

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our file #557

Lee

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 11-7-79 DUE DATE 11-27-79
Lee. 11-16

Resubmitted and Received 11/21

a. Returned to Agency w/o Filing w/Secretary of State 11/27
b. Approved 11/21 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact incorporated in #14
14. Certificate of Board's Resolution Adopting Rules, where applicable ✓
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N/A
20. Petition by Public, where applicable N/A

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Lee E. Sheehy
Special Assistant
Attorney General

DATE: November 29, 1979

FROM : Robert T. Holley
Special Assistant
Attorney General

PHONE: 341-7272

SUBJECT: In the Matter of the Minnesota Board of Chiropractic Examiners' Proposed Adoption of Rule Provisions Relating to Continuing Education
Your File No. 557

This is a refiling with your office of rules in the above subject matter.

Attached please find the previously submitted complete hearing record, together with the following documents:

(i) Your memorandum of November 27, 1979, to the Board indicating disapproval of the rules based upon use of the word "may" instead of "shall" under 7 MCAR § 2.005B(10),

(ii) Four copies of the rules as now adopted by the Board substituting the word "shall" for "may" under 7 MCAR § 2.005B(10), and

(iii) The original and three copies of Supplemental Report of the Chief Hearing Examiner, dated November 29, 1979, finding that the foregoing, single word change does not make the rules substantially different from those proposed at hearing.

I would appreciate a call when the rules are filed with the Secretary of State or, of course, if there is a problem with the instant refiling.

RTH:rlb

Attachments

PRINTED ON RECYCLED PAPER

BOARD OF CHIROPRACTIC EXAMINERS

Proposed Rule Provisions for Continuing Education

AMENDMENTS AS ADOPTED

7 MCAR § 2.005 (Chi 5) Individual Annual License Renewal

A. Fee.

~~(a)~~1. Thirty (30) or more days before January 1 each year, the State Board of Chiropractic Examiners (hereinafter "Board") shall mail to the last address on file with the Board a license renewal fee notice to each person (hereinafter "licensee") licensed to practice chiropractic within this state.

~~(b)~~2. The license of each licensee shall expire at midnight on December 31 each year. Subject to the terms of part B of this rule, the Board shall renew the license upon receipt from the licensee of a license renewal fee of $50.00, plus any applicable penalty fee as set forth in ~~(c)~~3. below. Each licensee shall submit the license renewal fee to the Board no later than January 1 of the year for which the license renewal is requested.

~~(c)~~3. A licensee shall submit to the Board, in addition to the license renewal fee, a penalty fee of $5.00 per month for each month or portion thereof for which the license renewal fee is in arrears, such penalty not to exceed $50.00.

B. Continuing education.

1. Purpose. The primary purpose of continuing chiropractic education is to assure the consumer of an optimum quality of chiropractic health care by requiring doctors of chiropractic to attend educational classes or seminars designed to advance their professional skills and knowledge.

2. Annual requirement. Except as hereinafter provided, every person licensed to practice chiropractic in this state shall, as a prerequisite for the annual renewal of his license, attend a minimum of twenty (20) hours during the preceding calendar year of continuing education courses recognized and approved by the Board.

a. At least three (3) of such hours shall be devoted to radiographic safety, technique and/or interpretation.

b. Licensees shall be exempt from the preceding continuing education requirements for the calendar year in which they are initially licensed. During the first calendar year following the year of initial licensure, licensees shall attend a total of not less than ten (10) hours of recognized and approved continuing education courses, including at least three (3) hours devoted to radiographic safety, technique and/or interpretation. Thereafter, five (5) additional course hours shall be attended each year until the annual twenty (20) hour minimum requirement is met.

3. Approved programs. Subject to continued approval under the criteria set forth at section 5 hereof and except as set forth under section 6, the following continuing education classes are approved by the Board:

a. Educational meetings of the American Chiropractic Association.

b. Educational meetings of the International Chiropractic Association.

c. Educational meetings of the Canadian Chiropractic Association.

d. Educational classes conducted by any chiropractic college that is accredited by or has accreditation status with the Council on Chiropractic Education.

e. Educational classes conducted by any state chiropractic association.

4. Other programs subject to approval. Other continuing education programs may be approved by the Board upon a written request therefor submitted by the program sponsor to the Board executive secretary. All such requests shall be received not less than ninety (90) days prior to the program presentation date and shall contain the following information:

a. Name and address of organization sponsoring the course for which approval is requested.

b. Instructor's name and credentials.

c. An outline of subject matter to be covered.

d. The number of sixty (60) minute hours of actual instruction.

e. The mechanism of monitoring and certifying attendance.

f. The location at which the course will be conducted.

g. Dates the course will be presented.

h. Tuition fee.

5. Program approval criteria. The Board shall employ the following criteria in determining whether a continuing education program shall be approved and the number of course hours for which approval is granted:

a. Whether the material to be presented is likely to enhance the practioner's knowledge and skill in the practice of chiropractic.

b. Whether the instructors or speakers presenting the program are sufficiently qualified in the field of their instruction, either by practical or academic experience or both.

c. Whether the classes will be held in a suitable setting which is conducive to the learning process.

6. Unapproved programs. Courses dealing with administrative and economic aspects of practice shall not be approved for continuing education credit by the Board.

7. Proof of attendance.

a. On or before January 1 of the year for which renewal of his license is requested, each licensee not initially licensed in this state during the preceding calendar year shall submit a written statement to the Board executive secretary containing the following:

(1) The name, date and subject of each educational program attended during the preceding calendar year;

(2) The names of the sponsoring organizations;

(3) The number of sixty (60) minute class hours of instruction offered at each program and the number of hours actually attended; and

(4) The name, signature, and current mailing address of the licensee.

b. Falsification of any written evidence submitted to the Board executive secretary pursuant to this rule shall be deemed to be unprofessional conduct and constitute grounds for license revocation or suspension.

8. Failure to comply. The Board may refuse to renew, or may revoke, suspend, condition, limit, restrict or qualify the license of any licensee failing to comply with the requirements of this rule and/or may publicly reprimand, censure and place such person on probation with the Board.

9. Reinstatement. The license of any licensee which is not renewed or which is revoked, suspended, or reduced in status by reason of failure to comply with the continuing education requirements of this rule may, at the election of the licensee or former licensee, be reinstated or restored to full status by either of the following procedures:

a. Submission to the Board executive secretary of proof of the make up of all continuing education course hour and subject matter requirements which would have been necessary for continuous licensure from the date of such person's last license renewal or initial licensure, whichever is more recent, and submission to the Board's executive secretary of proof of attendance at an additional ten (10) hours of Board recognized and approved continuing education courses for each intervening renewal year. Proof of compliance with the foregoing requirements shall be made by written statement in the form prescribed under section 7.a. of this rule and subject to the provisions of section 7.b.; or

b. Reexamination by the Board at the time for which it next schedules license examinations. No such reexamination shall be conducted except upon a written application therefor received by the Board executive secretary not less than thirty (30) days prior to the examination date.

10. Waiver or deferment of continuing education requirements. The Board shall waive or defer compliance with some or all annual continuing education requirements for any licensee presenting satisfactory written evidence to the Board

of illness or hardship making it impossible or highly impractical for the licensee to attend or to have attended a sufficient number of approved continuing education class hours.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 2 9 1979
Secretary of State

APPROVED AS TO FORM AND LEGALITY

NOV 29 1979

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____ 19 ____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 29 1979
Joan Anderson Growe
Secretary of State
4:20 PM

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF THE MINNESOTA BOARD OF CHIROPRACTIC EXAMINERS' PROPOSED ADOPTION OF RULE PROVISIONS RELATING TO CONTINUING EDUCATION (7 MCAR § 2.005 [Chi 5]).	SUPPLEMENTAL REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, on October 25, 1979, the Board of Chiropractic Examiners submitted the above-entitled rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, on October 31, 1979, the Chief Hearing Examiner issued his report finding that the rules as proposed to be adopted were not substantially different from those proposed at the public hearing and that the Board of Chiropractic Examiners had met all requirements of Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Board of Chiropractic Examiners subsequently submitted the rules and the record of the proceedings to the Attorney General for his review as to form and legality pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Attorney General recommended to the Board of Chiropractic Examiners that certain of the rules be amended; and

WHEREAS, the Board of Chiropractic Examiners has now resubmitted the rules to the Chief Hearing Examiner for his review; and

WHEREAS, the Chief Hearing Examiner finds that the changes made in the rules do not make the rules substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this Report, the Board of Chiropractic Examiners has the responsibility of resubmitting the complete hearing record and the rules as adopted by the Board to the Attorney General, notifying all persons who requested to be informed that the hearing record has been re-

submitted to the Attorney General, and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 29th day of November, 1979.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

Our File # 557

ATTORNEY GENERAL

E.A. BROCHMAN, D.C.
Executive Secretary
Minnesota Board of
Chiropractic Examiners

November 27, 1979

LEE E. SHEEHY
Special Assistant
Attorney General

296-1288

In the Matter of the Minnesota Board of Chiropractic Examiners' Proposed Adoption of Rules Relating to Continuing Education

The above-captioned rules have not been approved by this office for the below enumerated reason. After agency consideration of this reason and appropriate action, if any, the rules may be resubmitted to this office. At that time, please insure that the original of the Order Adopting and the Rules as Adopted which are necessary for filing with the Secretary of State accompany the re-submitted documents.

The rules have been disapproved for the following reason: 7 MCAR § 2.005 B (10) improperly grants to the agency unfettered discretion by use of the word "may" in its rule permitting waiver of certain requirements. The Minnesota Administrative Procedure Act requires that rules include "every agency statement of general applicability and future effect . . . made to implement or make specific the law . . . " See Minn. Stat. § 15.0411, Subd. 3. The use of the word "may" in the provision permits the agency to consider criteria beyond the criteria set forth in the rule. If the agency wishes to consider additional criteria, they should be adopted as a part of the rule. Otherwise, the word "shall" must be used.

If you have any questions, do not hesitate to contact me.

LES/bw
cc: Duane Harves
Marshall Whitlock

Draft #1

BOARD OF CHIROPRACTIC EXAMINERS

Proposed Rule Provisions for Continuing Education

AMENDMENTS AS ADOPTED

7 MCAR § 2.005 (Chi 5) Individual Annual License Renewal

A. Fee.

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~~(b)~~2. The license of each licensee shall expire at midnight on December 31 each year. Subject to the terms of part B of this rule, the Board shall renew the license upon receipt from the licensee of a license renewal fee of $50.00, plus any applicable penalty fee as set forth in ~~(c)~~3. below. Each licensee shall submit the license renewal fee to the Board no later than January 1 of the year for which the license renewal is requested.

~~(c)~~3. A licensee shall submit to the Board, in addition to the license renewal fee, a penalty fee of $5.00 per month for each month or portion thereof for which the license renewal fee is in arrears, such penalty not to exceed $50.00.

B. Continuing education.

1. Purpose. The primary purpose of continuing chiropractic education is to assure the consumer of an optimum quality of chiropractic health care by requiring doctors of chiropractic to attend educational classes or seminars designed to advance their professional skills and knowledge.

2. Annual requirement. Except as hereinafter provided, every person licensed to practice chiropractic in this state shall, as a prerequisite for the annual renewal of his license, attend a minimum of twenty (20) hours during the preceding calendar year of continuing education courses recognized and approved by the Board.

a. At least three (3) of such hours shall be devoted to radiographic safety, technique and/or interpretation.

b. Licensees shall be exempt from the preceding continuing education requirements for the calendar year in which they are initially licensed. During the first calendar year following the year of initial licensure, licensees shall attend a total of not less than ten (10) hours of recognized and approved continuing education courses, including at least three (3) hours devoted to radiographic safety, technique and/or interpretation. Thereafter, five (5) additional course hours shall be attended each year until the annual twenty (20) hour minimum requirement is met.

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c. Educational meetings of the Canadian Chiropractic Association.

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e. Educational classes conducted by any state chiropractic association.

4. Other programs subject to approval. Other continuing education programs may be approved by the Board upon a written request therefor submitted by the program sponsor to the Board executive secretary. All such requests shall be received not less than ninety (90) days prior to the program presentation date and shall contain the following information:

a. Name and address of organization sponsoring the course for which approval is requested.

b. Instructor's name and credentials.

c. An outline of subject matter to be covered.

d. The number of sixty (60) minute hours of actual instruction.

e. The mechanism of monitoring and certifying attendance.

f. The location at which the course will be conducted.

g. Dates the course will be presented.

h. Tuition fee.

