to cover licensed assistants under their policy.

Additionally, they ask if a photocopy of a license is able to serve as a duplicate license should a licensed assistant work in more than one office.

Lastly, the commenter opposes N.J.A.C. 13:44E-4.1(b) to delay the effectiveness of the rules by 12 months. They believe it will be possible for a person to meet the education requirements sooner and will not need to wait a year.

RESPONSE: As noted in the Response to Comment 2, the Board supports the current language on malpractice insurance, which requires at least \$ 100,000 per occurrence and \$ 300,000 per policy year. The Board believes this gives chiropractors some flexibility to choose the policy that covers them, as well as licensed chiropractic assistants.

In addition, the Board declines to make the change regarding the photocopying of a license. A duplicate copy, rather than a photocopy, helps prevent fraud. It ensures that State inspectors, when investigating or reviewing a licensee of any Board, is able to see clearly the documentation from the State allowing that

licensee to practice in their profession in New Jersey. In addition, it helps prevent unlicensed practice.

Lastly, the Board has agreed to change the rule upon adoption and delay the effectiveness of the rules by six months rather than a year.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and new rules are governed by N.J.S.A. 45:9-4 et seq., and are not subject to any Federal requirements or standards.

Regulations

Full text of the adoption 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-1.2 Definitions

Unless otherwise noted, any reference to "licensee" in Subchapters 1, 1A, 2, and 3 shall mean solely a chiropractor licensed and subject to regulation by the New Jersey State Board of Chiropractic Examiners.

SUBCHAPTER 1A. LICENSURE

13:44E-1A.6 Malpractice insurance

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

(c) All New Jersey-licensed chiropractic assistants working for a doctor of chiropractic as described in (b) above shall be covered by the malpractice insurance policy of that practice.

(d) Violations of (b) and (c) above shall be deemed professional misconduct within the meaning of N.J.S.A. 45:1-21(e).

SUBCHAPTER 2. GENERAL RULES OF PRACTICE

13:44E-2.1 Advertising

(a) (No change.)

(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. Advertisements may include references to licensed chiropractic assistants employed with a licensed chiropractor, provided the title "licensed chiropractic assistant" or the abbreviation "L.C.A." is included in the advertisement.

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

1.-2. (No change.)

3. Promotion of a professional service that the licensee knows or should know is beyond the licensee's ability to perform or beyond the ability of other staff to perform;

4.-10. (No change.)

(d) - (1) (No change.)

13:44E-2.2 Patient records

(a) A contemporaneous, permanent patient record shall be prepared and maintained by a licensee, which may include information collected by licensed chiropractic assistants, 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.-12. (No change.)

(b) - (g) (No change.)

13:44E-2.7 Delegable tasks or functions of chiropractic aides and licensed chiropractic assistants

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

1. "Chiropractic aide" means any person who does not hold a valid New Jersey chiropractic or chiropractic assistant license, or a

license, certification, or registration issued pursuant to law that authorizes the performance of acts that, absent such authorization, would be unlawful.

2. "Licensed chiropractic assistant" means a person who is licensed pursuant to the provisions of sections 5 through 8 of P.L. 2015, c. 283 and the rules set forth in this subchapter and in N.J.A.C. 13:44E-4 to practice chiropractic assistance under the supervision of a licensed chiropractor.

3. "Plan of care" means a documented treatment plan designed by a licensed chiropractor for the treatment of a patient.

4. "Supervision" means the oversight provided by a licensed chiropractor of the clinical services performed by a licensed chiropractic assistant, and for which the chiropractor shall be on the premises at all times and readily available to instruct the licensed chiropractic assistant throughout the performance of the clinical services.

(b) Under the supervision of, and when delegated by, a licensed chiropractor, a licensed chiropractic assistant may perform tasks or functions including, but not limited to, the following:

1.-8. (No change.)

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

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

11. Administering thermal, sound, light, mechanical, and electrical modalities and hydrotherapy, including, but not limited to, the following:

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. Electro-therapy devices powered by an alternating current or any interferential devices, as set forth in (a) above; or

iii. Decompression therapy devices or mechanical traction; and

12. Instructing and monitoring prescribed rehabilitative exercises.

(c) Under the supervision of, and when delegated by, a licensed chiropractor, a chiropractic aide, including a graduate of a recognized program of study in chiropractic, may perform tasks or functions including, but not limited to, those functions and tasks listed in (b)1 through 10 above. A licensed chiropractor shall not permit a chiropractic aide, including a graduate of a recognized program to study chiropractic, to perform the tasks listed in (b)11 and 12 above.

