

*45 N.J.R. 37(a)*

VOLUME 45, ISSUE 1

ISSUE DATE: **JANUARY 7, 2013**

**RULE ADOPTIONS**

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

**Adopted Amendments: N.J.A.C. 13:44E-1.1 and 1A.4**

**Adopted New Rules: N.J.A.C. 13:44E-1A.5 and 1A.6**

**Purpose and Scope; Licensure**

Proposed: November 21, 2011 at 43 N.J.R. 3076(a).

Adopted: March 22, 2012 by the State Board of Chiropractic Examiners, Albert Stabile Jr., D.C., President.

Filed: November 11, 2012 as R.2013 d.003, **with substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.6).

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

Effective Date: January 7, 2013.

Expiration Date: December 22, 2013.

**Summary** of Public Comments and Agency Responses:

The official comment period ended January 20, 2012. The Board received 19 comments from the following 22 individuals:

1. Gregory Stetzel, D.C., President, Garden State Chiropractic Society
2. Shlomo Bupkis, affiliation unknown
3. Paul Blank, D.C., ANJC
4. Joseph Murphy, D.C., former Board member in private practice
5. Michael Evangel, D.C., affiliation unknown
6. Alex DiMeo, D.C., ANJC
7. Hunter Novak, D.C., ANJC
8. John Neuner, D.C., affiliation unknown

9. Mark Spratford, D.C., affiliation unknown
10. William Charschan, D.C., ACA, ANJC
11. Liam Schubel, D.C., International Federation of Chiropractors and Organizations
12. Rob Coombs, D.C., ANJC
13. John B. Martinez, D.C., Morris Family Chiropractic Center
14. Thomas Walaszczyk, D.C., affiliation unknown
15. Joseph D'Angiolillo, D.C., President, ANJC
16. Stephen G. Rice, M.D., Ph.D., M.P.H., F.A.A.P., F.A.C.S.M., President, American Academy of Pediatrics, New Jersey Chapter; and Chairman of the New Jersey Student Athlete Cardiac Screening Task Force and Fran Gallagher M. Ed, Executive Director, American Academy of Pediatrics, New Jersey Chapter
17. Paul Powers, D.C., University of Bridgeport College of Chiropractic, Division of Postgraduate and Continuing Education
18. Micaela Isler, Property Casualty Insurers Association of America
19. Lawrence Downs, J.D., CEO and General Counsel Medical Society of New Jersey
20. Mark Manigan, Esq., New Jersey Orthopaedic Society (NJOS)
21. Deborah A. Wean, Esq., New Jersey Manufacturers Insurance Group
22. Raymond J. Saputelli, MBA, CAE, Executive Vice President, New Jersey Academy of Family Physicians

1. COMMENT: One commenter expressed concern about the proposed amendment to N.J.A.C. 13:44E-1A.5(i), under which the Board will grant no more than 10 continuing education credits for programs that take place during the course of one calendar day. The commenter stated that the continuing education coordinator for the Garden State Chiropractic Society and several members of the Society's board of directors conducted searches to find any credible studies or reports focusing on the ability of a person to learn in a period exceeding 10 hours in a calendar day that would support the Board's decision, but were unable to find any. The commenter noted that Garden State Chiropractic Society offers a one-day, 12-hour continuing education program that has been approved by Sherman College of Chiropractic and accepted for continuing education certification in many states. The Society has never received any complaints of inadequate training or a rejection of their program by any entity involved in the accreditation process. Since the Garden State Chiropractic Society is the only organization that offers a one-day, 12-hour program, the commenter stated that the Society believed that the rule was directed at them, and that this restriction was baseless and arbitrary, having nothing to do with the educational process or enhancement of the public safety.

RESPONSE: The Board would like to thank the commenter and the Garden State Chiropractic Society for their commitment to being a provider of continuing education. The

Board believes that it has the expertise to limit the number of continuing education credits within a calendar day. As practitioners themselves, Board members have attended many continuing education programs, and have noted that the quality of learning falls off after 10 hours. The Board has not directed this restriction against any one particular group; many groups engage in long days of learning and have requested Board approval for their programs. However, the Board has determined that it will grant no more than 10 continuing education credits for programs that take place during the course of one calendar day.

2. COMMENT: Two commenters addressed N.J.A.C. 13:44E-1.1(d). One commenter thought that new N.J.A.C. 13:44E-1.1(d)8, permitting chiropractors to provide dietary or nutritional counseling and to sell vitamins, food products, or nutritional supplements, contradicts the section of the rules that prohibits chiropractors from deriving any financial benefit from the sale of nutraceuticals. He believes that this is confusing to the general public and to licensees. Another commenter [page=38] questioned why licensees should not be permitted to profit from selling vitamins, food products, or nutritional supplements, since they are educated to provide proper nutritional advice and are required to pay for specific continuing education courses to maintain their licenses.

RESPONSE: The Board believes that the commenters may have misread the notice of proposal. N.J.A.C. 13:44E-1.1(d), the section of the rules that prohibits a licensee from offering nutritional advice as treatment for a specific disease, defect, or deformity, and which prohibits a licensee from selling, dispensing, or deriving any financial benefit from the sale of vitamins, food products, or nutritional supplements, is enclosed in brackets, indicating that the section has been deleted from the existing rule. N.J.A.C. 13:44E-1.1(c) was recodified as new N.J.A.C. 13:44E-1.1(d). This subsection has been amended to permit a licensee to provide nutritional counseling and to sell nutritional supplements, so long he or she has successfully completed 45 hours of coursework in human nutrition at an accredited college or university.

3. COMMENT: A commenter stated that he opposes requiring continuing education for New Jersey chiropractors because the board is unable to monitor the efficacy of continuing education courses. He has heard of chiropractors sleeping through courses, working on their computers during courses, and rushing through at-home courses just to be able to receive credits. He felt that the continuing education requirement is a great money-maker for the providers of these services, but does not achieve the results that it was designed to achieve. He believes that a chiropractor who meets the requirements for licensing only improves his or her skills over time.

The commenter also believes that expanding the scope of chiropractic weakens the quality of chiropractors in the State. He advocated that, instead of duplicating the services of other health care providers, chiropractors should return to practicing chiropractic. He felt that the Board should focus on making sure that its licensees are qualified chiropractors.

Additionally, this commenter was outraged that chiropractors should be required to take nutrition courses even if they do not offer nutrition advice or sales in their practices. Another commenter was concerned that most chiropractors would not be able to attest to whether they have completed at least 45 hours of nutrition education because most doctors are not versed in the exact number of course credit hours that they completed while students.