5. Program approval criteria. The Board shall employ the following criteria in determining whether a continuing education program shall be approved and the number of course hours for which approval is granted:

a. Whether the material to be presented is likely to enhance the practioner's knowledge and skill in the practice of chiropractic.

b. Whether the instructors or speakers presenting the program are sufficiently qualified in the field of their instruction, either by practical or academic experience or both.

c. Whether the classes will be held in a suitable setting which is conducive to the learning process.

6. Unapproved programs. Courses dealing with administrative and economic aspects of practice shall not be approved for continuing education credit by the Board.

7. Proof of attendance.

a. On or before January 1 of the year for which renewal of his license is requested, each licensee not initially licensed in this state during the preceding calendar year shall submit a written statement to the Board executive secretary containing the following:

(1) The name, date and subject of each educational program attended during the preceding calendar year;

(2) The names of the sponsoring organizations;

(3) The number of sixty (60) minute class hours of instruction offered at each program and the number of hours actually attended; and

(4) The name, signature, and current mailing address of the licensee.

b. Falsification of any written evidence submitted to the Board executive secretary pursuant to this rule shall be deemed to be unprofessional conduct and constitute grounds for license revocation or suspension.

8. Failure to comply. The Board may refuse to renew, or may revoke, suspend, condition, limit, restrict or qualify the license of any licensee failing to comply with the requirements of this rule and/or may publicly reprimand, censure and place such person on probation with the Board.

9. Reinstatement. The license of any licensee which is not renewed or which is revoked, suspended, or reduced in status by reason of failure to comply with the continuing education requirements of this rule may, at the election of the licensee or former licensee, be reinstated or restored to full status by either of the following procedures:

a. Submission to the Board executive secretary of proof of the make up of all continuing education course hour and subject matter requirements which would have been necessary for continuous licensure from the date of such person's last license renewal or initial licensure, whichever is more recent, and submission to the Board's executive secretary of proof of attendance at an additional ten (10) hours of Board recognized and approved continuing education courses for each intervening renewal year. Proof of compliance with the foregoing requirements shall be made by written statement in the form prescribed under section 7.a. of this rule and subject to the provisions of section 7.b.; or

b. Reexamination by the Board at the time for which it next schedules license examinations. No such reexamination shall be conducted except upon a written application therefor received by the Board executive secretary not less than thirty (30) days prior to the examination date.

10. Waiver or deferment of continuing education requirements. The Board may waive or defer compliance with some or all annual continuing education requirements for any licensee presenting satisfactory written evidence to the Board

of illness or hardship making it impossible or highly impractical for the licensee to attend or to have attended a sufficient number of approved continuing education class hours.

CHP-80-001-HC

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF THE MINNESOTA BOARD OF CHIROPRACTIC EXAMINERS' PROPOSED ADOPTION OF RULE PROVISIONS RELATING TO CONTINUING EDUCATION (7 MCAR § 2.005 [Chi 5]).

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on September 5, 1979, before Harry Seymour Crump, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Board of Chiropractic Examiners on September 28, 1979; and

WHEREAS, the Board of Chiropractic Examiners has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Board of Chiropractic Examiners has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Board of Chiropractic Examiners has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Board of Chiropractic Examiners has the responsibility of submitting the complete hearing record and the rules as adopted by the Board to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 31st day of October, 1979.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Robert T. Holley, do hereby declare that I have examined the proposed rules of the Minnesota Board of Chiropractic Examiners relating to continuing education and all related documents and that, based on such examinations and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has, without exceptions, been followed.

Dated: November 7, 1979

Robert T. Holley

ROBERT T. HOLLEY
Special Assistant
Attorney General

RECEIVED
JUL 3 1 1979
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of the Minnesota Board of Chiropractic Examiners' Proposed Adoption of Rule Provisions Relating to Continuing Education

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

This Statement is submitted and has been duly filed by the Minnesota Board of Chiropractic Examiners (hereinafter cited as "Board") in accordance with Minn. Stat. § 15.0412, subd. 4, and 9 MCAR §§ 2.104 and 2.105. Its purpose is to present justification for the Board's adoption of the above subject rule provisions.[1/] Included are citations to the Board's pertinent rulemaking authority, statements respecting the underlying need for the provisions, and a section-by-section presentation of the Board's supporting rationale.

I. Legal Authority. Specific legal authority for the Board's promulgation of the instant rule is set forth at Minn. Stat. § 214.12 (1978). That section states:

> The health related and non-health related licensing boards may promulgate by rule requirements for renewal of licenses designed to promote the continuing professional competence of licensees. These requirements of continuing professional education or training shall be designed solely to improve professional skills and shall not exceed an average attendance requirement of 50 clock hours per year. All requirements promulgated by the boards shall be effective commencing January 1, 1977, or at a later date as the board may determine. The 50 clock hour limitation shall not apply to the board of teaching.

1/ The proposed provisions constitute the addition of a second part to 7 MCAR § 2.005 (Minn. Rule Chi 5), an existing Board rule relating to annual license renewal. At present, 7 MCAR § 2.005 addresses only fee requirements for annual license renewal. The Board has engaged in no rulemaking since its adoption of the first portion of 7 MCAR § 2.005 on September 24, 1976.

In that the proposed provisions would establish requirements for license renewal, they are further authorized under the following mandatory section :

> Notwithstanding any law to the contrary, each health related and non-health related licensing board shall promulgate rules providing for the renewal of licenses. The rules shall specify the period of time for which a license is valid, procedures and information required for renewal, and renewal fees to be set pursuant to subdivision 1 [hereof].

Minn. Stat. § 214.06, subd. 2 (1978).

Additionally, as a Board statement intended to be of general applicability and future effect, see: Minn. Stat. § 15.0411, subd. 3 (1978), the rule is also subject to the directive of Minn. Stat. § 148.05 (1978), wherein it is provided that the Board "shall . . . promulgate rules to govern its actions."

II. Need. The Board's adoption of a rule regarding continuing education is necessary to implement Minn. Stat. §§ 148.05, 214.06, subd. 2, and 214.12 (1978). Further, as is set forth in greater detail below, the adoption of the particular provisions here proposed are considered necessary at this time to update existing mandatory continuing chiropractic education requirements.[2/] Moreover, it is the position of the Board that it is obligated to the consumer of chiropractic health care to seek to insure the competent practice of chiropractic in this state and that required continuing education is an appropriate and reasonable means of achieving this end.[3/]

III. Supporting Rationale. In considering the requirements to be imposed by this rule, the Board was particularly concerned with the following points:

(i) To reflect the previously referenced need for the rule by seeking to protect the health and welfare of the citizens of Minnesota by attempting to insure that chiropractors practicing in this state are qualified not only by initial licensure but that they continue to maintain their competency by continuing their education.

(ii) To insure that continuing chiropractic education courses are of satisfactory quality to provide significant learning opportunities.

2/ Currently only five hours of annual study are required. Minn. Stat. § 148.06, subd. 2 (1974) and Minn. Laws 1976, ch. 222, §§ 209 and 210.

3/ See, N.8, infra.

(iii) To avoid adopting a rule which may be counterproductive because its requirements are too demanding of newly licensed chiropractors.

Specifically, the Board's justification for the promulgation of each section of the instant rule is as follows:

A. Fee. There now exists a Board rule relative to annual license renewal, namely: 7 MCAR § 2.005 (Chi 5).[4/] At present, it addresses only the matter of renewal fees.[5/] Because the instant proposed rule would also deal with license renewal requirements, it is considered logical and necessary to include its provisions as a second part within 7 MCAR § 2.005. To achieve this end with least confusion, it is here proposed that the existing portion of 7 MCAR § 2.005 be amended by adding the subtitle "A. Fee," with the new part being entitled "B. Continuing education."

It is also proposed that corresponding, standard outline changes be made in the remainder of the rule's existing numbering scheme. Accordingly, current subpart designations "(a)" "(b)" "(c)" are to be changed to "1," "2" and "3." These alterations are regarded as further justified and necessary in that they would bring the rule into conformity with the rules numbering format established by the Office of the State Register.[6/]

A final amendment to the existing portion of 7 MCAR § 2.005 would consist of the addition of the following cross-reference to annual continuing education requirements within the current rule's second paragraph:

> [Subject to the terms of part B of this rule, t] he Board shall renew the license upon receipt from the licensee of a license renewal fee of $50.00, plus any applicable penalty fee as set forth in [3.] below.

(Brackets enclose the proposed new cross-reference language.) This addition is necessary to give clear notice that fee payment alone is not sufficient for annual renewal, and that a license may not be renewed except upon compliance with both fee and continuing education requirements.

4/ See, N. 1, supra.

5/ Id.

6/ "Instructions For Publishing Material In The State Register" (undated).

B. Continuing education.

1. Purpose. This section is included and regarded as necessary to clarify and give notice of the express purpose of the new proposed rule provisions. It is designed and believed to be consistent with similar language appearing under the previously-cited authorizing provision of Minn. Stat. § 214.12 (1978) and under Minn. Stat. § 148.06, subd. 2 (1974) which set forth current standards for continuing chiropractic education.[7/], [8/]

2. Annual requirement. At present but five hours of continuing education are required of Minnesota chiropractors.[9/] It is the view of the Board that this total, although adopted only five years ago, Laws 1974, ch. 564 § 1, is simply not adequate. As has been true in most other health-related professions, numerous advances occurring in the practice of chiropractic in recent years require more than just minimal postgraduate study. Additionally, as the agency legally responsible for the enforcement of chiropractic standards in this state, Minn. Stat. §§ 148.01-148.10 (1978), the Board is acutely aware of various and recurring practice deficiencies which it believes to be largely amenable to improvement through additional educational courses. Recent cases, for example, suggest the increasing importance of ongoing training in areas such as the use of analytical x-rays, general chiropractic diagnosis, and the appropriate use of procedures complementary to the chiropractic adjustment.

[7/] Pursuant to Minn. Laws 1976, ch. 222, §§ 209 and 210, the instant rule, when adopted, will supersede Minn. Stat. § 148.06, subd. 2 (1974).

[8/] Although it may be questioned whether continuing chiropractic education can be shown with scientific certainty to necessarily improve or maintain practice quality, it is the Board's view that it is more likely than not that this will be the result and that the absence of such educational requirements would obviously do nothing to enhance quality or prevent the erosion of practitioner skills. That this view is widespread is evidenced by the adoption of such requirements by most of this state's health related licensing boards, including those for the following professions: Dentistry, medicine, nursing, nursing home administrators, optometry, and pharmacy. Further, through its passage of Minn. Stat. §§ 148.06, subd. 2 (1974) and 214.12 (1978) the legislature has clearly registered its belief in the necessity of requirements for continuing chiropractic education.

[9/] See, N.2 supra.

The 20 hour figure proposed under this part of the rule was determined on the basis of several factors. First, it is a figure well within the authorized 50 hour annual total which the Board is permitted by law to impose. Minn. Stat. § 214.12. An examination of continuing chiropractic education requirements in other states also indicates that the 20 hour figure would fall approximately within the middle range of course hour requirements nationwide. The State of Washington, for instance, mandates eight hours annually,[10/] while Kansas calls for 50.[11/], [12/] Further, it is the Board's view that 20 hours would be a reasonable annual requirement in that it would neither be so small that it could be met in one weekend or less of program attendance nor would it be so large or burdensome that it could not typically be achieved in appoximately two weekends.

a. This section states that at least three hours of the 20 hour continuing education requirement must be devoted to radiographic safety, technique and/or interpretation. An increased use of analytical x-rays in many chiropractic practices coupled with the inherent hazards of x-ray, clearly justify this important requirement. As previously mentioned, recent Board disciplinary proceedings further indicate the significance of mandatory continuing education in this area. Moreover, state law requires certain minimal x-ray operation and maintenance standards for chiropractors and other x-ray machine registrants[13/] which it is believed the instant rule should help to ensure.

10/ Wash. Rev. Code § 18.25.070.

11/ Kan. Healing Arts Board Rule: Art. 15, 100-15-2(3).

12/ Other state laws reviewed include those of Alabama (15 hours), Colorado (15 hours), Mississippi (16 hours), Nebraska (15 hours), and Wisconsin (12 hours).