1. If a licensed chiropractor employs a chiropractic aide, the aide is to be supervised by a licensed chiropractor who shall be on the premises at all times and readily available. Such supervision shall entail regular consultation, guidance, and instruction with respect to the tasks and functions performed by the aide.

[page=1215] (d) A licensed chiropractor shall not permit a chiropractic aide or licensed chiropractic assistant to:

1. (No change.)

2. Notwithstanding (a)1 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 80.

3. (No change.)

4. Perform a chiropractic adjustment; or

5. 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.

(e) A licensed chiropractor who allows a chiropractic aide or licensed chiropractic assistant to perform any task or function incidental to the rendering of chiropractic care shall:

1. (No change.)

2. Supervise chiropractic aides and licensed chiropractic assistants; and

3. Ensure that such individual is competent to perform all delegated tasks or functions. The licensed chiropractor 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 chiropractic aid and licensed chiropractic assistant may render any delegated tasks or functions with reasonable skill and safety.

(f) A licensed chiropractor shall write all instructions for duties to be performed by chiropractic aides and licensed chiropractic assistants in the plan of care and shall make the plan available at all times to the chiropractic aide and licensed chiropractic assistant carrying out the instructions.

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

(h) Notwithstanding the provisions of (a) through (g) above, a student enrolled in a chiropractic or chiropractic assistant program approved by the Board may perform clinical services under the supervision of a licensed chiropractor to gain the necessary practical clinical experiences.

SUBCHAPTER 4. LICENSED CHIROPRACTIC ASSISTANTS

13:44E-4.1 Purpose and scope; effective date

(a) The rules in this subchapter implement the provisions of P.L. 2015, c. 283, concerning the licensure of chiropractic assistants.

(b) The provisions in this subchapter shall take effect on *[(12 months from the effective date this new rule)]* ***November 7, 2018***.

13:44E-4.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings unless otherwise noted:

"Board" means the New Jersey State Board of Chiropractic Examiners.

"Chiropractic assistance" means assisting a licensed chiropractor by providing certain clinical procedures common and customary to the chiropractic setting pursuant to N.J.S.A. 45:9-41.19.c and N.J.A.C. 13:44E-4.3.

"Licensed chiropractic assistant" means a person holding a license issued by the New Jersey State Board of Chiropractic Examiners to practice chiropractic assistance under the supervision of a licensed chiropractor. A person licensed as a chiropractic assistant may use that full title or its abbreviation, "L.C.A."

"Plan of care" means a documented treatment plan designed by the licensed chiropractor for the treatment of a patient.

"Supervision" means the oversight provided by a licensed chiropractor of the clinical services performed by a licensed chiropractic assistant and for which the chiropractor shall be on the premises at all times and readily available to instruct the licensed chiropractic assistant throughout the performance of the clinical services.

13:44E-4.3 Scope of practice

(a) The scope of practice of a licensed chiropractic assistant includes, but is not limited to, the following:

1. Collection of general health data including:

i. Taking of an oral history or vital sign measurement;

ii. Performing manual muscle tests, general orthopedic and neurologic tests, and functionality and outcome assessment tests; and

iii. Other testing that qualifies as part of chiropractic assistance;

2. Application of thermal, sound, light, mechanical, and electrical modalities and hydrotherapy including, but not limited to, the following:

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. Electro-therapy devices powered by an alternating current or any interferential devices, as set forth in N.J.A.C. 13:44E-2.7A(a); and

iii. Decompression therapy devices or mechanical traction, including non-fulcrum mechanical traction without restraint;

3. Instructing and monitoring prescribed rehabilitative activities, including:

i. Recording a patient's response to treatment based on subjective and objective findings; and

ii. Reporting to the licensed chiropractor who developed the plan of care for treatment of the patient on:

A. Any response to or lack of progress with treatment; and

B. The need for program change, reassessment of treatment, or discontinuation of treatment.

(b) A licensed chiropractic assistant's work shall not include:

1. Non-clinical administrative work;

2. Chiropractic adjustment;

3. Manual therapy;

4. Nutritional instruction;

5. Counseling; and

6. Other therapeutic services or procedures requiring additional licensure.

13:44E-4.4 Licensing requirements

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

1. Be at least 18 years of age;

2. Be of good moral character;

3. Have successfully completed high school or its equivalent;

4. Have successfully completed the education and clinical requirements set forth in N.J.A.C. 13:44E-4.6;

5. Submit a completed application;
6. Have successfully passed a Board-approved competency examination; and
7. Have paid the required fees pursuant to N.J.S.A. 45:9-41.34.d and N.J.A.C. 13:44E-4.16.

13:44E-4.5 Licensure eligibility; exceptions

(a) The term "chiropractic assistant" or any other title, designation, words, letters, abbreviations, or insignia indicating the practice of chiropractic assistance shall only be used by an individual if that person is licensed to practice chiropractic assistance under the provisions of N.J.S.A. 45:9-41.33 et seq. (P.L. 2015, c. 283).

(b) Students enrolled in an educational program, recognized by the Board, that leads to a degree or certification as a chiropractic assistant shall be permitted to provide clinical services under the supervision of a chiropractor to gain the necessary practical clinical experience.

13:44E-4.6 Education requirements

(a) An applicant for licensure as a chiropractic assistant shall satisfy the following educational requirements earned from a chiropractic institution accredited pursuant to N.J.S.A. 45:9-41.6:

1. 120 hours of didactic education, obtained through live and recorded webinars and live classroom instruction, to include the following:

- i. Chiropractic philosophy and terminology;
- ii. Functional anatomy of the spine, extremities, muscles, nerves, and landmarks;
- iii. Management of common disorders;
- iv. Rehabilitation;

[page=1216] v. Physiotherapy modalities including indications and contraindications;

vi. Professional behavior related to ethics, boundaries, and risk management;

vii. Documentation and recordkeeping; and

viii. Hygiene;

2. 380 hours of clinical training consisting of the following monitored activities:

i. Health data collection;

ii. Examination and testing procedures;

iii. Passive and active therapeutic interventions;

iv. Documentation and recordkeeping; and

v. Patient safety and office policies regarding emergency procedures; and

3. A Board-administered examination on New Jersey jurisprudence.

(b) The completion of the clinical training in (a)2 above shall be accompanied by documented attestation and notarization to demonstrate the satisfactory completion of clinical requirements under supervision of the licensed chiropractor.

13:44E-4.7 Application for licensure

(a) An applicant for licensure as a licensed chiropractic assistant 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, information from other states regarding licensure, certification or registration (if applicable), a resume, answers demonstrating moral character, confidential answers 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-4.6;

3. Proof of successful completion of a Board-approved competency exam pursuant to N.J.A.C. 13:44E-4.4(a)6;

4. The application fee set forth in N.J.A.C. 13:44E-4.16; 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-4.8 Issuance of licenses; license renewals

(a) Licenses to practice chiropractic assistance shall be issued for a period of two years and be renewed biennially. A licensed assistant 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-4.16 to the Board prior to the expiration of the current license.

(b) If a licensed assistant does not renew his or her license prior to its expiration date, they 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-4.16.

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

13:44E-4.9 Continuing education

(a) "Licensee," as used in this section, means a chiropractic assistant licensed and subject to regulation by the New Jersey State Board of Chiropractic Examiners.

(b) A licensee applying for biennial license renewal shall have completed, during the preceding biennial period, 15 continuing educational credits in order to qualify for the renewal of his or her license pursuant to N.J.S.A. 45:9-41.35. 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 professional ethics of chiropractic assistance or recordkeeping and documentation as it pertains to the practice of chiropractic assistance in this State.

(c) The continuing education courses may include, but not be limited to, subject matter and content of study that is taught by accredited chiropractic schools, colleges, institutions, and universities, or in a subject matter tested for licensure, that has been approved by ***Providers of Approved Continuing Education**

(PACE), and/or* the Board*; except that the Board retains the right to reject any PACE-approved program that does not have significant intellectual or practical content dealing primarily with matters directly related to the practice of chiropractic assistance or with professional responsibilities or ethical obligations of licensees*.