RESPONSE: The Board's proposed rules implement changes to the law with respect to the scope of practice of chiropractic and continuing education. The scope of practice under N.J.S.A. 45:9-14.5.c(3) has been expanded to permit chiropractors to provide dietary or

nutritional counseling, such as the direction, administration, dispensing, and sale of nutritional supplements, so long as they have completed a course of study of not less than 45 hours concerning human nutrition from an accredited college or university. The proposed change to the rule comports with this statutory change. Neither the statute nor the rules require chiropractors to provide nutritional counseling; if a chiropractor chooses not to include nutritional counseling in his or her practice, he or she would not be required to complete the 45 hours of nutrition study.

However, with respect to continuing education, N.J.S.A. 45:9-41.28 requires that all chiropractors complete 30 credits each biennial licensure period, two of which must be in State laws and rules governing chiropractic professional ethics or recordkeeping and documentation in the State, and two of which must be in nutrition education. The proposed rules comport with the change in the statute. The Board notes that there are ways to ensure that licensees pay attention during continuing education courses. On-line courses have become sophisticated; many require the student to answer questions at various times throughout the presentation. Some "live" courses use scanners to monitor attendance, and have proctors in the room. Proposed N.J.A.C. 13:44E-1A.5(k)3ii requires that a program sponsor provide evidence to the Board that it has policies and procedures in place to verify and adequately monitor the attendance of course participants.

Regarding the commenter's concern about the ability of most chiropractors to attest to the completion of 45 credit hours in nutrition study, the Board suggests that if a licensee is unsure of how many credit hours in human nutrition he or she has completed, he or she may request a copy of his or her chiropractic college or university transcript. The transcript should list the names of the courses and the number of credit hours completed.

4. COMMENT: One commenter criticized the amendment to N.J.S.A. 45:9-41.19.b, which requires a chiropractor who uses the title "doctor" to qualify the term by the words, "doctor of chiropractic," "chiropractor," or "chiropractic physician" or by the abbreviation, "D.C." The commenter believed that this limitation is ridiculous. He felt that if a chiropractor has passed his or her board examination and is in active practice, it is appropriate that he or she be called "doctor."

RESPONSE: The Board does not have the authority to change the statute.

5. COMMENT: A commenter questioned whether proposed N.J.A.C. 13:44E-1A.5(j), which does not permit continuing education credit for courses involving practice building, practice management, and/or practice marketing, would prevent a licensee from getting credit for a course that deals with advertising, or a course such as "[the] proper way or legal ways to market your practice."

RESPONSE: N.J.S.A. 45:9-41.29 requires the Board to establish standards for continuing chiropractic education including, but not limited to, the subject matter and content of courses of study that are taught by chiropractic schools, colleges, and institutions and universities or tested on for licensure. The Board believes that the statute's intent is to require that licensees take courses that increase or enhance their knowledge of the substantive aspects of their healing art and/or keep them current on the substantive developments in chiropractic, which will improve their skills as practitioners, rather than courses about economics and salesmanship. When a sponsor requests Board approval for a program, the Board will determine whether the program relates to compliance with the statutes and rules governing practice parameters and marketing, or is about economics and salesmanship. If a program addresses both the substantive aspects of chiropractic and practice management, the Board may grant credit for that portion of the course that

addresses the substantive aspects of the practice of chiropractic.

6. COMMENT: A commenter thought that the proposed regulations looked good, but thought that licensees should be able to do chiropractic acupuncture.

RESPONSE: The Board appreciates the commenter's support; however, chiropractic acupuncture is not within the scope of practice permitted by statute.

7. COMMENT: A commenter believed that the reference to Providers of Approved Continuing Education (PACE) in proposed N.J.A.C. 13:44E-1A.5 is completely unnecessary, since the proposed regulation repeatedly details the types of courses for which the Board will accept continuing education (CE) credits. The commenter felt that the reference to PACE is also unnecessary because the regulation makes it clear that the Board retains the right to reject any PACE-approved program and that the Board has the final say. The commenter also wondered why the regulation only references PACE and not other accrediting bodies such as the AMA, ACA, and ADA.

RESPONSE: The reference to PACE was incorporated into the proposed rule by the Board to indicate that courses approved by PACE will be automatically accepted by the Board for continuing education purposes, unless the Board specifically exercises its prerogative to decline any specific PACE-approved course because it not an advanced course, or involves practice building, practice management, and/or practice marketing. The Board did this to reduce the number of courses that the Board would need to review for approval, and to expand the number of courses immediately available to licensees to satisfy their continuing education requirement. The Board may consider other accrediting bodies upon request; however, Board members are familiar with the PACE program and have elected to begin with PACE for the reasons stated above.

8. COMMENT: Six commenters addressed proposed N.J.A.C. 13:44E-1A.5(i), which limits to 12 the number of continuing education credits that may be earned through distance learning or Internet classes each biennial period. Several commenters, who have already taken more than 12 online credits, stated that they thought that they had completed or nearly completed their continuing education requirement and were upset to find out that they could not apply all of the credits that they had earned. One commenter suggested that the Board not implement the 12-[page=39] hour restriction in distance learning or Internet courses until the onset of the next renewal period, or make an exception for a licensee who took more than 12 hours of distance learning or Internet courses prior to the implementation of the new rule, and allow the licensee to apply all of the hours to their current renewal period.

Several commenters questioned the decision to limit participation in online courses in this current age of computers and video presentations, and urged the Board to reconsider. One commenter, who serves on another state's board of chiropractic, has ties to the postgraduate and continuing education program of a university, and has testified before many boards on the topic of distance-based learning, pointed out that institutions of higher learning, including Oxford University and the University of Washington, have embraced the use of Internet education, and noted that one may obtain a bachelors degree, a master's degree, or even a Ph.D. online. This commenter also urged the Board to consider that medical doctors may obtain all of their continuing education requirements online in every jurisdiction that requires continuing education. The commenter argued that there is no reason why chiropractors be denied the same opportunity to obtain their continuing education online. The commenter argued that there are different types of learners, and urged that licensees should have a choice as to what learning format will suit them best. He

believes that if a doctor receives a quality educational experience, it will help protect the public.