13/ Minn. Stat. § 144.121 (1978); 7 MCAR § 1.181 et. seq.

b. Under this part, new licensees would be exempt from the rule's continuing education requirements for the year in which they were licensed. A chiropractor first licensed in Minnesota in September of the year 1979, for example, would not be required to attend continuing education courses prior to the first renewal of his or her license three months later on January 1, 1980. This exemption is viewed as most reasonable in that the great majority of new licensees has recently graduated from chiropractic college and is well-abreast of recent practice developments. Normal preparations for license examination, of course, and the fact of examination passage also indicate recency. In addition, because license examinations rarely, if ever, are held immediately during the first portion of the year, most licensees obtain licensure less than 12 months prior to the date of their first renewal. Thus, were annual continuing education requirements to be imposed at the outset upon such persons, they would be unfairly obligated to secure their continuing education credits in less time than the full 12 months allowed all other licensees.[14/]

As may be noted, this section of the proposed rules also authorizes a gradual attainment of the 20 hour requirement for the new licensee. Again, it is believed that this approach is justified and desirable by reason of the recency of the academic and examination preparation of new licensees. Nevertheless, because of the previously referenced importance to be placed upon radiographic studies, even these graduated requirements would necessarily include such studies.

14/ For purposes of this section of the proposed rule, licensees by reciprocity would also be regarded as new Minnesota licensees and exempt from mandatory first year continuing education. The Board views this construction of the rule as justified for largely the same reasons that other new licensees would be granted the exemption, namely, most licensees by reciprocity are also recent chiropractic college graduates and do not generally secure reciprocity licensure 12 full months prior to renewal. Moreover, even though such licensees are, by definition, exempt from written licensure examination requirements, they may not be licensed in Minnesota except upon passage of the Board's practical examination. Minn. Stat. § 148.06, subd. 1 (1978).

3. Approved programs. This section authorizes advance approval for certain educational seminars. The concept of advance approval is, of course, believed to be necessary as a means of providing licensees as well as potential program sponsors with reasonable notice of the Board's program acceptance standards.

The specific organizations named in this part of the rule were selected on the basis of the following criteria: (i) The Board has found through experience that each consistently presents varied programs of high quality; and (ii) in combination, the listed organizations represent varying philosophies of the practice of chiropractic, while also offering a sufficient volume of good programs in various parts of the state to permit those in outlying areas to satisfy annual requirements without undue difficulty.

Advance approval of the programs of these several groups does not indicate, however, that such approval could not be withdrawn. As the rule states, continuing approval would be contingent upon the maintenance of certain specific standards. Similarly, consistent with rule section B.6 which is discussed below, in no event would advance approval extend to programs dealing with the administrative and economic aspects of practice.

4. Other programs subject to approval. Because it is recognized that numerous programs in addition to those which would be granted advance or early approval might also prove to be of significant educational value, this section establishes a mechanism for their review and, if the approval criteria are met, acceptance by the Board. In the past, such programs have typically included those which are new, only infrequently scheduled, or simply less well-known to the Board.

In light of these factors, the Board has determined that requests for approval should be received at least 90 days prior to the program's scheduled presentation date. This period is regarded as reasonable and appropriate to permit Board staff to make any necessary

inquiries about the program, including inquiries about its proposed content and its instructor's credentials. It would also allow the program sponsor sufficient time to remedy any application or related deficiencies identified by the Board and, in most cases, permit the Board to review the matter at one of its quarterly or regularly scheduled Board meetings.

The rationale underlying this rule's required provision of various categories of program data is, in each instance, believed to be largely self-evident. It may be specifically noted, however, that item e. under this part, relating to attendance monitoring, is viewed as a significant and useful backup means of verifying attendance in cases where questions might arise about any individual licensee's actual attendance.[15/] Item f. is included to permit the Board to determine, even if only in a general way, whether the course's scheduled location would be conducive to the learning process. And notice of the tuition fee, item h., would be requested as an additional means of substantiating whether the program was being presented principally for educational purposes or for other reasons.

5. Program approval criteria. This section presents the criteria which would be employed by the Board in judging whether program approval requests or portions thereof would be granted and whether programs pre-approved under section B.3 of the rule would maintain that status. The rationale supporting the application of these criteria is, quite obviously, to avoid inconsistent or arbitrary Board action. It is believed, moreover, that the value of each of the criterion listed is readily apparent. Evidence of the enhancement of practitioner knowledge, highly qualified instructors, and of a suitable setting is all clearly essential to any acceptable continuing education program.

15/ Section B.7 of the proposed rule, which is discussed below, would require that proof of attendance be made in writing to the Board by each individual licensee.

6. Unapproved programs. The Board is aware of certain benefits and knowledge which may be gained by the practitioner through so-called practice management or business courses dealing primarily with the administrative and economic aspects of practice. It is also understood that on occasion such courses may be indirectly helpful in providing more efficient patient encounters. For the most part, however, practice management programs may not reasonably be regarded as sufficiently related to the improvement of professional practice skills or health care quality to merit educational credit in accordance with the purpose of this rule. It is also quite clear that the legislature does not recognize such courses as meeting authorized continuing education requirements.

> The health related and non-health related licensing boards may promulgate by rule requirements for renewal of licenses designed to promote the continuing professional competence of licensees. These requirements of continuing professional education or training shall be designed solely to improve professional skills. . . .

Minn. Stat. § 214.12 (1978). (Underlining added.) Accordingly, this section would disallow continuing education credit for courses dealing with administrative and economic aspects of practice.

7. Proof of attendance.

a. To insure that a chiropractor has met the requirements of this continuing education rule an annual reporting mechanism is necessary. Early proposals by several Board members to permit program attendance to be shown solely through attendance reports submitted to the Board by program sponsors were necessarily rejected because of the absence of clear enforcement authority relative to such sponsors. Accordingly, the obligation to submit an annual proof of attendance report would rest with each individual licensee. Items to be specified in the report under this rule are all obviously designed to permit ready identification of the licensee (item (4)) and verification of his or her actual attendance (items (1), (2) and (3)).

b. This part declares that any licensee's submission of false evidence to the Board concerning his or her continuing education program attendance would constitute unprofessional conduct and grounds for license revocation or suspension. The Board's authority to impose sanctions for any such act of unprofessional conduct is set forth at Minn. Stat. § 148.10, subd. 1 (1978). It may also be noted that the Board is specifically empowered to adopt rules, such as that proposed here, which define acts of unprofessional conduct. Minn. Stat. § 148.10, subd. 1 (10)(g)(1978).

Sanctions for the falsification of continuing education submissions are believed to be a reasonable and necessary incentive for adherence to the filing requirements introduced by this section of the rule. The Board is sincere in its proposals to regulate continuing education program attendance and feels that doctors who show a lack of integrity in this matter do not act in the best interests of their patients or their profession and should be dealt with accordingly.

It is understood, of course, that no sanction or remedy proposed under this part would be imposed except in accordance with the Minnesota Administrative Procedure Act.

8. Failure to comply. Like the preceding part, this section of the rule would establish sanctions. Its provisions, however, do not specifically relate to falsified filings but to acts of omission or noncompliance. Once again, it is the Board's view that, within the requirements of the Administrative Procedure Act, this provision is justified as a means of insuring that all chiropractors seeking license

renewal show proof of continuing competency by meeting the rule's standards. The sanctions cited in this section are authorized under Minn. Stat. § 148.10, subd. 1 and 3 (1978).

9. Reinstatement. This section sets forth two options for reinstatement after the imposition of remedial action for failure to comply with continuing education requirements. Proof of the doctor's continued competency could be accomplished by either method the sanctioned doctor would choose.

a. The first reinstatement method would involve submission of written evidence to the Board that all continuing education requirements otherwise due since the licensee's last renewal or, if not previously renewed, initial licensure had been fulfilled. In addition, proof of attendance at 10 extra hours for each intervening year would be required.

It is the Board's view that these requirements are justified and appropriate in that they address the essential purpose of continuing education, namely, the provision of reasonable assurances that the practitioner's skills and knowledge are at the least being maintained. Further, because it is likely that many chiropractors subject to this part of the rule would not be practicing in any other jurisdiction during the period of their absence from practice in Minnesota, the 10 extra hours is viewed as an additional assurance that professional skills otherwise gained through active practice would be preserved. It is also felt that the 10 hour requirement would tend to serve as an incentive for the timely fulfillment of this rule's standard annual renewal requirements. Further, although a discretionary number, the 10 hours is considered to be a significant period of continuing

education program attendance, while not being excessively burdensome for those sincerely interested in resuming practice in this state.

b. The second method for reinstatement of a license under this section which may be pursued at the licensee's or former licensee's option is that of license reexamination. Reexamination for continuing education noncompliance is presently available and authorized pursuant to Minn. Stat. § 148.06, subd. 2 (1974). Upon the adoption of the instant rule, however, this statutory section will cease to have effect. Minn. Laws 1976, ch. 222, §§ 209 and 210.[16/] In that it is not the underlying object of this rule to remove any doctor from practice but only to ensure continuing competency, reinstatement after a satisfactory demonstration of such competency is viewed as appropriate. Further, reexamination by the Board is an obvious means of seeking to establish basic competency. It is therefore the position of the Board that existing reexamination procedures should be retained in the form proposed under this section.

The 30 day application requirement is considered to be a minimum period in which written notice of a licensee's or former licensee's election to be reexamined must be filed. It is believed that this period would allow the Board sufficient time to review the application, arrange for examination space, equipment and testors, and provide the applicant with an opportunity to revise any indicated application deficiencies.

10. Waiver or deferment of continuing education requirements. It is assumed that there will be occasional unavoidable circumstances which prevent a chiropractor from meeting the instant

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16/ See, N.7, supra.

rule's continuing education requirements. Likewise, it is impossible to foresee all such circumstances which might arise. Accordingly, in this section the Board attempts to deal with the most obvious instances of illness or hardship and provides for a waiver or deferment to be granted at the Board's discretion. All cases in this category would be presented and judged on an individual basis.

CONCLUSION

Based on the foregoing, the Board justifies the currently proposed rule provisions as being necessary, reasonable and clearly authorized by law.

Dated: July 24, 1979

MINNESOTA BOARD OF
CHIROPRACTIC EXAMINERS

E. A. BROCHMAN, D.C.
Executive Secretary

RECEIVED
JUL 31 1979
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA BOARD

OF CHIROPRACTIC EXAMINERS

In the Matter of the
Minnesota Board of
Chiropractic Examiners'
Proposed Adoption of
Rule Provisions Relating
to Continuing Education

PERSONNEL
AND
WITNESSES

Pursuant to 9 MCAR § 2.105H, the Minnesota Board of Chiropractic Examiners (hereinafter "Board") hereby names the Board personnel who will represent it at hearing in the above-captioned matter:

Cleve Gruler, D.C.
Board Member

E. A. Brochman, D.C.
Board Executive Secretary

The Board hereby further names all other witnesses solicited by it and expected to appear at said hearing:

John D. Murray, D.C.

Dated: July 31, 1979

MINNESOTA BOARD OF
CHIROPRACTIC EXAMINERS

E. A. Brochman D.C.
E. A. BROCHMAN, D.C.

BOARD OF CHIROPRACTIC EXAMINERS

Proposed Rule Provisions for Continuing Education

AMENDMENTS AS PROPOSED

7 MCAR § 2.005 (Chi 5) Individual Annual License Renewal

A. Fee.

~~(a)~~1. Thirty (30) or more days before January 1 each year, the State Board of Chiropractic Examiners (hereinafter "Board") shall mail to the last address on file with the Board a license renewal fee notice to each person (hereinafter "licensee") licensed to practice chiropractic within this state.

~~(b)~~2. The license of each licensee shall expire at midnight on December 31 each year. Subject to the terms of part B of this rule, the Board shall renew the license upon receipt from the licensee of a license renewal fee of $50.00, plus any applicable penalty fee as set forth in ~~(c)~~3. below. Each licensee shall submit the license renewal fee to the Board no later than January 1 of the year for which the license renewal is requested.

~~(c)~~3. A licensee shall submit to the Board, in addition to the license renewal fee, a penalty fee of $5.00 per month for each month or portion thereof for which the license renewal fee is in arrears, such penalty not to exceed $50.00.

B. Continuing education.

1. Purpose. The primary purpose of continuing chiropractic education is to assure the consumer of an optimum quality of chiropractic health care by requiring doctors of chiropractic to attend educational classes or seminars designed to advance their professional skills and knowledge.