(d) The Board will not grant continuing education credit for completion of basic courses required for graduation from programs offering training as a licensed chiropractic assistant or for initial licensure. Continuing education credit shall be granted only for courses designed to build upon basic knowledge and/or to bring licensees up-to-date on new developments relating to the practice of chiropractic assistance.

(e) The Board may accredit other educational programs offered by professional organizations or societies, health care professions, schools, colleges, institutions, universities, or healthcare facilities as suitable for continuing education credits, so long as such other educational programs have significant intellectual or practical content, which deal primarily with matters directly related to the practice of chiropractic assistance or with the professional responsibilities or ethical obligations of licensees.

(f) The Board may accredit other equivalent options to educational programs including, but not limited to, examinations, scientific papers, professional publications, scientific presentations, residency programs, teaching and/or research appointments, advanced degree or certification program in related fields, scientific exhibits, independent study or research, self-study programs, or distance learning as suitable for continuing education credits, so long as such other equivalent options have significant intellectual or practical content, which deal primarily with matters directly related to the practice of chiropractic assistance or with the professional responsibilities or ethical obligations of licensees.

(g) Continuing education credit shall be calculated as follows:

1. Continuing professional education programs of national or State professional organizations: one credit hour for every 50 minutes of in-class participation;

2. Accredited university or college courses in the subjects set forth in (d) above:

i. Applicants shall receive 7.5 credit hours of continuing education credit for each semester or trimester credit hour earned; five credit hours of continuing education credit for each credit hour earned in a quarter; and

ii. Applicants attending noncredit courses shall be granted continuing education credit at the rate of one credit hour for every 50 minutes of in-class participation;

3. Distance learning programs and other independent study programs: the amount of credit to be allowed for approved distance and individual study programs, including taped study programs, shall be one credit hour for every 50 minutes of distance and individual self-study program participation;

4. Teaching or instruction of a course for the first time or teaching a course previously taught if substantial time was spent updating course material shall be instruction and preparation time: one continuing education credit for each hour of instruction or preparation.

i. The total number of continuing education credits that may be granted for service as a teacher or instructor shall not exceed six credits per biennial period.

ii. Requests for credit shall be accompanied by an outline of the instruction or course.

iii. A teacher or instructor that is employed as a teacher or instructor on a full-time basis shall not be eligible to obtain continuing education credits for such activities;

5. Scientific papers and professional publications: credit shall be given for each 50-minute period of preparation time on a self-declaration basis, not to exceed six credit hours per biennial period. A copy of the publication article shall be submitted to the Board with a request for continuing education credit.

i. Credit may be claimed for published articles and books by the authors of those works. These publications must contribute to the professional competency of chiropractors.

ii. In exceptional circumstances, a licensee may request additional credit by submitting the article or book to the Board with an explanation of the circumstances that he or she believes justifies an award of greater credit. When licensees request more than six

continuing education credit [page=1217] hours earned through papers and publications during the biennial period, credit hours awarded shall be determined by the Board on a case-by-case basis. Factors such as complexity of the subject matter, length of publication, and the amount of preparation time shall be considered;

6. Research and preparation of examinations or acting as an examiner for a clinical examination: one continuing education credit for each hour of research or time spent on the examination, not to exceed three continuing education credits per biennial period; and

7. Scientific presentations or exhibits: one continuing education credit for each hour of preparation or presentation, not to exceed six continuing education credits per biennial period.

(h) A licensee shall complete no more than six of the total continuing chiropractic assistance education credits by asynchronous distance learning courses where the instructor and the learner are not in direct, live communication during the course, approved by the Board; the remaining credits must be attained through live didactic learning experience, including synchronous distance learning activities where the instructor and learner are in direct live communication during the course. The Board shall not award more than ***[five]* *eight*** hours of continuing education credit for any program that takes place during the course of one calendar day.