The commenter also argued that there are many educational advantages to online learning versus live programs. Live programs are often offered as 12-hour seminars over two days in one subject. With Internet learning, chiropractors can take courses that are of specific interest to them. Additionally, in live programs, students often sit through six hours of lecture per day. The commenter questioned how much of the material will be retained under these circumstances. The commenter also noted that traditional classroom programs are presented verbally. Internet programs, however, present the material in a variety of audiovisual modes. Students can learn at their own pace and review any information as needed. There is no peer pressure that may inhibit questions, or time constraints on questions. Students can contact their professors via e-mail, and more deeply converse and explore concepts than at a live seminar. Additionally, the commenter believed that Internet continuing education offers the ability to disseminate new information faster than live programs, which, he argued, is a considerable factor in protecting the public.

Other commenters argued that limiting the number of Internet and distance learning credits to 12, forces practitioners to pay for travel/hotel expenses and to miss time from the office. It also places a hardship on single parents and interferes with family time. They point out that online courses frequently require those who participate to answer a quiz at the end, and require the input of codes at various times to ensure that participants watch the entire seminar.

A commenter also suggested that if the Board does deem it appropriate to limit Internet courses, the language in the rule should be modified to reflect appropriate terminology associated with distanced-based learning, in order to limit any confusion for licensees and vendors of continuing education. He pointed out that an asynchronous distanced-based learning course is a course in which the student and the instructor are not in direct, live communication during the course. A synchronous distance-based continuing education course is a course in which the instructor and student can immediately interact, and students can interact with each other. The commenter suggested that the language in proposed N.J.A.C. 13:44E-1A.5(i) be amended to read, "A licensee shall complete no more than 12 of the total continuing chiropractic 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 10 hours of continuing education credit for any program that takes place during the course of one calendar day."

RESPONSE: The Board chose to restrict the number of credits that can be obtained through distance learning and on the Internet because distance learning that is not "live" lends itself to less reliability as to the identity of the person in front of the computer and the amount of attention being paid to the material being displayed there. However, the Board considers interactive, real-time distance programs to be "live." Therefore, attendance at many "webinars" will count towards the required 30 credits without limitation, so long as licensees attend live, interactive presentations. The Board also notes that other New Jersey professional boards, such as Accounting, Pharmacy, and Dentistry, limit the number of course credits that can be taken over the Internet. The Board will adopt the language proposed by the commenter regarding "asynchronous" and "synchronous" distance learning courses. This change does not require republication because it clarifies the Board's intent and does not substantially change the rule.

9. COMMENT: A commenter was concerned that proposed N.J.A.C. 13:44E-1.1(b) requires a "clinical" condition before beginning chiropractic care. The commenter stated that the old scope of practice required an adjustment, but the new scope of practice does not. The commenter gave the example that the new scope does not require an adjustment for "Life Style Coaching." The commenter believes that the first sentence, "During the initial consultation and before commencing chiropractic care, a licensee shall identify and document a clinical condition warranting chiropractic care" should be deleted.

RESPONSE: The Board believes that although the amendments to N.J.S.A. 45:9-14.5 expanded the chiropractic scope of practice, the performance of any procedure still needs to have a treatment purpose related to chiropractic.

10. COMMENT: A commenter also objected to proposed recodified N.J.A.C. 13:44E-1.1(d)2 and 4, which permit chiropractors to order, but not perform, computerized axial tomography (CT), magnetic resonance imaging (MRI), and bioanalytical laboratory tests, consistent with chiropractic practice. The commenter believed that there is no statutory bar that prohibits chiropractors from performing these tests. The commenter noted that there may be statutes that require that a physician have a license to practice medicine and surgery to own or operate an imaging center, but there is no prohibition against the performance of CT or MRI studies by a licensed chiropractic physician in a properly licensed facility. Therefore, he felt that these sections should be rewritten to permit licensees to order or perform these tests consistent with chiropractic practice.

RESPONSE: N.J.S.A. 45:9-14.5.c(1) distinguishes between the types of tests that a chiropractor may order and the types of tests that a chiropractor may perform. Diagnostic imaging and bioanalytical laboratory testing are specifically listed under the types of diagnostic or analytical tests that a chiropractor may order; they are not listed under the types of tests that a chiropractor may perform. The Board does not have the authority to expand on what the statute has limited.

11. COMMENT: A commenter objected to the use of the term "invasive electromyography (EMG)" in proposed recodified N.J.A.C. 13:44E-1.1(d)4. He stated that the statutes do not refer to invasive and non-invasive muscle testing; rather, the statute specifically permits chiropractors to perform "computer-aided neuromuscular testing." He noted that N.J.S.A. 45:9-5.2 limits the performance of needle EMGs to physicians licensed to practice medicine and surgery, but permits licensed chiropractors to conduct and interpret nerve conduction studies, which usually require the use of surface electrodes for stimulation and recording. He believes that the term "invasive EMG" should be stricken from the proposed amendments because the use of the terms invasive and non-invasive may be misinterpreted in a manner that the statutes do not intend. He also notes that N.J.A.C. 13:44E-3 already addresses EMG, surface EMG, and electrodiagnostic testing.

RESPONSE: Use of the term "invasive electromyography" was not a change; it has been in N.J.A.C. 13:44E-1.1(c)4 for years. It has been understood by the Board to refer to needle EMG, and was in place prior to the limitation referred to in N.J.S.A. 45:9-5.2 that distinguishes needle EMG from surface EMG. There has not been any misinterpretation of the existing regulation in that regard, and there is no reason to believe it will be the subject of misinterpretation in the future.

12. COMMENT: A commenter also believes that proposed N.J.A.C. 13:44E-1.1(e) should be deleted in its entirety because it is redundant, and because it infers [sic] that the ordering and/or administering of physical modalities, or therapeutic or rehabilitative exercises may

only be [page=40] done in conjunction with a chiropractic adjustment, which the commenter believes is not required by statute. He notes that N.J.A.C. 13:44E-1.1(a) already states that the use of physical modalities, etc., are included within the scope of practice. He thinks that the substance of new N.J.A.C. 13:44E-1.1(e)3, which permits chiropractors to perform splinting and bracing, first aid, and other diagnostic or analytical tests including computer aided neuromuscular testing and nerve conduction studies should be added to the end of N.J.A.C. 13:44E-1.1(a) with the added stipulation that all tests and studies are subject to the conditions set forth in N.J.A.C. 13:44E-3 and N.J.S.A. 45:9-5.2. He proposed that N.J.A.C. 13:44E-1.1(a) should read as follows:

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

(a) The practice of chiropractic [is that patient health care discipline whose methodology is the adjustment and/or manipulation of the articulations of the spine and related structures.] means a philosophy, science, and healing art concerned with the restoration and preservation of health and wellness through the promotion of well-being, prevention of disease, and promotion and support of the inherent or innate recuperative abilities of the body. The practice of chiropractic includes the reduction of chiropractic subluxation and the examination, diagnosis, analysis, assessment, systems of adjustments, manipulation, and treatment of the articulations and soft tissue of the body. It is within the lawful scope of the practice of chiropractic to diagnose, adjust and treat the articulations of the spinal column and other joints, articulations, and soft tissue and to order and administer physical modalities and therapeutic, rehabilitative and strengthening exercises.