2. Annual requirement. Except as hereinafter provided, every person licensed to practice chiropractic in this state shall, as a prerequisite for the annual renewal of his license, attend a minimum of twenty (20) hours during the preceding calendar year of continuing education courses recognized and approved by the Board.

a. At least three (3) of such hours shall be devoted to radiographic safety, technique and/or interpretation.

b. Licensees shall be exempt from the preceding continuing education requirements for the calendar year in which they are initially licensed. During the first calendar year following the year of initial licensure, licensees shall attend a total of not less than ten (10) hours of recognized and approved continuing education courses, including at least three (3) hours devoted to radiographic safety, technique and/or interpretation. Thereafter, five (5) additional course hours shall be attended each year until the annual twenty (20) hour minimum requirement is met.

3. Approved programs. Subject to continued approval under the criteria set forth at section 5 hereof and except as set forth under section 6, the following continuing education classes are approved by the Board:

a. Educational meetings of the American Chiropractic Association.

b. Educational meetings of the International Chiropractic Association.

c. Educational meetings of the Canadian Chiropractic Association.

d. Educational classes conducted by any chiropractic college that is accredited by or has accreditation status with the Council on Chiropractic Education.

e. Educational classes conducted by any state chiropractic association.

4. Other programs subject to approval. Other continuing education programs may be approved by the Board upon a written request therefor submitted by the program sponsor to the Board executive secretary. All such requests shall be received not less than ninety (90) days prior to the program presentation date and shall contain the following information:

a. Name and address of organization sponsoring the course for which approval is requested.

b. Instructor's name and credentials.

c. An outline of subject matter to be covered.

d. The number of sixty (60) minute hours of actual instruction.

e. The mechanism of monitoring and certifying attendance.

f. The location at which the course will be conducted.

g. Dates the course will be presented.

h. Tuition fee.

5. Program approval criteria. The Board shall employ the following criteria in determining whether a continuing education program shall be approved and the number of course hours for which approval is granted:

a. Whether the material to be presented is likely to enhance the practioner's knowledge and skill in the practice of chiropractic.

b. Whether the instructors or speakers presenting the program are sufficiently qualified in the field of their instruction, either by practical or academic experience or both.

c. Whether the classes will be held in a suitable setting which is conducive to the learning process.

6. Unapproved programs. Courses dealing with administrative and economic aspects of practice shall not be approved for continuing education credit by the Board.

7. Proof of attendance.

a. On or before January 1 of the year for which renewal of his license is requested, each licensee not initially licensed in this state during the preceding calendar year shall submit a written statement to the Board executive secretary containing the following:

(1) The name, date and subject of each educational program attended during the preceding calendar year;

(2) The names of the sponsoring organizations;

(3) The number of sixty (60) minute class hours of instruction offered at each program and the number of hours actually attended; and

(4) The name, signature, and current mailing address of the licensee.

b. Falsification of any written evidence submitted to the Board executive secretary pursuant to this rule shall be deemed to be unprofessional conduct and constitute grounds for license revocation or suspension.

8. Failure to comply. The Board may refuse to renew, or may revoke, suspend, condition, limit, restrict or qualify the license of any licensee failing to comply with the requirements of this rule and/or may publicly reprimand, censure and place such person on probation with the Board.

9. Reinstatement. The license of any licensee which is not renewed or which is revoked, suspended, or reduced in status by reason of failure to comply with the continuing education requirements of this rule may, at the election of the licensee or former licensee, be reinstated or restored to full status by either of the following procedures:

a. Submission to the Board executive secretary of proof of the make up of all continuing education course hour and subject matter requirements which would have been necessary for continuous licensure from the date of such person's last license renewal or initial licensure, whichever is more recent, and submission to the Board's executive secretary of proof of attendance at an additional ten (10) hours of Board recognized and approved continuing education courses for each intervening renewal year. Proof of compliance with the foregoing requirements shall be made by written statement in the form prescribed under section 7.a. of this rule and subject to the provisions of section 7.b.; or

b. Reexamination by the Board at the time for which it next schedules license examinations. No such reexamination shall be conducted except upon a written application therefor received by the Board executive secretary not less than thirty (30) days prior to the examination date.

10. Waiver or deferment of continuing education requirements. The Board may waive or defer compliance with some or all annual continuing education requirements for any licensee presenting satisfactory written evidence to the Board

of illness or hardship making it impossible or highly impractical for the licensee to attend or to have attended a sufficient number of approved continuing education class hours.

INTERNATIONAL CHIROPRACTORS ASSOCIATION
EXECUTIVE OFFICES

October 2, 1979

State of Minnesota
Office of the Attorney General
St. Paul, Minnesota 55155

Attn: Richard G. Evans
Special Assistant
Attorney General

Thank you for your letter of October 1, 1979.

I would be interested in the date the Board of Chiropractic Examiners submits its continuing educational report to Genreal Spannaus.

The hearing was September 5, 1979 and the Hearing Officer was Harry Crump.

I have received a copy of the hearings findings and would have comment.

Sincerely,

Bob Fitzgerald, B.S., D.C.
3007 Lyndale Avenue South
Minneapolis, Minnesota 55408

BF:ll

RECEIVED
OCT 4 - 1979
ATTORNEY GENERAL
132 STATE CAPITOL
ST. PAUL, MINN. 55155

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Lee E. Sheehy
Special Assistant
Attorney General

DATE: November 7, 1979

FROM : Robert T. Holley
Special Assistant
Attorney General

PHONE: 341-7272

SUBJECT: In the Matter of the Minnesota Board of Chiropractic Examiners' Proposed Adoption of Rule Provisions Relating to Continuing Education

Enclosed herewith for submission to your office pursuant to Minn. Stat. § 15.0412, subd. 4 (1978) please find four copies of the hearing record in the above subject matter.

With the exception of the tapes of the hearing which are included within only one of the enclosed record copies, each is identical and contains:

- Statement of Compliance with Manual of Rule Making Procedures;
- Letter notices of submitting hearing record to the Attorney General;
- Report of Chief Hearing Examiner with attached copies of Order Adopting Rules and Rules as Adopted;
- Report of Hearing Examiner;
- Hearing Examiner invoice;
- Rule Hearing Register;
- Written statements submitted during open record period, including certain financial audits excluded at hearing as irrelevant;
- Hearing exhibits;
- Prehearing documents submitted by agency under 9 MCAR § 2.105;
- Prehearing documents submitted by agency under 9 MCAR § 2.102.

Should there by any questions about this submission, please call me at 341-7272.

RTH:rlb
Enclosure

PRINTED ON RECYCLED PAPER

Exhibit 1

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of the Minnesota Board of Chiropractic Examiners' Proposed Adoption of Rule Provisions Relating to Continuing Education. (7 MCAR Sec. 2.005 (Chi 5))

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Harry Seymour Crump, Hearing Examiner from the State Office of Hearing Examiners, on September 5, 1979, at 1:00 p.m. at the Minnesota Health Department Building, in the City of Minneapolis, County of Hennepin, State of Minnesota.

Robert T. Holley, Special Assistant Attorney General, 232 Minnesota Health Department Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, appeared on behalf of the Minnesota State Board of Chiropractic Examiners (the Board). The Board's panel consisted of Cleve Gruler, D.C., Board member; and E. A. Brochman, D.C., Executive Secretary of the Board.

Approximately 25 persons attended the hearing. Ten persons signed the rules hearing register. Four of them were Board members. One name was added after the hearing. Five persons spoke at the hearing. The hearing continued until all interested persons and groups had an opportunity to be heard.

This proceeding is a rules hearing held pursuant to Minn. Stat. Ch. 15 to determine whether the proposed rules should be adopted and given the force of law. Copies of this Report are available for review from the Office of the Secretary of the Board and from the Office of Hearing Examiners.

Pursuant to Minn. Stat. Sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

Thereafter, the Board shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. Sec. 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. The Board will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On June 28, 1979, the Board filed the following the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

Attached to the Order for Hearing was a Certificate of Board's Authorizing Resolution.

2. On July 23, 1979, a Notice of Hearing and a copy of the proposed rules were published at 4 State Register 66.

3. On July 19, 1979, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On July 31, 1979, the Board filed the following documents:

(a) Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) The names of Board personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through September 12, 1979, for the receipt of written comments. Four prehearing comments were received including a response to two of the comments from the Board. The written comments were made part of the record herein.

Statutory Authority

6. The Board cites, as its statutory authority to promulgate the proposed rules, Minn. Stat. Sec. 148.05, Sec. 214.06, subd. 2, and Sec. 214.12 (1978).

Minn. Stat. Sec. 214.12 provides, in relevant part, as follows:

> CONTINUING EDUCATION. The health related . . . licensing boards may promulgate by rule requirements for renewal of licenses designed to promote the continuing professional competency of licensees. These requirements of continuing professional education or training shall be designed solely to improve professional skills and shall not exceed an average attendancy requirement of 50 clock hours per year . . . .

Need and Reasonableness

7 MCAR Sec. 2.005 (Chi 5) -Individual Annual License Renewal

7. A. Fee. The existing portion of the rule, 7 MCAR Sec. 2.005, relative to annual license renewal was amended by adding the subtitle "A. Fee" with the proposed segment being entitled "B. Continuing education". In addition, the second paragraph of the existing rule was amended with a cross-reference to annual continuing education requirements within the current rule's second paragraph, i.e., "subject to the terms of part B of this rule", in order to give notice that compliance with the requirement of both fee payment and continuing education is necessary for annual renewal of a license. Finally, the number scheme of the existing rule was changed to conform with the rules numbering format established by the Office of State Register.

The Hearing Examiner finds that these amendments are needed and reasonable.

8. B. Continuing education. The Statement of Need and reasonableness contains the Board's affirmative presentation of the proposed rule provisions in its entirety, which was resubmitted at the hearing as part of the Board's presentation. Furthermore, at the hearing, the Board summarized the contents of the Statement of Need and Reasonableness with regard to each of the rule provisions. Except as otherwise noted in the Findings herein, infra, there were no specific comments regarding the rule provisions. The Statement of Need and Reasonableness is hereby incorporated by reference and made a part hereof.

9. Proposed rule provision B.2. set forth an annual requirement of a minimum of twenty (20) hours of continuing education courses recognized and approved by the Board. At the hearing, Bob Fitzgerald, D.C., made two comments relative to this rule provision including a comment criticizing the minimum notice procedures followed by the Board in publishing the Notice of Hearing. One comment was to suggest that the 20-hour requirement be spread over a two-year period in order for the annual requirement to be picked up in a weekend. Second, Mr. Fitzgerald questioned the Board's approval of certain courses and whether the particular courses would advance, within the acceptable practices, the skill and knowledge of the chiropractic practice. He stated, as an example, a course being offered by the Northwestern College of Chiropractic in Meridian Therapy. Following the hearing, Mr. Fitzgerald submitted a letter detailing the above comments. A letter indicating similar comments was received following the hearing from Ms. J. Boyle.

10. W. F. Hynan, a member of the Board, commented in response to Dr. Fitzgerald's comment relative to Meridian Therapy that the Board had denied a request for approval of the course entitled "Meridian Therapy" and that the course was not approved by the Board. Mr. Gruler, also, stated that chiropractic colleges have classes in "Applied Kinesiology" in which part of the course embraces the subject of Meridian Therapy.

11. Counsel for the Board stated for the record that, in his opinion, the Board had met the minimum requirements for notice under the Administrative Procedure Act. He pointed out that due process does not require the agency to give notice beyond that required by statute, i.e., Notice to persons on the Secretary of State's list and Notice published in the State Register, and, added, that in a previous case, a hearing examiner had commented that additional notice is acceptable and encouraged but not required by law. Furthermore, the Counsel commented if there needs to be an amendment to the Administrative Procedure Act, that the State Legislature would be the appropriate forum. See, Welsand v. State of Minnesota Railroad and Warehouse Commission, 251 Minn. 504, 88 N.W.2d 834 (1958).

12. In its post-hearing comments, the Board's Counsel concluded that there is absolutely no evidence to suggest either that the instant rules would expand the scope of chiropractic practice as established by the statute, or that the Board has any interest or intention to attempt to employ the rules for such a purpose. Furthermore, it was stated that the rules have no bearing on the establishment of the scope of chiropractic practice. The Board's counsel also noted that the Legislature has strongly expressed its support of continuing education for all health-related professions including chiropractic. Finally, it is the Board's opinion that the rules are necessary because of the importance of preventing improper and uninformed practice.