(i) 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. Be a formal course of learning, which contributes directly to the maintenance of professional competence of a licensee;

ii. Be at least one credit hour, 50-minute period, in length; however, additional credits in excess of one hour may be awarded in 1/2 hour increments;

iii. Be conducted by a qualified instructor or discussion leader; and

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 (i)1 above, and in addition, certifies that the sponsor shall:

i. Maintain and retain accurate records of attendance for a five-year period;

ii. Retain a written outline of course materials for a five-year period; and

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

3. The Board will post on its website at <http://www.njconsumeraffairs.gov/chi/Pages/continuingeducation.aspx>, a list of all program sponsors that, pursuant to this section, have applied and been approved to sponsor courses for continuing education credit. Continuing education sponsors shall comply with the following additional requirements:

i. The program sponsor shall disclose in advance to prospective participants the objective, prerequisites, experience level, content, required advanced preparation, teaching method, and number of continuing education credits involved in the program;

ii. The program sponsor shall provide evidence to the Board that it has policies and procedures in place to verify and adequately monitor the attendance of course participants;

iii. The program sponsor shall be responsible for assuring that the number of participants and the physical facilities are consistent with the teaching methods to be utilized;

iv. The program sponsor shall select and assign qualified instructors for the continuing education program. Sponsors shall provide to the Board the curriculum vitae of all course instructors and certify to the Board that the sponsor has verified the

credentials of all its instructors. Sponsors must notify the Board of any instructor change within 20 days of making the change;

v. The program sponsor shall evaluate the performance of its program instructors at the conclusion of each program to determine the instructors' suitability to continue to serve as instructors in the future;

vi. Program evaluation shall be in accordance with the following:

(1) The sponsor shall provide some means of program evaluation. Evaluations shall be solicited from both the participants and instructors. Programs shall be evaluated to determine whether:

- (A) Objectives were met;
- (B) Prerequisites were necessary or desirable;
- (C) Facilities were satisfactory;
- (D) The instructor was effective;
- (E) Advanced preparation materials were satisfactory; and
- (F) The program content was timely and effective; and

(2) Evaluations shall take the form of one or a combination of pre-tests for advanced preparation, post-tests for effectiveness of the program, questionnaires completed at the end of the program or later, or oral feedback to the instructor or sponsor. Instructors shall be informed of their performance and sponsors shall systematically review the evaluation process to insure its effectiveness; and

vii. The program sponsor shall be responsible for issuing certificates of satisfactory completion or other comparable documentation to program participants. Such certificates or documentation shall be printed with the following information:

- (1) Dates attended;
- (2) Credit hours earned;
- (3) Course title and description of content, including the method of course delivery and subject area;
- (4) Course sponsor name;

(5) Instructor name; and

(6) Course location.

4. A continuing education sponsor who has qualified as a sponsor, or has obtained prior Board approval, 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.

(j) A licensee seeking Board approval of a program for continuing education credit, which has not been approved pursuant to (i) above, may submit an application on 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.

(k) A new licensee who completed an accredited chiropractic assistant education program within 12 months of the commencement of the biennial registration period is not required to complete the continuing education requirements for the biennial period.

(l) A licensee shall certify on the application for biennial licensure renewal that he or she has completed the required number of continuing education credits. The Board may conduct random audits to determine licensee compliance with the continuing education requirements of this section.

(m) A licensee who completes more than 15 continuing chiropractic education credits required pursuant to this section may apply no more than three of the excess credits to the continuing chiropractic education requirements for the following biennial period only. The excess credits approved for a biennial period may be applied to the continuing education requirements for the next period whether or not approved for that period.

(n) Licensees holding an inactive or retired license shall be exempt from continuing education requirements, except that any licensee holding an inactive or retired license, or whose license is suspended or revoked, who applies to resume practice as a licensed chiropractic assistant shall provide proof of having

completed the continuing chiropractic assistance education requirements for each biennial licensure period for which the licensee was on inactive or retired status. If the total credits required to become current exceeds 15, then 15 shall be the maximum number required. Any applicant seeking to resume practice shall submit to the Board a detailed list of all continuing [page=1218] education courses that the licensee has completed in order to become current. If the Board determines that there is a deficiency in a particular area of study, the Board may require the applicant to complete additional continuing education courses in the area of the deficiency before reinstating the license to active status.

(o) To report continuing chiropractic assistance education credits, a licensee shall:

1. Certify, on the application for biennial renewal, completion of the required number of continuing education credits; and
2. Maintain all evidence of completion of continuing education requirements for a period of not less than five years after satisfaction of the credits and submit such documentation to the Board upon request.