Perform splinting and bracing, first aid, and other diagnostic or analytical tests including computer aided neuromuscular testing and nerve conduction studies subject to conditions set forth in N.J.A.C. 13:44E-3 and NJSA 45:9-5.2."

RESPONSE: The commenter's proposed language relegates the requirements of N.J.A.C. 13:44E-1.1(e), that the components listed in the paragraphs (e)1, 2, and 3 need to be "clinically indicated, supported, and documented in the patient record" to a non-specific reference to N.J.A.C. 13:44E-3. However, the Board prefers to enumerate these requirements in N.J.A.C. 13:44E-1.1(e).

With respect to proposed N.J.A.C. 13:44E-1.1(e), the Board believes that the ordering and/or administering of physical modalities, therapeutic or rehabilitative or strengthening exercises, or the performance of splinting and bracing, first aid, or other diagnostic or analytical tests needs to have a treatment purpose related to chiropractic, and that at some point during the course of chiropractic treatment, the chiropractor will perform an adjustment.

13. COMMENT: The Board received several comments objecting to allowing chiropractors to perform school physical examinations, including pre-participation screenings. The commenters believed that the requirements of a comprehensive pre-participation examination of a student athlete go beyond the scope of practice, education, and training of a chiropractor. The commenters stated that the purpose of a student athlete's pre-participation screening is to detect conditions that may predispose the student to injury, disability, or death, as well as to determine the general health of the athlete, provide counsel on health related issues, and assess the athlete's fitness for a particular sport. The commenters argued that a pre-participation physical includes evaluations of the body beyond the scope of chiropractic, such as evaluations of the heart and lungs, which should only be performed by a physician, a directly supervised physician assistant, or an advanced practice nurse providing services in accordance with a collaborative agreement with a

physician. The commenters also pointed out that the New Jersey Department of Education rules at N.J.A.C. 6A:16-2.2, and the Department of Education-approved medical clearance form do not include chiropractors among the list of professionals with the authority to perform these examinations.

The commenters also emphasized that with heightened awareness of the sudden death of student athletes related to cardiac and neurological conditions, these evaluations are essential. One commenter explained that the Student Athlete Cardiac Screening Task Force was established in response to this concern. The Task Force has recommended that the sensitivity and specificity of the pre-participation examination should be increased and limited to the most qualified professionals. The Task Force opposes expanding the scope of chiropractic to permit pre-participation examinations because chiropractor training does not emphasize cardiac diagnosis or auscultation.

The commenters also expressed concern that parents may rely on the school pre-participation screenings as a medical "all clear" for their children, but this screening will not be meaningful because chiropractors do not have the same extensive training as medical doctors and doctors of osteopathic medicine. They feared that parents, lulled into a false sense of security, may skip an annual medical physical for their children because they believe that their children have received a medical examination. Several commenters noted that in a recent survey by the American Medical Association, 31 percent of those surveyed believed that chiropractors are medical doctors.

The commenters also pointed out that the Board of Medical Examiners (BME) also expects that a pre-participation examination will be performed by a physician licensed to practice medicine and surgery in the State. When it recently adopted rules governing athletic trainers, the BME found that there is an expectation that an athlete is generally healthy due to physical examination requirements before an athlete can engage in such activities. Using this rationale, the BME was comfortable that physician supervision of athletic trainers was not necessary in the interscholastic setting because the student athletes would have already had a medical examination by a physician, defined as a physician or surgeon licensed pursuant to N.J.S.A. 45:9-1 et seq.

Several commenters also noted that the legislative history of the statute indicated that the legislature intended to exclude pre-participation screenings from the scope of chiropractic. Originally included in the bill, amendments adopted from the floor specifically excluded pre-participation screenings. The commenters argued that the fact that pre-participation screenings were discussed, rejected, and then omitted from the statute clearly demonstrates that the New Jersey Legislature did not intend to expand the scope of practice to permit chiropractors to perform pre-participation screenings.

RESPONSE: The Board will delete the reference to pre-participation screenings in the rule because the legislative history shows that the reference to pre-participation screenings was removed from the bill by amendment. Its removal leads to the inescapable conclusion that pre-participation screenings would be outside the scope of chiropractic practice. The Board believes that this is not a substantive change requiring republication because including pre-participation screenings in the scope of practice would be ultra vires. Therefore, any comments opposing the change would be moot because the Board has no statutory authority to include pre-participation screenings in the scope of practice.

14. COMMENT: Several commenters believe that N.J.S.A. 45:9-14.5b, the enabling statute that prohibits chiropractors from performing endoscopy, prescribing, administering or dispensing drugs or medicine for any purpose, or performing surgery that requires cutting

by instrument or laser, should be specifically stated in the proposed rule. A commenter also felt that the provision that prohibits a chiropractor from signing any certificate required by law or the State Sanitary Code concerning reportable diseases, birth, or marriage or death certificates should also be incorporated in the proposed rule.

RESPONSE: The Board believes that the proposed rules positively set forth the scope of practice of chiropractic, and that the proposed rules need not list every action or procedure that is prohibited to chiropractors. The Board believes that the prohibition in the statute makes it clear that these procedures are not within the chiropractic scope of practice.

15. COMMENT: A commenter believes that proposed N.J.A.C. 13:44E-1.1(c) should be amended to make clear that the obligation to refer a patient to a dentist, medical doctor, or surgeon, when the chiropractor believes the symptoms or conditions require diagnosis, analysis, treatment, or methods beyond the scope of chiropractic, are ongoing and could occur during any exam or treatment. The commenter recommends that the language in subsection (c) be modified to state "at any time during examinations or treatments." The commenter also believes that the rules should include a requirement that a chiropractor refer a patient to a plenary licensed physician when the patient presents with a reportable disease that is within the purview of a licensed physician to diagnose and report. The commenter referred to N.J.S.A. 45:9-14.5.b.

[page=41] RESPONSE: The Board will adopt the specific amended language proposed by the commenter. This is not a substantive change requiring republication because it merely clarifies that the obligation to refer a patient is ongoing. The Board does not believe that the notice of proposal needs to be further changed to state that a chiropractor who examines a patient with a reportable disease must refer the patient to the appropriate health care professional, because this situation would be covered by the general referral rule set forth in N.J.A.C. 13:44E-1.1(c).