13. The Hearing Examiner finds this proposed rule to be both needed and reasonable as proposed herein. The Examiner fails to see where in these rules the Board of Chiropractic Examiners is encouraging chiropractors to expand the scope of their practice of chiropractic beyond that required by statute. The purpose of the statute relative to the practice of chiropractic is to promote the continuing professional competency of licensees. See, Minn. Stat. Sec. 214.12 (1978). This rule provides for the means of improving various deficiencies, if any, by requiring additional educational courses. Furthermore, it is within the Board's statutory authority to set the minimum number of hours of continuing education at twenty (20) hours annually. This proposed rule, therefore, complied with the Statute.

14. At the hearing, Dr. Fitzgerald criticized Sections 2.005 B.7.b. and 8., because the provisions included no periods for suspension or revocation. Contrary to Dr. Fitzgerald's contention, the Hearing Examiner finds these provisions to be needed and reasonable. At the option of the licensees, proposed rule Section 2.005 B.9., Reinstatement, presumably limits such periods of sanctions for failure to comply with the rule requirements. Thus, the Board has, in effect, put such a time limit in the proposed rules.

15. At the hearing, Dr. Jon Murray, Second Vice President, Minnesota Chiropractic Association (MAC), spoke on behalf of MAC in support of increasing the educational requirements for relicensure of chiropractors. He stated that MAC had recommended, in convention, 25 hours of continuing education. The Board of Directors of MAC, prior to the convention, had passed on a resolution for 20 hours. By post-hearing letter, Gene L. Johannes, Executive Director, Minnesota Chiropractic Association, commented

on behalf of the Board of Directors of MAC in support of raising the number of hours needed for relicensure to twenty (20) hours on an annual basis.

16. John B. Wolfe, President, Northwestern College of Chiropractic, in expressing the sentiments of the staff and faculty of the College, spoke in support of the rule provisions expanding the continuing education requirements for renewal of the licensures of chiropractors.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. The Board of Chiropractic Examiners gave proper notice of the promulgation of the proposed rule provisions.

2. The Board has statutory authority to take the action proposed, to wit, the promulgation and amendment of the proposed rules.

3. The Board has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. The Board has demonstrated the need for and the reasonableness of the proposed rules and proposed amendments by an affirmative presentation of facts in the record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed rules be adopted by the Board of Chiropractic Examiners as recommended by the Hearing Examiner.

Dated: September 28, 1979.

Harry Seymour Crump

HARRY SEYMOUR CRUMP
Hearing Examiner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of the
Minnesota Board of
Chiropractic Examiners'
Proposed Adoption of
Rule Provisions
Relating to Continuing
Education

ORDER
ADOPTING
RULES

The above-entitled matter came on for hearing before Harry Seymour Crump, Hearing Examiner from the State Office of Hearing Examiners on September 5, 1979, at 1:00 p.m., in Room 105, at the Minnesota Department of Health Building, Minneapolis, Minnesota. Based upon the proceedings herein, the Hearing Examiner issued Findings of Fact, Conclusions, and a Recommendation in a Report dated September 28, 1979. (Exhibit 1).

For purposes of taking final action in the matter, the Minnesota Board of Chiropractic Examiners met on October 19, 1979, and, having read the Report of Hearing Examiner (Exhibit 1) and the record herein, made and passed a resolution relative to the above subject rule provisions. See Certificate of Board's Adoption of Rules Resolution (Exhibit 2).

NOW, THEREFORE, IT IS ORDERED that, in accordance with the aforesaid resolution and by authority of Minn. Stat.

§§ 148.05, 214.06 and 214.12 (1978), these rule provisions, designated as 7 MCAR § 2.005 A and B, are hereby adopted.

Dated: October 23rd, 1979.

MINNESOTA BOARD OF CHIROPRACTIC EXAMINERS

Gerald Fesenmaier

GERALD FESENMAIER
Member of Board

Exhibit

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of the Minnesota Board of Chiropractic Examiners' Proposed Adoption of Rule Provisions Relating to Continuing Education

CERTIFICATE OF BOARD'S ADOPTION OF RULES RESOLUTION

I, E. A. Brochman, D.C., do hereby certify that I am the Executive Secretary of the Minnesota Board of Chiropractic Examiners, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Board of Chiropractic Examiners duly and properly called and held on the 19th day of October, 1979; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the proposed rule provisions relating to continuing education and individual annual license renewal, 7 MCAR § 2.005 A and B (Chi 5), are found to be reasonable, necessary and supported by the evidence contained in the record and that, pursuant to the authority vested in us by Minn. Stat. §§ 148.05, 214.06 and 214.12 (1978), said rule provisions are adopted in their entirety in the form proposed upon the initiation of this proceeding, without any change or amendment, and that Gerald Fesenmaier, one of the members of the Board, be and hereby is authorized to sign an order so adopting said rule provisions.

BE IT FURTHER RESOLVED, that the Report of Hearing Examiner herein, dated September 28, 1979, including its Findings of Fact and Conclusions, be and hereby is adopted in its entirety as the Board's own."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23rd day of October, 1979.

MINNESOTA BOARD OF

CHIROPRACTIC EXAMINERS

E. A. Brochman D.C.

E. A. BROCHMAN, D.C.
Executive Secretary

Minnesota State Board of Chiropractic Examiners

OFFICE OF THE SECRETARY
ROOM 336, 717 DELAWARE STREET S.E., MINNEAPOLIS, MINNESOTA 55414 TEL. 612-296-5430

RECEIVED
JUL 31 1979
OFFICE OF HEARING EXAMINERS

July 31, 1979

Mr. Harry S. Crump
Hearing Examiner
Office of Hearing Examiners
Room 300
1745 University Avenue
St. Paul, Minnesota 55104

Re: In the Matter of the Minnesota Board of Chiropractic Examiners' Proposed Adoption of Rule Provisions Relating to Continuing Education

Dear Mr. Crump:

In accordance with 9 MCAR § 2.105, please find enclosed copies of the following documents in the above-entitled matter:

A. The Order for Hearing.

B. The Notice of Hearing as mailed, together with a copy of said Notice as published in the State Register.

C. The Affidavit of Receipt of the Secretary of State's list, with attached copies of said list and of the Certificate of the Secretary of State.

D. The Affidavit of Mailing the Notice of Hearing to all persons on the Secretary of State's list.

E. The Statement of Need and Reasonableness.

Also enclosed please find a document entitled "Personnel and Witnesses" naming the Board personnel who will represent it at hearing, together with the name of a single other witness solicited by the Board who is expected to appear at hearing. See 9 MCAR § 2.105H.

Finally, please note that 9 MCAR § 2.105F. and G. are not applicable to this proceeding.

Sincerely,

E. A. Brochman, D.C.

E. A. BROCHMAN, D.C.
Executive Secretary

Enclosures

NOTICE: This material may be protected by copyright law (Title 17 U. S. Code)

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Board of Chiropractic Examiners

Board of Chiropractic Examiners' Proposed Adoption of Rule Provisions Relating to Continuing Education

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room 105, at the Minnesota Health Department Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on September 5, 1979, commencing at 1:00 p.m.

All interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of hearing which is to be included in the hearing record may be mailed to Harry S. Crump, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8111. Unless a longer period not to exceed 20 calendar days is ordered by the Hearing Examiner at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. The hearing shall be conducted in accordance with the rules of the Office of Hearing Examiners, 9 MCAR § 2.101 et seq.

The proposed rule provisions, if adopted, would add a new section to 7 MCAR § 2.005 (Minn. Rule Chi. 5). At present, 7 MCAR § 2.005 sets forth fee payment requirements for individual annual license renewal. The new section would add continuing education standards. Most significantly, the rule would increase annual continuing education requirements from five to 20 course hours. Three of these 20 hours would necessarily be in the area of radiographic safety, technique and/or interpretation. New licensees would be exempt from ten hours of the full twenty hour requirement the first year following the year of their initial licensure and from five hours the second year. The proposed rule also includes a listing of preapproved continuing education programs and would establish procedures and criteria for the Board's approval of other programs. Courses dealing with administrative and economic aspects of practice would not be approved for continuing education credit. In addition to the foregoing, the rule would specify procedures for each licensee's proof of attendance at the requisite number of annual course hours and establish penalties for falsification of such proof and for general noncompliance. Among the penalties which could be imposed would be license revocation or suspension. In the event a license were revoked or suspended or another remedy imposed, the rule would provide for reinstatement either by reexamination or by attendance at an additional ten course hours for each year since the license was last renewed. Finally, the proposed rule would authorize the Board's waiver or deferment of continuing education requirements as to licensee's who showed the existence of illness or hardship making it impossible or highly impractical for them to meet the rule's requirements.

Copies of the proposed rule are now available, and one free copy may be obtained by writing to the Minnesota Board of Chiropractic Examiners, 717 Delaware Street Southeast, Room 336, Minneapolis, Minnesota 55414. Additional copies will be available at the door on the date of the hearing.

The statutory authority of the Minnesota Board of Chiropractic Examiners to promulgate the proposed rule is contained in Minn. Stat. §§ 148.05, 214.06, subd. 2, and 214.12 (1978).

Notice: The proposed rule is subject to change as a result of the rule hearing process. The Board therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rule to participate in the rule hearing process.

Please be advised that pursuant to Minn. Stat. § 10A.03, subd. 1 (1978) lobbyists must register with the State Ethical Practices Board within five days after becoming lobbyists.

"'Lobbyist' means any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

'Lobbyist' does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony;

(f) Stockholder of a family farm corporation as defined in section 500.24, subdivision 1, who does not spend over $250, excluding his own travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim."

Minn. Laws 1979, ch. 59 § 3. Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5615.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the office of the Board of Chiropractic Examiners and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the Board at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Board may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Board. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the Board (in the case of the Board's submission or resubmission to the Attorney General).

Promulgation of these proposed rule provisions will not result in the expenditure of public monies by local public bodies.

Dated: June 28, 1979

E. A. BROCHMAN, D.C.
Executive Secretary

Amendments as Proposed

7 MCAR § 2.005 (Chi 5) Individual Annual License Renewal

A. Fee.

~~(a)~~1. Thirty (30) or more days before January 1 each year, the State Board of Chiropractic Examiners (hereinafter "Board") shall mail to the last address on file with the Board a license renewal fee notice to each person (hereinafter "licensee") licensed to practice chiropractic within this state.

~~(b)~~2. The license of each licensee shall expire at midnight on December 31 each year. Subject to the terms of part B of this rule, the Board shall renew the license upon receipt from the licensee of a license renewal fee of $50.00, plus any applicable penalty fee as set forth in ~~(c)~~3. below. Each licensee shall submit the license renewal fee to the Board no later than January 1 of the year for which the license renewal is requested.

~~(c)~~3. A licensee shall submit to the Board, in addition to the license renewal fee, a penalty fee of $5.00 per month for each month or portion thereof for which the license renewal fee is in arrears, such penalty not to exceed $50.00

B. Continuing education.

1. Purpose. The primary purpose of continuing chiropractic education is to assure the consumer of an optimum quality of chiropractic health care by requiring doctors of chiropractic to attend educational classes or seminars designed to advance their professional skills and knowledge.

2. Annual requirement. Except as hereinafter provided, every person licensed to practice chiropractic in this state shall, as a prerequisite for the annual renewal of his license, attend a minimum of twenty (20) hours during the preceding calendar year of continuing education courses recognized and approved by the Board.

a. At least three (3) of such hours shall be devoted to radiographic safety, technique and/or interpretation.

b. Licensees shall be exempt from the preceding continuing education requrements for the calendar year in

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

which they are initially licensed. During the first calendar year following the year of initial licensure, licensees shall attend a total of not less than ten (10) hours of recognized and approved continuing education courses, including at least three (3) hours devoted to radiographic safety, technique and/or interpretation. Thereafter, five (5) additional course hours shall be attended each year until the annual twenty (20) hour minimum requirement is met.

3. Approved programs. Subject to continued approval under the criteria set forth at section 5 hereof and except as set forth under section 6, the following continuing education classes are approved by the Board:

a. Educational meetings of the American Chiropractic Association.

b. Educational meetings of the International Chiropractic Association.

c. Educational meetings of the Canadian Chiropractic Association.

d. Educational classes conducted by any chiropractic college that is accredited by or has accreditation status with the Council on Chiropractic Education.

e. Educational classes conducted by any state chiropractic association.

4. Other programs subject to approval. Other continuing education programs may be approved by the Board upon a written request therefor submitted by the program sponsor to the Board executive secretary. All such requests shall be received not less than ninety (90) days prior to the program presentation date and shall contain the following information:

a. Name and address of organization sponsoring the course for which approval is requested.

b. Instructor's name and credentials.

c. An outline of subject matter to be covered.

d. The number of sixty (60) minute hours of actual instruction.

e. The mechanism of monitoring and certifying attendance.

f. The location at which the course will be conducted.

g. Dates the course will be presented.

h. Tuition fee.