(p) The Board may extend the time period for completion of continuing education requirements or may waive continuing education requirements on an individual basis for reasons of hardship, such as severe illness, disability, or military service, consistent with the following:

1. A licensee seeking an extension or waiver of the continuing education requirements shall apply to the Board in writing setting forth the specific details for the reasons why an extension or a waiver is requested. The licensee shall submit all of the documentation that supports the request for the extension and/or waiver;
2. A licensee shall apply for an extension and/or a waiver prior to the expiration of the biennial renewal period. All requests shall be sent to the Board office, by certified mail, return receipt requested; and
3. An extension or waiver granted pursuant to this section shall become effective for the biennial licensure period in which the extension or waiver is granted. If the condition that necessitated the extension or waiver continues into the next biennial period,

the licensee shall apply to the Board for the renewal of such extension or waiver for the new biennial period.

(q) A licensee shall provide verification and proof of compliance with continuing chiropractic education requirements. Non-compliance with the continuing education requirements shall provide cause for civil penalties pursuant to N.J.S.A. 45:9-41.32.

(r) A second or subsequent offense by a licensee for failure to comply with the continuing education requirements may be considered professional misconduct and would provide grounds for additional discipline including license suspension or revocation.

13:44E-4.10 Display of licensure

Each person holding a license to practice as a chiropractic assistant in the State of New Jersey shall display the license and a current renewal certificate in a conspicuous location in the principal place of business where he or she is employed as a licensed chiropractic assistant.

13:44E-4.11 Notification of change of address; service of process

(a) A licensed chiropractic assistant 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 licensed assistant'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.

13:44E-4.12 Opportunity to be heard

Prior to any suspension, revocation, or refusal to renew a license, the licensed assistant shall have the opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:44E-4.13 Supervision

(a) A licensed chiropractic assistant shall only initiate treatment when a supervising licensed chiropractor is on the premises.

(b) In a practice with more than one licensed chiropractor, a supervising licensed chiropractor is to be designated for that office. In his or her absence, a licensed chiropractor in that same practice shall be designated temporarily until the initial designee returns.

13:44E-4.14 Plan of care; recordkeeping

(a) A licensed chiropractic assistant shall follow the plan of care designed for a patient's treatment by a licensed chiropractor.

(b) Licensed chiropractic assistants shall make contemporaneous, permanent entries into professional treatment records that shall accurately reflect the treatment or service rendered as listed in the plan of care. To the extent applicable, professional treatment records shall reflect:

1. Dates and times of interaction with a patient;
2. Identifying and documenting specific elements of each physiotherapy modality provided, including:
 - i. Time or other details to be included in a plan of care;
 - ii. Equipment used during session or provided to the patient; and
 - iii. Length of time for each treatment relating to therapeutic modalities or rehabilitative care;
3. Care provided without the co-signature of the supervising chiropractor; and
4. Patient progress and status at discharge in the chiropractic record according to office policies.

13:44E-4.15 Sexual misconduct

(a) By this section, the New Jersey State Board of Chiropractic Examiners is identifying for licensed chiropractic assistants conduct that it shall deem to be violative of the 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 assistance as regulated by the New Jersey 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 care relating to chiropractic assistance.

3. "Patient-chiropractor assistant relationship" means an association between a chiropractic assistant 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 assistance training and experience. The performance of any professional chiropractic assistance includes, but is not limited to, any consultation and care provided by a licensee in furtherance of chiropractic assistance care.

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 that is necessary during the performance of a generally accepted and recognized chiropractic assistant 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 assistant 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, or student 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 that 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-licensed chiropractic assistant relationship. That relationship is considered ongoing for purposes of this section, unless:

[page=1219] 1. Professional services are terminated by written notice to the patient from the chiropractor working with the licensed assistant 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) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-chiropractic assistant 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 conditions that prevent the exposure of the unclothed body of the patient unless necessary to the professional chiropractic assistant 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 that 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 that 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) 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.

13:44E-4.16 Fee schedule

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

1. Application fee--\$ 125.00;
2. Endorsement fee--\$ 75.00;
3. Initial licensing fee:
 - i. During the first year of a biennial renewal period--\$ 150.00; and
 - ii. During the second year of a biennial renewal period--\$ 75.00;
4. Biennial license renewal fee--\$ 150.00;
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); and
9. Inactive license fee--\$ 50.00.

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