16. COMMENT: Several commenters felt that the Board should more strictly regulate chiropractors dispensing and selling nutritional supplements. The commenters suggested that the rules be tightened to limit mark-ups and prohibit kickbacks from suppliers. Two commenters were concerned that the rules do not express the statutory restrictions contained in N.J.S.A. 45:9-14.5.b, so as to clearly distinguish between substances that chiropractors are allowed to dispense and those substances that constitute drugs or medicines that cannot be dispensed by chiropractors for any reason. These commenters also felt that the Board should promulgate rules setting forth the requirements for storage, labeling, handling, and other safeguards to protect patients who purchase nutritional supplements from chiropractors.

Another commenter believed that the rules should restrict the claims or representations that a chiropractor may make to sell such products, as well as impose advertising and fee restrictions comparable to those imposed on those with plenary licenses. Two commenters believed that the Board should make it clear that the excessive fee and advertising rules are expressly applicable to the fees charged to patients for selling nutritional supplements and to the claims and representations made in the course of dispensing or selling the products.

Another commenter was concerned that permitting chiropractors to dispense nutritional supplements may create a potential conflict of interest between the doctor of chiropractic and the chiropractor as an entrepreneur wanting to make a profit from sales of nutritional supplements. The commenter also wanted to know whether there will be an accessible database to verify that chiropractors have completed the 45-credit-hour requirement.

RESPONSE: N.J.S.A. 45:9-14.5.c(3) states that chiropractors who have completed 45-course hours in human nutrition may provide dietary or nutritional counseling, such as the direction, administration, dispensing, and sale of nutritional supplements including, but not limited to all food concentrates, food extracts, vitamins, minerals, herbs, enzymes, amino acids, homeopathic remedies, and other dietary supplements, including, but not limited to, tissue or cell salts, glandular extracts, nutraceuticals, botanicals, and other nutritional supplements. N.J.A.C. 13:44E-1.1(d)8 incorporates this statutory language. Because N.J.S.A. 45:9-14.5.b clearly states that chiropractors may not prescribe, administer, or dispense drugs or medicines for any reason whatsoever, and because the language of N.J.S.A. 45:9-14.5.c(3) and of proposed N.J.A.C. 13:44E-1.1(d)8 provides very clear examples of the types of supplements chiropractors may sell, the Board does not feel that it is necessary to set forth in the rule the substances that chiropractors may not sell.

Addressing the commenter's concern that permitting chiropractors to sell nutritional supplements may create a potential conflict of interest between the chiropractor as doctor and entrepreneur, the Board notes that any time a health care professional recommends an elective procedure, the same potential conflict is present. Furthermore, the proposed rule that permits the sale of nutritional supplements merely conforms to the Legislature's amendment of the statute.

Regarding the issue of how much profit a chiropractor may make on the sale of nutritional supplements, N.J.S.A. 45:9-22.11, the statute that restricts the physician's profit on any such drugs or medicines, specifically excludes from these restrictions chiropractors dispensing nutritional supplements. Under N.J.S.A. 45:9-14.5.c(3), the sale of nutritional supplements is a component of the service of nutritional counseling. N.J.A.C. 13:44E-2.11 prohibits chiropractors from rendering any bill or submitting any claim for services that contains an excessive fee. The Board construes this rule to apply to the sale of nutritional supplements because the sale of nutritional supplements is a chiropractic service.

The Board understands that the restriction in N.J.A.C. 13:44E-2.1, prohibiting the use of any misrepresentation in advertising, is applicable to representations made in conjunction with the sale of nutritional supplements. N.J.A.C. 13:44E-2.1 defines "advertisement" as the attempt, directly or indirectly, by publication, dissemination, solicitation, endorsement or circulation in print or electronic media **or in any other way** to attract directly or indirectly a person to enter into an expressed or implied agreement to accept chiropractic services or care or goods related thereto. (emphasis added) The Board believes that this broad definition would encompass any statements made by chiropractors to induce patients to purchase nutritional supplements from them.

The Board does not intend to publish a database listing chiropractors who have completed 45 hours of education in human nutrition. The Board believes that chiropractic colleges and universities that are accredited in New Jersey include a minimum of 45 hours of human nutrition as part of their standard core curriculum. Licensees are responsible for verifying to the Board that they have completed this course of study. The Board suggests that if a member of the public wants to know if a specific chiropractor has completed 45 credit-hours of nutritional education, he or she should contact the Board.

The Board will consider proposing an anti-kickback rule in the future that would be consistent with other boards' anti-kickback rules, if such is needed based upon the Board's experience upon promulgation of these rules. At this point, the Board does not intend to promulgate rules pertaining to the storage, labeling, and handling of nutritional supplements. The Board does not believe such rules are necessary because it anticipates that chiropractors will be ordering products from manufacturers rather than formulating

them themselves. These products have expiration dates on the labels, which should alert the public as to whether the products are still potent. The Board notes nutritional supplements sold by retail stores are displayed on open shelves.

17. COMMENT: A commenter expressed concern that the scope of practice language has been expanded excessively. The commenter felt that expanding the scope to "examination, analysis, and assessment of soft tissue of the body," would make it difficult to determine what a chiropractor cannot do. The commenter believes that nothing in this language would prevent a chiropractor from conducting a prostate examination on a patient if the patient complained of pain, because the chiropractor could assert that the prostate examination was needed for analysis and assessment. The commenter expressed concern that chiropractors may lack the requisite training to perform some of the procedures they will now be allowed to perform.

The commenter also stated that the scope of practice language contains no admonition to chiropractors to avoid unnecessary or duplicative treatment, and there is nothing to prevent one chiropractor from treating one body region while a second chiropractor treats a separate body region. The commenter believes that there will be an increase in chiropractic treatment of carpal tunnel syndrome, which previously had not been permitted, because carpal tunnel syndrome is not related to problems in the spine. The commenter expressed concern that the broad language is going to make it very difficult for an insurer to deny treatment by a chiropractor as being beyond the scope of chiropractic practice. The commenter believes that requiring a chiropractor to identify and document a condition warranting chiropractic care before commencing chiropractic care may be the best safeguard against questionable chiropractic care.