5. Program approval criteria. The Board shall employ the following criteria in determining whether a continuing education program shall be approved and the number of course hours for which approval is granted:

a. Whether the material to be presented is likely to enhance the practioner's knowledge and skill in the practice of chiropractic.

b. Whether the instructors or speakers presenting the program are sufficiently qualified in the field of their instruction, either by practical or academic experience or both.

c. Whether the classes will be held in a suitable setting which is conducive to the learning process.

6. Unapproved programs. Courses dealing with administrative and economic aspects of practice shall not be approved for continuing education credit by the Board.

7. Proof of attendance.

a. On or before January 1 of the year for which renewal of his license is requested, each licensee not initially licensed in this state during the preceding calendar year shall submit a written statement to the Board executive secretary containing the following:

(1) The name, date and subject of each educational program attended during the preceding calendar year;

(2) The names of the sponsoring organizations;

(3) The number of sixty (60) minute class hours of instruction offered at each program and the number of hours actually attended; and

(4) The name, signature, and current mailing address of the licensee.

b. Falsification of any written evidence submitted to the Board executive secretary pursuant to this rule shall be deemed to be unprofessional conduct and constitute grounds for license revocation or suspension.

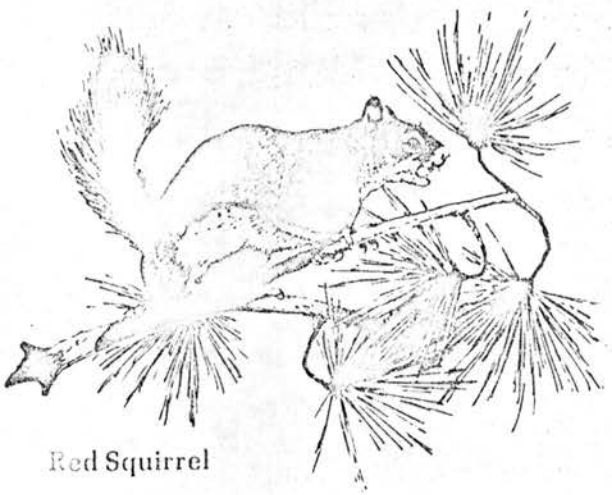
8. Failure to comply. The Board may refuse to renew, or may revoke, suspend, condition, limit, restrict or qualify the license of any licensee failing to comply with the requirements of this rule and/or may publicly reprimand, censure and place such person on probation with the Board.

9. Reinstatement. The license of any licensee which is not renewed or which is revoked, suspended, or reduced in status by reason of failure to comply with the continuing education requirements of this rule may, at the election of the licensee or former licensee, be reinstated or restored to full status by either of the following procedures:

a. Submission to the Board executive secretary of proof of the make up of all continuing education course hour and subject matter requirements which would have been necessary for continuous licensure from the date of such person's last license renewal or initial licensure, whichever is more recent, and submission to the Board's executive secretary of proof of attendance at an additional ten (10) hours of Board recognized and approved continuing education courses for each intervening renewal year. Proof of compliance with the foregoing requirements shall be made by written statement in the form prescribed under section 7.a. of this rule and subject to the provisions of section 7.b.; or

b. Reexamination by the Board at the time for which it next schedules license examinations. No such reexamination shall be conducted except upon a written application therefor received by the Board executive secretary not less than thirty (30) days prior to the examination date.

10. Waiver or deferment of continuing education requirements. The Board may waive or defer compliance with some or all annual continuing education requirements for any licensee presenting satisfactory written evidence to the Board of illness or hardship making it impossible or highly impractical for the licensee to attend or to have attended a sufficient number of approved continuing education class hours.



Red Squirrel

The red squirrel, smallest of the tree squirrels, measures 11-14 inches in length and weighs from 5-11 ounces. It ranges from Alaska and Canada to New Mexico and South Carolina, preferring pine forest habitats. Aggressive about its food stores and its home range, the red squirrel is fearless in the trees. Ernest Thompson Seton (1860-1946), Canadian naturalist, writer, artist and early Boy Scout leader writes of it as: ". . . a veritable Puck-o'-the-Pines — an embodiment of merriment, bird-like activity and saucy roguery . . . as boisterous as it is vigorous in work and play."

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contract person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Energy Agency Information and Education Activity

Notice of Availability of Contracts for Professional and Technical Services in the Graphic Arts

The Minnesota Energy Agency is seeking to identify contractors in graphic arts with the following services:

- layout/design
- keylining
- audio-visual presentations (script writing, slide photography, sound recording)
- radio and TV Public Service Announcements
- graphics for brochures, pamphlets, displays, slides, transparencies

Contract services must be available upon request through June 30, 1980.

Interested firms must submit proposals by August 13, 1979, stating services offered, hourly rate for those services and any minimum requirements. A sample, or samples, of your work must also be included.

All questions related to this notice and all proposals should be directed to:

Jean M. Dick
Minnesota Energy Agency
Information and Education
980 American Center Building
150 Kellogg Boulevard
St. Paul, Mn. 55101
(612) 296-9082

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RECEIVED
JUL 31 1979
OFFICE OF HEARING
EXAMINERS

D

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

In the Matter of the Minnesota
Board of Chiropractic Examiners'
Proposed Adoption of Rule
Provisions Relating to
Continuing Education

AFFIDAVIT OF
MAILING

Elizabeth A. Brochman, D.C., being first duly sworn, upon oath, deposes and says:

That on the 19th day of July, 1979, at the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Hearing by (a) depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons, associations and other interested groups at the addresses listed on the attached Certificate of the Secretary of State and, only where expressly authorized in writing by the Secretary of State, by (b) properly depositing such enveloped Notice of Hearing for delivery through the State interoffice mailing system.

Elizabeth A. Brochman D.C.
ELIZABETH A. BROCHMAN, D.C.

Subscribed and sworn to before
me this 24th day of July, 1979.

Susan Osman

SUSAN OSMAN
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Sept. 21, 1984

RECEIVED
JUL 31 1979
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
BOARD OF CHIROPRACTIC

In the Matter of the Minnesota Board of Chiropractic Examiners' Proposed Adoption of Rule Provisions Relating to Continuing Education

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Elizabeth A. Brochman, D.C., being duly sworn, upon oath, deposes and says:

1. That she is the Executive Secretary and an employee of the Minnesota Board of Chiropractic Examiners.

2. That on the 10th day of July, 1979, she called the Minnesota Secretary of State's office and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules or amendments thereto pursuant to Minn. Stat. § 15.0412, subd. 4 (1978).

3. That on the 12th day of July, 1979, in response to the above request, the Secretary of State provided her with such a list, a photocopy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Elizabeth A. Brochman D.C.
ELIZABETH A. BROCHMAN, D.C.

Subscribed and sworn to before
me this 24th day of July, 1979.

Susan Osman

SUSAN OSMAN
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Sept. 21, 1984

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Minnesota
Board of Chiropractic Examiners'
Proposed Adoption of Rule Provisions
Relating to Continuing Education

CERTIFICATE

I hereby certify that 324 general labels and a 1 page list for the Minnesota Board of Chiropractic Examiners, all of which are attached hereto and made a part hereof, constitute the complete lists of persons, associations, and other interested groups who as of 11:30 o'clock a.m., this 12th day of July, 1979, have requested, pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules and amendments thereto on the subject captioned above.

SECRETARY OF STATE

JOAN ANDERSON GROWE

Joan Anderson Growe

By Kathy Hyden

RECEIVED
JUL 31 1979
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of the Minnesota Board of Chiropractic Examiners' Proposed Adoption of Rule Provisions Relating to Continuing Education

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NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Room 105, at the Minnesota Health Department Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on September 5, 1979, commencing at 1:00 p.m.

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> 'Lobbyist' does not include any:
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Promulgation of these proposed rule provisions will not result in the expenditure of public monies by local public bodies.

Dated: June 28, 1979

MINNESOTA BOARD OF
CHIROPRACTIC EXAMINERS

By: s / E. A. Brochman, D.C.
E. A. BROCHMAN, D.C.
Executive Secretary

NOTICE: This material may be protected by copyright law (Title 17 U.S.C.)

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Board of Chiropractic Examiners

Board of Chiropractic Examiners' Proposed Adoption of Rule Provisions Relating to Continuing Education

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room 105, at the Minnesota Health Department Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on September 5, 1979, commencing at 1:00 p.m.

All interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of hearing which is to be included in the hearing record may be mailed to Harry S. Crump, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8111. Unless a longer period not to exceed 20 calendar days is ordered by the Hearing Examiner at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. The hearing shall be conducted in accordance with the rules of the Office of Hearing Examiners, 9 MCAR § 2.101 et seq.

The proposed rule provisions, if adopted, would add a new section to 7 MCAR § 2.005 (Minn. Rule Chi. 5). At present, 7 MCAR § 2.005 sets forth fee payment requirements for individual annual license renewal. The new section would add continuing education standards. Most significantly, the rule would increase annual continuing education requirements from five to 20 course hours. Three of these 20 hours would necessarily be in the area of radiographic safety, technique and/or interpretation. New licensees would be exempt from ten hours of the full twenty hour requirement the first year following the year of their initial licensure and from five hours the second year. The proposed rule also includes a listing of preapproved continuing education programs and would establish procedures and criteria for the Board's approval of other programs. Courses dealing with administrative and economic aspects of practice would not be approved for continuing education credit. In addition to the foregoing, the rule would specify procedures for each licensee's proof of attendance at the requisite number of annual course hours and establish penalties for falsification of such proof and for general noncompliance. Among the penalties which could be imposed would be license revocation or suspension. In the event a license were revoked or suspended or another remedy imposed, the rule would provide for reinstatement either by reexamination or by attendance at an additional ten course hours for each year since the license was last renewed. Finally, the proposed rule would authorize the Board's waiver or deferment of continuing education requirements as to licensee's who showed the existence of illness or hardship making it impossible or highly impractical for them to meet the rule's requirements.

Copies of the proposed rule are now available, and one free copy may be obtained by writing to the Minnesota Board of Chiropractic Examiners, 717 Delaware Street Southeast, Room 336, Minneapolis, Minnesota 55414. Additional copies will be available at the door on the date of the hearing.

The statutory authority of the Minnesota Board of Chiropractic Examiners to promulgate the proposed rule is contained in Minn. Stat. §§ 148.05, 214.06, subd. 2, and 214.12 (1978).

Notice: The proposed rule is subject to change as a result of the rule hearing process. The Board therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rule to participate in the rule hearing process.

Please be advised that pursuant to Minn. Stat. § 10A.03, subd. 1 (1978) lobbyists must register with the State Ethical Practices Board within five days after becoming lobbyists.

"'Lobbyist' means any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

'Lobbyist' does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony;

(f) Stockholder of a family farm corporation as defined in section 500.24, subdivision 1, who does not spend over $250, excluding his own travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim."

Minn. Laws 1979, ch. 59 § 3. Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5615.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the office of the Board of Chiropractic Examiners and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the Board at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Board may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Board. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the Board (in the case of the Board's submission or resubmission to the Attorney General).

Promulgation of these proposed rule provisions will not result in the expenditure of public monies by local public bodies.

Dated: June 28, 1979

E. A. BROCHMAN, D.C.
Executive Secretary

Amendments as Proposed

7 MCAR § 2.005 (Chi 5) Individual Annual License Renewal

A. Fee.

~~(a)~~1. Thirty (30) or more days before January 1 each year, the State Board of Chiropractic Examiners (hereinafter "Board") shall mail to the last address on file with the Board a license renewal fee notice to each person (hereinafter "licensee") licensed to practice chiropractic within this state.

~~(b)~~2. The license of each licensee shall expire at midnight on December 31 each year. Subject to the terms of part B of this rule, the Board shall renew the license upon receipt from the licensee of a license renewal fee of $50.00, plus any applicable penalty fee as set forth in ~~(c)~~3. below. Each licensee shall submit the license renewal fee to the Board no later than January 1 of the year for which the license renewal is requested.

~~(c)~~3. A licensee shall submit to the Board, in addition to the license renewal fee, a penalty fee of $5.00 per month for each month or portion thereof for which the license renewal fee is in arrears, such penalty not to exceed $50.00

B. Continuing education.

1. Purpose. The primary purpose of continuing chiropractic education is to assure the consumer of an optimum quality of chiropractic health care by requiring doctors of chiropractic to attend educational classes or seminars designed to advance their professional skills and knowledge.

2. Annual requirement. Except as hereinafter provided, every person licensed to practice chiropractic in this state shall, as a prerequisite for the annual renewal of his license, attend a minimum of twenty (20) hours during the preceding calendar year of continuing education courses recognized and approved by the Board.

a. At least three (3) of such hours shall be devoted to radiographic safety, technique and/or interpretation.

b. Licensees shall be exempt from the preceding continuing education requirements for the calendar year in

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which they are initially licensed. During the first calendar year following the year of initial licensure, licensees shall attend a total of not less than ten (10) hours of recognized and approved continuing education courses, including at least three (3) hours devoted to radiographic safety, technique and/or interpretation. Thereafter, five (5) additional course hours shall be attended each year until the annual twenty (20) hour minimum requirement is met.

3. Approved programs. Subject to continued approval under the criteria set forth at section 5 hereof and except as set forth under section 6, the following continuing education classes are approved by the Board:

a. Educational meetings of the American Chiropractic Association.

b. Educational meetings of the International Chiropractic Association.

c. Educational meetings of the Canadian Chiropractic Association.

d. Educational classes conducted by any chiropractic college that is accredited by or has accreditation status with the Council on Chiropractic Education.

e. Educational classes conducted by any state chiropractic association.

4. Other programs subject to approval. Other continuing education programs may be approved by the Board upon a written request therefor submitted by the program sponsor to the Board executive secretary. All such requests shall be received not less than ninety (90) days prior to the program presentation date and shall contain the following information:

a. Name and address of organization sponsoring the course for which approval is requested.

b. Instructor's name and credentials.

c. An outline of subject matter to be covered.

d. The number of sixty (60) minute hours of actual instruction.

e. The mechanism of monitoring and certifying attendance.

f. The location at which the course will be conducted.

g. Dates the course will be presented.

h. Tuition fee.

5. Program approval criteria. The Board shall employ the following criteria in determining whether a continuing education program shall be approved and the number of course hours for which approval is granted:

a. Whether the material to be presented is likely to enhance the practioner's knowledge and skill in the practice of chiropractic.

b. Whether the instructors or speakers presenting the program are sufficiently qualified in the field of their instruction, either by practical or academic experience or both.

c. Whether the classes will be held in a suitable setting which is conducive to the learning process.

6. Unapproved programs. Courses dealing with administrative and economic aspects of practice shall not be approved for continuing education credit by the Board.

7. Proof of attendance.

a. On or before January 1 of the year for which renewal of his license is requested, each licensee not initially licensed in this state during the preceding calendar year shall submit a written statement to the Board executive secretary containing the following:

(1) The name, date and subject of each educational program attended during the preceding calendar year;

(2) The names of the sponsoring organizations;

(3) The number of sixty (60) minute class hours of instruction offered at each program and the number of hours actually attended; and

(4) The name, signature, and current mailing address of the licensee.

b. Falsification of any written evidence submitted to the Board executive secretary pursuant to this rule shall be deemed to be unprofessional conduct and constitute grounds for license revocation or suspension.

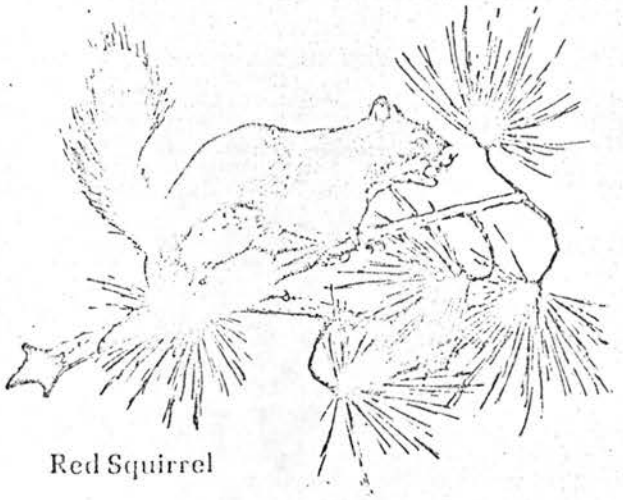
8. Failure to comply. The Board may refuse to renew, or may revoke, suspend, condition, limit, restrict or qualify the license of any licensee failing to comply with the requirements of this rule and/or may publicly reprimand, censure and place such person on probation with the Board.

9. Reinstatement. The license of any licensee which is not renewed or which is revoked, suspended, or reduced in status by reason of failure to comply with the continuing education requirements of this rule may, at the election of the licensee or former licensee, be reinstated or restored to full status by either of the following procedures:

a. Submission to the Board executive secretary of proof of the make up of all continuing education course hour and subject matter requirements which would have been necessary for continuous licensure from the date of such person's last license renewal or initial licensure, whichever is more recent, and submission to the Board's executive secretary of proof of attendance at an additional ten (10) hours of Board recognized and approved continuing education courses for each intervening renewal year. Proof of compliance with the foregoing requirements shall be made by written statement in the form prescribed under section 7.a. of this rule and subject to the provisions of section 7.b.; or

b. Reexamination by the Board at the time for which it next schedules license examinations. No such reexamination shall be conducted except upon a written application therefor received by the Board executive secretary not less than thirty (30) days prior to the examination date.

10. Waiver or deferment of continuing education requirements. The Board may waive or defer compliance with some or all annual continuing education requirements for any licensee presenting satisfactory written evidence to the Board of illness or hardship making it impossible or highly impractical for the licensee to attend or to have attended a sufficient number of approved continuing education class hours.



Red Squirrel

The red squirrel, smallest of the tree squirrels, measures 11-14 inches in length and weighs from 5-11 ounces. It ranges from Alaska and Canada to New Mexico and South Carolina, preferring pine forest habitats. Aggressive about its food stores and its home range, the red squirrel is fearless in the trees. Ernest Thompson Seton (1860-1946), Canadian naturalist, writer, artist and early Boy Scout leader writes of it as: ". . . a veritable Puck-o'-the-Pines — an embodiment of merriment, bird-like activity and saucy roguery . . . as boisterous as it is vigorous in work and play."

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contract person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Energy Agency Information and Education Activity

Notice of Availability of Contracts for Professional and Technical Services in the Graphic Arts

The Minnesota Energy Agency is seeking to identify contractors in graphic arts with the following services:

- layout/design
- keylining
- audio-visual presentations (script writing, slide photography, sound recording)
- radio and TV Public Service Announcements
- graphics for brochures, pamphlets, displays, slides, transparencies

Contract services must be available upon request through June 30, 1980.

Interested firms must submit proposals by August 13, 1979, stating services offered, hourly rate for those services and any minimum requirements. A sample, or samples, of your work must also be included.

All questions related to this notice and all proposals should be directed to:

Jean M. Dick
Minnesota Energy Agency
Information and Education
980 American Center Building
150 Kellogg Boulevard
St. Paul, Mn. 55101
(612) 296-9082

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CHP-80-001-HC

B

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF CHIROPRACTIC EXAMINERS

RECEIVED
JUN 28 1979
OFFICE OF HEARING EXAMINERS

In the Matter of the Minnesota Board of Chiropractic Examiners' Proposed Adoption of Rule Provisions Relating to Continuing Education

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule be held in Room 105, Minnesota Health Department Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on Wednesday, September 5, 1979, commencing at 1:00 p.m. and continuing until all interested persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Dated: June 28, 1979.

MINNESOTA BOARD OF
CHIROPRACTIC EXAMINERS

E. A. Brochman D.C.

E. A. BROCHMAN, D.C.
Executive Secretary

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of the Minnesota
Board of Chiropractic Examiners'
Proposed Adoption of Rule Provisions
Relating to Continuing Education

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Elizabeth A. Brochman, D.C., do hereby certify that I am the Executive Secretary of the Minnesota Board of Chiropractic Examiners, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a motion made at a meeting of the Minnesota Board of Chiropractic Examiners duly and properly called and held on the 27th day of January, 1978, that a quorum of the Board was present at said meeting, that a majority of those present voted for the motion, that it is set forth in the minutes of the meeting and has not been rescinded or modified.

> RESOLVED that the Executive Secretary of the Minnesota Board of Chiropractic Examiners be and hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board relating to continuing education as well as performing any and all acts incidental thereto, including but without being limited to signing an order for hearing and notice of hearing as well as performing all other pertinent matters required by the Administrative Procedure Act and the rules of the Office of Hearing Examiners.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28 day of June, 1979.

Elizabeth A. Brochman D.C.
ELIZABETH A. BROCHMAN, D.C.

Subscribed and sworn to before me

this 28 day of June, 1979.

Susan Osman

SUSAN OSMAN
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Sept. 21, 1984

IN THE SUPREME COURT OF MISSISSIPPI

NO. 50,371

L. ALFRED NORVILLE, JR.

v.

MISSISSIPPI STATE MEDICAL ASSOCIATION

BEFORE SMITH, WALKER AND COFER

WALKER, JUSTICE, FOR THE COURT:

This is a suit to enjoin a chiropractor from the practice of medicine without a license. Suit was brought in the Chancery Court of the First Judicial District of Hinds County, Mississippi by the Mississippi State Medical Association against L. Alfred Norville, Jr. The court granted partial relief and issued a permanent injunction prohibiting Norville from prescribing, recommending or suggesting vitamins and food supplements for use by his patients and prohibiting the use of microwave diathermy machines, ultrasonic devices, and electric muscle stimulators.

The case presents three issues:

(1) Whether the use of microwave diathermy machines, ultrasonic devices and electric muscle stimulators by a chiropractor constitutes the unlicensed practice of medicine?

(2) Whether prescribing, recommending or suggesting use of vitamins by a chiropractor constitutes the unlicensed practice of medicine?

(3) Was the petitioner, Mississippi State Medical Association, required to prove irreparable harm and lack of an adequate remedy at law before an injunction could issue?

The Mississippi State Medical Association, at the 1975 annual meeting of its House of Delegates, approved a resolution to initiate legal action against chiropractors who violate the Chiropractic Licensing Act resulting in unlicensed practice of medicine. Subsequently the executive secretary of the Mississippi State Medical Association selected Norville as a defendant and employed counsel to file suit. The suit was for injunctive relief. Defendant generally demurred to the bill on the grounds that there was no equity on the face of the bill; that it did not state a cause of action; that there existed a proper remedy at law, and that complainant was not a proper party to bring suit and therefore lacked standing. The demurrer was overruled and the cause set for trial.

At trial, Norville admitted that he prescribed vitamins for his patients and kept a supply for sale in his office. He further stated that his use of vitamins was for the purpose of relieving ailments or disease and that he prescribed vitamins in ninety to ninety-five percent of his cases. Similarl Norville admitted the use of ultrasound,microwave, and electric muscle stimulators in ninety to ninety-five percent of his cases. He testified that the modalities were used to relieve an ailment or treat a disease; however, at another point he had testified they were used to facilitate spinal adjustments.

Photographs of the vitamins involved were introduced into evidence. There were some eighty-one different types of vitamins and food supplements involved, but all were of the type which can be purchased in stores without prescription. The modalities prohibited were ultrasound, microwave diathermy, and electric muscle stimulator. Dr. Wharton, an orthopedic surgeon and chief of the spinal injury service at Methodist Rehabilitation Center testified that microwave diathermy is a

form of treatment which concerns the use of radio waves in the microwave spectrum. These microwaves have the capability of developing heat or translating the energy of radio waves deep within the body or at least deeper than the superficial layers of skin. The purpose of microwave diathermy according to Dr. Wharton is to produce heat deep within the body and by doing so to increase blood circulation in that particular area. He also testified that if overheating occurs, tissue necrosis (death of the tissue) can occur. He further testified that in his opinion it was possible to cause death with the use of diathermy.

Ultrasound, according to Dr. Wharton, is energy in the form of a sound frequency. The ultrasound equipment can cause changes in the temperature of tissue and the purpose is to alter temperature selectively. As with microwave diathermy, it also produces some degree of increased circulation. According to Dr. Wharton, ultrasound penetrates more deeply than microwave diathermy. Among other dangers of the use of ultrasound, Dr. Wharton pointed out that if used in an area of an underlying tumor, the vibratory form of energy may spread malignancies through the bloodstream. A similar effect may occur if used over an area of infection.