RESPONSE: N.J.S.A. 45:9-14.5 expanded the scope of practice to permit chiropractors to diagnose, adjust, and treat the articulation of the spinal column and other joints, articulations, and soft tissue. The proposed rules merely implement these changes to the statute. Proposed N.J.A.C. 13:44E-1.1(e) states that when clinically indicated, supported, and documented in the patient record, a licensee may perform the ordering and/or administering of physical modalities, therapeutic, rehabilitative, and/or strengthening exercises and perform splinting and bracing, first aid, and other diagnostic or analytical tests. Thus, in order to commence chiropractic treatment, the treatment must be clinically indicated and supported by the record. N.J.A.C. 13:44E-2.11 prohibits a chiropractor from rendering any bill or the submission of any claim for service that is not justified by the needs of the patient; that is, for any diagnostic or treatment, services, goods, or appliances that are excessive [page=42] in quality or quantity; that represents multiple charges for the same chiropractic services or care, goods, or appliances; or that contains an excessive fee. However, the Board does not have the authority to prevent patients from treating with more than one chiropractor.

18. COMMENT: A commenter expressed concern that the prior language of N.J.A.C. 13:44E-1.1(b) required the finding of an "abnormality" upon a chiropractic examination before referring the patient to another health care professional. The language in proposed N.J.A.C. 13:44E-1.1(c) permits referral if the chiropractor has "reasonable cause to believe" that "symptoms are present that require diagnosis, analysis, treatment, or methods beyond the scope of chiropractic" with no finding of any abnormality required. The commenter believes that this language may encourage referrals to physical therapists, licensed massage therapists, and other disciplines where there may be no need to do so, because there is no requirement of an "abnormality" upon examination.

RESPONSE: The language in proposed N.J.A.C. 13:44E-1.1(c) duplicates the statutory

language of N.J.S.A. 45:9-14.5. The Legislature determined that a finding of an abnormality is not necessary for a referral.

19. COMMENT: A commenter was concerned that the changes to N.J.A.C. 13:44E-1.1(d) and (e) permit chiropractors to take and order any x-ray, not just skeletal x-rays, including digital x-rays, in any body area, and utilize other unnecessary radiological procedures.

RESPONSE: N.J.S.A. 45:9-14.5.b and c(1) permit chiropractors to perform x-rays as part of their examination. The statute does not limit the use of x-ray to the osseous system. However, N.J.A.C. 13:44E-2.11 prevents chiropractors from billing or submitting claims for services that are not justified by the needs of the patients, or for any diagnostic or treatment services that are excessive in quality or quantity.

20. COMMENT: A commenter believes that permitting chiropractors to sign or certify temporary or permanent impairments or other certificates, such as pre-employment screenings, could cause a potential increase in the number of patients treated by chiropractors with some eventual permanency rate. The commenter questioned whether chiropractors have the medical expertise and training to certify temporary or permanent impairments in some cases, and noted that pre-employment screenings have nothing to do with the spine.

RESPONSE: N.J.S.A. 45:9-14.5.c(2) permits chiropractors to sign or certify temporary or permanent impairments and other certifications, such as pre-employment screenings that are consistent with a chiropractic practice.

21. COMMENT: Several commenters addressed proposed N.J.A.C. 13:44E-1.1(e)3, which states that when clinically supported in the record, a chiropractor may provide a full complement of diagnostic and analytical tests, and can perform first aid, splinting, and bracing. One commenter felt that the terms "first aid" and "other diagnostic and analytical tests" are overly broad, making it difficult to decipher what a chiropractor would not be permitted to do. The commenter was concerned that, although the rule specifically mentions chiropractors being permitted to conduct computer aided neuromuscular testing and nerve conduction studies, the term "diagnostic and analytical tests" is not limited.

The commenter also believes that computer aided neuromuscular tests are seldom determined to be medically necessary in the treatment of soft tissue injuries and that nerve conduction studies are subject to frequent abuse by providers and are often not medically necessary. The commenter recommended that whenever a computer aided neuromuscular test or a nerve conduction study is performed, the patient records should be thoroughly reviewed by a medical expert to ensure that this testing is clinically indicated, supported, and documented. The commenter expects that there will be an increase in the use of collars and sports taping provided by chiropractors.

Another commenter argued that proposed N.J.A.C. 13:44E-1.1(e)3 impermissibly broadens the scope of practice as it relates to splinting/bracing and electrodiagnostic testing. The commenter pointed out that although the procedures must be "clinically indicated" and "in conjunction with chiropractic care," these terms are not defined in the proposed rules. Furthermore, since the rules state that chiropractic care can be delivered "in the absence of a subjective complaint or other objective findings," the commenter found it difficult to see any limitation on the use of these procedures.

The commenter also believed that language in N.J.A.C. 13:44E-1.1(e)3 conflicts with statutory language that clearly limits a chiropractor's performance of splinting and bracing

to situations that are consistent with the practice of chiropractic. The commenter offered an example of when the splinting and bracing would be permitted under the proposed rule but prohibited under the statute: if an individual came to a chiropractor for readjustment, and the chiropractor suspected that the individual had a fractured leg, splinting or bracing may be "clinically indicated" but inconsistent with the training of chiropractors. The commenter believes that at a minimum, the section should be qualified so as to identify the specific circumstances where splinting and bracing procedures would be consistent with chiropractic care. The commenter was concerned that leaving this undefined would permit chiropractors to act as emergency room physicians for patients arriving with broken bones. Another commenter believed that the rule should be amended to permit chiropractors to perform splinting and bracing "consistent with the practice of chiropractic."

The commenter also argued that proposed N.J.A.C. 13:44E-1.1(e) impermissibly exceeds the scope of practice when it includes nerve conduction studies. Noting that only studies measuring "H reflexes" and "F waves" have a causal nexus to the spine, the commenter believed that all other nerve conduction studies measure the peripheral nervous system. The commenter argued that by permitting chiropractors to perform nerve conduction studies when "clinically indicated," the rule eliminates any limitations on when chiropractors may perform such procedures. The commenter believed that the proposed rule should be amended to identify those nerve conduction studies that may "facilitate, enhance, and/or prolong the effects of "chiropractic adjustment."

The commenter believes that if an individual went to a chiropractor with complaints of wrist pain with associated numbness, clinical indications of carpal tunnel syndrome, the proposed rule would permit the chiropractor to conduct various electrodiagnostic studies, so long as these studies are in conjunction with chiropractic care. However, the rule does not define "in conjunction with chiropractic care." Even though the statute and rule provide that a referral to a medical doctor may be necessary if there is reasonable cause for referral, the proposed rules would allow the chiropractor to conduct the tests and refer the patient at a later date. The commenter believed that the proposed rule should be changed to prohibit chiropractors from conducting tests in situations where a referral is necessary for the treatment of the symptoms. The commenter also believed that the term "computer-assisted neuromuscular testing" should be clarified; without clarification, the proposed rule would incorporate broad undefined electrodiagnostic techniques that could be outside of chiropractic care.

RESPONSE: The Board believes that the types of tests that a chiropractor may perform are not limitless. Proposed N.J.A.C. 13:44E-1.1(d) sets forth the types of diagnostic and analytical procedures included within the scope of chiropractic, and specifies which types of tests a chiropractor may order and which types of tests a chiropractor may perform. For example, a chiropractor may order, but not perform, computerized axial tomography (CT), magnetic resonance imaging (MRI), bone scans and invasive electromyography (EMG). Chiropractors may request or perform non-invasive muscle testing, tests using neurocalometer-type devices, and electrodiagnostic tests or other special examinations to the extent and in the manner authorized by N.J.A.C. 13:44E-3. N.J.S.A. 45:9-14.5.c(1) specifically permits chiropractors to perform neuromuscular testing and nerve conduction testing.

Although the proposed rules do not define "clinically indicated" and "in conjunction with chiropractic care" as isolated terms, proposed N.J.A.C. 13:44E-1.1(e), permits a chiropractor to perform splinting/bracing, first aid, and other diagnostic or analytical tests only when "clinically indicated, supported, and documented in the patient record." N.J.A.C. 13:44E-3.1 defines "clinically supported" in the context of performing diagnostic testing. The Board's understanding is that this definition also applies in the context of performing

splinting/bracing and first aid. The Board also believes that meaning of the term, "in conjunction with chiropractic care" is clear, as the proposed rule requires that a procedure performed in conjunction with chiropractic care [page=43] facilitate, enhance, and/or prolong the effects of chiropractic adjustment. If a patient presents with a condition that is outside of the practice of chiropractic, both the statute and proposed N.J.A.C. 13:44E-1.1(c) require a chiropractor to refer a patient to a medical doctor or other healthcare professional if the chiropractor has reasonable cause to believe that symptoms or conditions are present that require diagnosis, analysis, treatment, or methods beyond the scope of chiropractic. A chiropractor may not be able to determine whether a referral is necessary without performing diagnostic testing.

Regarding one of the commenter's suggestions to have patient records thoroughly reviewed to ensure that computer aided neuromuscular tests or a nerve conduction studies are warranted, the Board notes that, pursuant to N.J.S.A. 45:9-14.5.d, no one other than a State-licensed chiropractor may make a utilization management decision that limits, restricts, or curtails a course of chiropractic care. Also, see the Response to Comment 20 above.

22. COMMENT: A commenter questioned why there is no rule implementing N.J.S.A. 45:9-14.5.d, which makes it unlawful for someone who is not licensed in the State to perform chiropractic to render a utilization management decision that limits, restricts, or curtails a course of chiropractic care.

RESPONSE: The Board did not propose a rule making it unlawful for someone who is not a State-licensed chiropractor to render a utilization management decision that limits, restricts, or curtails a course of chiropractic care because the Board believed that the statute was clear and did not require a rule to implement it.

23. COMMENT: A commenter expressed concern that the proposed regulations do not include the language contained in N.J.S.A. 45:9-14.5.e, that requires a licensed chiropractor, who at any time during the examination has reasonable cause to believe symptoms or conditions are present that require diagnosis, analysis, treatment, or methods beyond the scope of chiropractic as defined in N.J.S.A. 45:9-14.5.a, shall refer an individual to a practitioner licensed to practice dentistry, medicine, or surgery in this State or other appropriate licensed healthcare professionals. The commenter expressed concern about a Board decision in September, 2011, that permitted a chiropractor to order a kidney ultrasound. The commenter believes that the ordering of this test went beyond the statutory scope of practice which limits chiropractic treatment to "the articulations of the spinal column and other joints, articulations, and soft tissue of the body." The commenter felt the rules should state that treatment of organs is not within the scope of practice of chiropractic.

RESPONSE: Proposed N.J.A.C. 13:44E-1.1(c) contains the statutory language to which the commenter referred. With respect to the Board decision referenced by the commenter, the Board permitted the chiropractor to order an ultrasound of the kidneys but required that it be read by an appropriately licensed practitioner or a radiologist. The chiropractor was also required to refer the patient to a medical doctor if there were positive findings. The Board permitted the chiropractor to order the test in order to differentially diagnose a condition treatable chiropractically from a medical condition such as kidney stones. See also the Response to Comment 14.

24. COMMENT: A commenter was concerned that he did not complete 30 credits last year, and wanted to know how to make up the missing credits.

RESPONSE: The commenter is required to complete a total of 30 credits by the time he renews his license in 2013. Therefore, he may continue to take classes to make up the shortfall.

### **Federal Standards Statement**

A Federal standards analysis is not required because the adopted amendments and new rules are not subject to any Federal laws or standards.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions indicated in brackets with asterisks \*[thus]\*):

#### SUBCHAPTER 1. PURPOSE AND SCOPE

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

(a) The practice of chiropractic means a philosophy, science, and healing art concerned with the restoration and preservation of health and wellness through the promotion of well-being, prevention of disease, and promotion and support of the inherent or innate recuperative abilities of the body. The practice of chiropractic includes the reduction of chiropractic subluxation and the examination, diagnosis, analysis, assessment, systems of adjustments, manipulation, and treatment of the articulations and soft tissue of the body. It is within the lawful scope of the practice of chiropractic to diagnose, adjust and treat the articulations of the spinal column and other joints, articulations, and soft tissue and to order and administer physical modalities and therapeutic, rehabilitative and strengthening exercises.

(b) During the initial consultation and before commencing chiropractic care, a licensee shall identify and document a clinical condition warranting chiropractic care. Nothing contained in this section shall be deemed to prohibit a licensee from caring for chiropractic subluxation as determined by chiropractic analytical procedures. Chiropractic analysis that identifies the existence of a subluxation may be the basis for chiropractic care even in the absence of a subjective complaint or other objective findings.

(c) A chiropractic diagnosis or analysis shall be based upon a chiropractic examination appropriate to the presenting patient, except that a licensed chiropractor who, at any time during \*[the]\* examination **\*s or treatments\***, has reasonable cause to believe symptoms or conditions are present that require diagnosis, analysis, treatment, or methods beyond the scope of chiropractic as defined in (a) above, shall refer an individual to a practitioner licensed to practice dentistry, medicine, or surgery in this State or other appropriate licensed healthcare professionals. Nothing contained in this subsection shall preclude a licensed chiropractor from rendering concurrent or supportive chiropractic care to any patient so referred.

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

1. The taking and ordering of X-rays;
- 2.-3. (No change.)
4. The ordering, but not performing, of such other diagnostic or analytical tests consistent

with chiropractic practice including, but not limited to, computerized axial tomography (CT), magnetic resonance imaging (MRI), bone scan, and invasive electromyography (EMG);

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

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

7. The signing or certifying of temporary or permanent impairments and other certifications, such as \*[pre-participation and]\* pre-employment screenings. A chiropractic physician may use recognized references in making his or her determination; and

8. The providing of dietary or nutritional counseling, such as the direction, administration, dispensing, and sale of nutritional supplements including, but not limited to, all food concentrates, food extracts, vitamins, minerals, herbs, enzymes, amino acids, homeopathic remedies, and other dietary supplements including, but not limited to, tissue or cell salts, glandular extracts, nutraceuticals, botanicals, and other nutritional supplements; provided that the chiropractor has successfully completed a course of study concerning human nutrition, consisting of not less than 45 credit hours from a college or university accredited by a regional or national accrediting agency recognized by the United States Department of Education and approved by the Board based upon the criteria set forth in N.J.S.A. 45:9-41.3.

(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;

[page=44] 2. The ordering and/or administering of therapeutic, rehabilitative and/or strengthening exercises; and

3. Perform splinting and bracing, first aid, and other diagnostic or analytical tests including computer aided neuromuscular testing and nerve conduction studies.

(f) A chiropractor licensed by the State Board of Chiropractic Examiners may use the title doctor, or its abbreviation in the practice of chiropractic, however, it must be qualified by the words doctor of chiropractic, chiropractor or chiropractic physician or its abbreviation D.C., which may be used interchangeably.

#### SUBCHAPTER 1A. LICENSURE

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.-2. (No change.)

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;

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; and

5. Submission of proof of having completed the continuing education requirements for each biennial licensure period for which the applicant's license was expired. If the total credits required to become current exceeds 30, then 30 shall be the maximum number required. Any applicant seeking reinstatement of his or her license shall submit to the Board, a detailed list of all continuing 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.

(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 5 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 5 above; and

2. (No change.)

(g) (No change.)

(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. (No change.)

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;

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; and

4. Submission of proof of completion of the continuing education credits required pursuant to N.J.A.C. 13:44E-1A.5.

(i)-(k) (No change.)

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

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

(b) Except as provided in (c) below, 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.

(c) For the biennial renewal period beginning September 1, 2013, a licensee who has completed continuing education credits in courses meeting the requirements set forth in this section between January 18, 2010 and August 31, 2013, shall be permitted to apply such credits to qualify for renewal of his or her license for the biennial period commencing on September 1, 2013.

(d) 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:

1. Whose focus is the subject matter described in (j) below; or
2. That does not have significant intellectual or practical content dealing primarily with matters directly related to the practice of chiropractic or with professional responsibilities or ethical obligations of licensees.

(e) The Board will not grant continuing education credit for completion of basic courses required for graduation from a chiropractic college or university and/or for initial licensure. Continuing education credit shall be granted only for post-doctoral courses designed to build upon basic knowledge and/or to bring licensees up-to-date on new developments relating to the practice of chiropractic.

(f) 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 or with the professional responsibilities or ethical obligations of licensees and whose focus is not the subject matter described in (j) below.

(g) The Board may accredit other equivalent 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, or self-study programs, or distance learning 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 or with the professional responsibilities or ethical obligations of licensees and whose focus is not the subject matter described in (j) below.

(h) 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 15 credit hours of continuing education credit for each semester or trimester credit hour earned; 10 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: 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 12 credits per biennial period.

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

[page=45] 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 12 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 12 continuing education credit hours 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 six 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.

(i) A licensee shall complete no more than 12 of the total continuing chiropractic education credits \*[in]\* **\*by asynchronous\*** distance learning \*[or Internet]\* 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 \*[real time interactive seminars conducted by electronic methods]\* **\*synchronous distance learning activities where the instructor and learner are in direct live communication during the course\***. The Board shall not award more than 10 hours of continuing education credit for any program that takes place during the course of one calendar day.

(j) The Board shall not accept courses involving practice building, practice management and/or practice marketing toward the continuing chiropractic education requirements.

(k) 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 (d) 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 (d) 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 (k)<sup>1</sup> 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 (k)<sup>4</sup> below.

3. The Board will post on its website at [http://www.njconsumeraffairs.gov/chiro/chiro\\_licensee.htm](http://www.njconsumeraffairs.gov/chiro/chiro_licensee.htm) a list of all program sponsors that, pursuant to this section, have applied and have 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 pursuant to (k)1 above, or has obtained prior Board approval for a course pursuant to (k)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.

(l) A licensee seeking Board approval of a program for continuing education credit, which has not been approved pursuant to (k) 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 (e), (f), and (g) above.

(m) A new licensee who completed an accredited graduate chiropractic 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.

(n) 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 [page=46] licensee compliance with the continuing education requirements of this section.

(o) A licensee who completes more than 30 continuing chiropractic education credits required pursuant to this section may apply no more than seven of the excess credits to the continuing chiropractic education requirements for the following biennial period only. 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.

(p) 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 shall provide proof of having completed the continuing chiropractic 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 30, then 30 shall be the maximum number required. Any applicant seeking to resume practice shall submit to the Board a detailed list of all continuing 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.

(q) To report continuing chiropractic 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.

(r) The board may extend the time period for completion of continuing chiropractic education requirements or may waive continuing chiropractic 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.

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

(t) 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-1A.6 Malpractice insurance

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

"Authorized" means recognized by a government agency to offer chiropractic malpractice insurance products.

"Covered" means ongoing maintenance of insurance in the amount of at least \$ 100,000 per occurrence and \$ 300,000 per policy year with extended reporting endorsement coverage for claims made (or "tail coverage") issued by a carrier or other entity authorized to write chiropractic malpractice insurance.

"Maintaining a professional practice with responsibility for patient care" means the furnishing of professional services to patients in New Jersey including, but not limited to, the testing for, or diagnosis of, or the offering or furnishing of treatment, preventative chiropractic care or consultation relating to chiropractic care at a place, such as an office (even if located in the home) or clinic or through a business entity, regardless of the ownership of the practice.

(b) All doctors of chiropractic licensed to practice in this State who maintain a professional practice or have responsibility for patient care shall be covered by chiropractic malpractice insurance.

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