Electrical muscle stimulators are used to transmit a low voltage current through the skin, generally to trigger points in a muscle near the junction of nerves and muscle tissue thereby causing the muscle to contract. Dr. Wharton testified that he knew of no circumstances where a muscle stimulator would be used with regard to the spine or spinal column.

Several physicians testified that ultrasound or microwave diathermy were used only in fairly rare circumstances and

only after other forms of treatment had proven ineffective. Photographs of these three modalities were introduced into evidence. All three machines bore plates warning that the machines were sold only for use by or under the direction of a qualified physician or by a person licensed by state law to use such machines.

DIATHERMY

Federal law restricts the sale of this device for use by or on the order of a physician or any other practitioner licensed by the law of the state in which he practices to use or order the use of this device.

The manufacture use and sale of this equipment is licensed by Raytheon Company

ULTRASOUND

Federal law restricts this device to sale by or on the order of a qualified physician or other qualified practitioner licensed by the law of the state in which he practices to use or order the use of this device. Licensed under U.S. patents of A.T.&T. Co. and Western Electric Co., Inc. for therapeutic generators. Other patents pending. Federal Communications Commission type approved.

ELECTRIC MUSCLE STIMULATOR

WARNING: This device is sold only for use by or under the direction of a qualified physician. The observance of safe and established medical practices is essential to its proper use. Otherwise there are possibilities of injury to patients or operators.

MAJESTIC INSTRUMENTS

I.

(1) Does use of the modalities microwave diathermy, electrical muscle stimulators and ultrasound equipment constitute the practice of medicine?

(2) If so, is use of such equipment permitted by the Chiropractic Licensing Act?

The practice of medicine is defined in Mississippi Code Annotated section 73-25-33 (1972) as:

> The practice of medicine shall mean to suggest, recommend, prescribe, or direct for the use of any person, any drug, medicine, appliance, or other agency, whether material or not material, for the cure, relief, or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound or fracture or other bodily injury or deformity, or the practice of obstetrics or midwifery, after having received, or with the intent of receiving therefor, either directly or indirectly, any bonus, gift, profit or compensation; provided, that nothing in this section shall apply to females engaged solely in the practice of midwifery.

Defendant Norville admitted that he prescribed or directed the use of these modalities for the cure and relief or palliation of ailment or disease of the body with the intent to receive compensation therefor. Thus, there is no question but that such use of the machines constituted the practice of medicine.

The question remains, however, whether such use is protected or allowed under the Chiropractic Licensing Statute, Mississippi Code Annotated section 73-6-1 to 73-6-31 (Supp. 1977) Section 73-6-1 defines the practice of chiropractic as:

> The practice of chiropractic involves the analysis of any interference with normal nerve transmission and expression, and the procedure preparatory to and complementary to the correction thereof, by an adjustment of the articulations of the vertebral column and its immediate articulations for the restoration and maintenance of health without the use of drugs or surgery.

If the use of such instrumentalities is allowed by the statute, then they must come under the phrase "procedure preparatory to and complementary to . . . adjustment of the articulations of the vertebral column." The appellant at one point testified he used diathermy and ultrasound to relax patients prior to making adjustments and electrical muscle stimulators to "free infringed nerves" prior to making adjustments. While there was contradictory testimony on

the purpose of use of modalities, nevertheless assuming the above purposes, the question still remains whether the legislature intended such use to be covered. The chancellor construed the phrase as not including use of such modalities. We agree.

Prior to the passage of the Chiropractic Licensing Act of 1973, this Court had upheld the conviction of a chiropractor for the illegal practice of medicine who had attempted to remove tonsils by inserting a needle and applying electric current. Joyner v. State, 181 Miss. 245, 179 So. 573 (1938). In affirming the decision, the Court did not dwell on the use of the needle as such but rather discussed the use of electrotherapy in the general sense. The Court stated:

> But the treatment of disease by the use of surgical instruments and other appliances, as distinguished from treatment by hand . . . and treatment by means of electricity, known as electrotherapy, are methods commonly adopted by physicians and surgeons, as taught in their institutions, established by their highest authorities in the field of surgical and medical science, and, by general acceptation, regarded as pertaining peculiarly to those professions.
>
> Electrotherapy is defined in medical jurisprudence as the use of different forms of electric machines for theraputic purposes, and before an electrotherapist can follow his profession he must obtain, at least in some states, a license authorizing him to practice in that particular field. This practice has not been recognized in our state as a distinct science, separate and apart from the field of medicine or surgery;[1] and, since the use of electrical appliances for the treatment of disease is ordinarily regarded as pertaining to these particular fields, it is not lawful to engage in the practice of these methods without being licensed as a physician and surgeon. (Emphasis added). 181 Miss. at 252.

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[1] In 1966 the Legislature enacted the Physical Therapists Licensing Law (Laws, Ch. 484, Sections 73-23-1 through 73-23-25, Miss. Code Ann. 1972). The use of electrical appliances such as diathermy and ultrasonic machines by physiotherapists is not, however, "separate and apart from the field of medicine or surgery, since Section 73-23-19 requires the physiotherapist to practice under, and only under the prescription or direction of a regular qualified doctor of medicine.

The Court went on to hold that "Appellant was authorized to practice chiropractics under his license (privilege license) issued to him by this State, but not to engage in the use of any methods pertaining to the practice of medicine and surgery." In so holding, the Court cited State Board of Medical Examiners v. DeBaun, 7 N.J. Misc. 1040, 147 A. 744 (1929). There, the defendant chiropractor explained his use of the electrical apparatus as "a galvanic current producing heat for relaxation" which is the argument of Norville in the case at bar. The Court in DeBaun rejected this contention stating that:

> Electricity is a dangerous instrumentality with the ever present capacity to do serious bodily harm unless restrained within proper limitations. It is essential that its use as applied to the human body should be under the direction of authorized persons. Its use in the instant case was a part of the art of healing. The specific use above referred to in no wise involved the function of hand manipulation. We are unable to conceive of any hypothesis in the proofs in the case upon which the use of electricity in the manner stated is a part of the practice of chiropractic. . . . (147 A. at 744-45).

Thus, it is clear that absent an intent on the part of the legislature to broaden the preexisting scope of chiropractic practice, the contention of appellant must fail. No such intent expressly appears in the licensing statute.

Moreover, we are influenced by the consideration that where in the Chiropractic Act, practitioners are allowed to use equipment capable of causing bodily harm, e.g., x-ray machines, such use was allowed only with stringent educational requirements, e.g., ". . . forty (40) clock hours of instruction in the operation o X-ray machinery and not less than forty (40)clock hours of instructions in X-ray interpretation and diagnosis." Furthermore, provision is made for examination concerning knowledge of and use of x-ray machines. Mississippi Code Annotated section 73-6 (Supp. 1977). In contrast, no provision was expressly made for use of diathermy, ultrasound or electrical muscle stimulators,

nor is there any educational requirement for classes in such machines. The testimony at trial indicated such machines were capable of causing bodily harm. It seems likely that if the legislature intended that chiropractors be allowed to employ these hazardous modalities in the treatment of their patients, it would have provided for substantially the same safeguards that underlie use of x-ray machines.

All of the witnesses agreed that the disputed modalities can be dangerous if improperly used or if used when contra-indicated. Doctors George Wharton and George Purvis both testified that it is necessary to rule out infections and malignancies in the areas to be treated before using diathermy or ultrasound, as treatment with these modalities might cause the malignancy or infection to spread. Both testified that if a surface examination indicates the possibility of a malignancy or infection, it may be necessary to obtain a tissue sample or to use a needle to draw out any fluid that might be present in the potentially infected area and have that analyzed by a laboratory. By appellant's admission, the taking of tissue samples or fluid is outside the scope of his practice as described by the State Board of Chiropractic Examiners and we are not persuaded that the presence of malignancy or infection can be ruled out by the other diagnostic procedures employed by appellant.

Given the prior ruling in Joyner that electrotherapy constituted the practice of medicine and was not a part of chiropractic, coupled with the failure of the legislature to expressly allow use of and set up educational requirements for use of these modalities and since the testimony showed them to be capable of causing harm if improperly used, we must conclude the use of such modalities is prohibited to chiropractors.

II.

(1) Does prescribing, recommending or suggesting the use of vitamins for patients constitute the unlicensed practice of medicine?

(2) If so, is such protected under the Chiropractic Licensing Act?

Appellant admitted that he recommended or prescribed vitamins and food supplements for use by his patients to cure their ailments. He maintained a supply in his office and sold them directly to the patients for whom he prescribed. As pointed out above, the practice of medicine, by statute, "shall mean to suggest, recommend, prescribe or direct for the use of any person, any drug, medicine, appliance or other agency . . . for the cure, relief, or palliation of any ailment or disease . . . after having received . . . compensation . Miss. Code Ann. § 73-25-33 (1972). If then, "vitamins" are included within the meaning of "drug, medicine, appliance or other agency, such practice constitutes the unlicensed practice of medicine."

In Harris v. State, 229 Miss. 755, 92 So.2d 217 (1957), where suit was brought against a chiropractor for unlicensed practice of medicine, this Court said:

> The question is further presented as to whether the appellant's treatment of John Minor by the injection of vitamins under all of the facts and circumstances of the case brought him within the statutory definition of practicing medicine. In other words, whether in so treating John Minor by injecting vitamins, the appellant was for compensation suggesting, recommending, prescribing, or directing for the use of the patient a drug, medicine, appliance, or other agency for the cure, relief or palliation of any ailment or disease of the body of the patient. In determining this question, we adopt that interpretation of the statute which is most favorable to the appellant and apply the rule of ejusdem generis to the words "or other agency,"

> and construe the words to mean other agency akin to or of like character with a drug or medicine. 41 Am. Jur., Physicians and Surgeons, Sec. 27, p. 157.
>
> Assuming as true the testimony of the appellant that he prescribed and administered vitamins in order to correct a vitamin deficiency, it necessarily follows that he prescribed and administered vitamins as an agency akin to medicine to correct a disorder or ailment in the human body which interfered with normal animal growth and was likely to produce disease. (229 Miss. at 766).

Thus, the present prescription of vitamins to cure an ailment constitutes the unlicensed practice of medicine unless the Chiropractic Licensing Act of 1973 permits such a usage.

Norville testified in part that his usage of vitamin prescriptions was complementary to his administration of spinal adjustments and therefore justified under the licensing statute. However, having concluded in the Harris case that vitamins are a medicine[2], Norville is precluded from making such an argument by the very words of the Chiropractic Licensing statute itself. The statute clearly states that the correction of interference with normal nerve transmission which is the purpose of chiropractic, shall be done " . . . without the use of drugs or surgery." (Emphasis added). Section 73-6-1, Mississippi Code Annotated (1972). Section 1-3-7 defines the term "drugs" in the following manner:

> The term "drugs" when used in any statute shall embrace all medicines for internal or external use for man or beast.

Thus, since vitamins are a medicine and the word "drugs" encompasses all medicines for use for man, the licensing act itself prohibits their use in the practice of chiropractic. We therefore conclude that the prescription of vitamins for the cure of an ailment by a chiropractor does constitute the illegal practice of medicine and such

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2 "The fact that the substance employed as a remedial agent may have value as food and a tendency to build up and restore wasted or diseased tissue, will not deprive it of its character as a 'medicine' if it is administered and employed for that purpose." 57 C.J.S. Medicine, p. 1042, cited as controlling in Harris v. State, 229 Miss. 755, 767, 92 So.2d 817, 822 (1957).

use is prohibited to chiropractors.

Norville has argued strenuously that since none of the vitamins involved require medical prescription and may be purchased by any layman over the counter in most stores, use of such vitamins should not be denominated "practice of medicine." We are fully cognizant that any layman can obtain such vitamins and that any retailer can sell such vitamins. Purchase of or sale of vitamins is not however the vice which is condemned here. Rather the vice condemned and that which constitutes the unlicensed practice of medicine is (1) prescription of vitamins, (2) to cure, (3) an ailment or disease, (4) for compensation.

The chiropractor on the present facts does not simply sell vitamins to a customer who asks for them as does a retailer. Rather, he represents to a patient who has come to him that such vitamins will cure a disease or ailment. Further, unlike the relative or friend who recommends that someone take vitamins for nutrition or to prevent colds, and neither expects nor receives any compensation for such "advice," the chiropractor in a professional capacity advises the patient to take the vitamins for the ailment or disease, charges compensation for such advice, and may cause the patient to think his ailment or disease will thereby be cured. This is the vice condemned and the danger of such is amply demonstrated by the record.

Norville testified that his treatment for people with high blood pressure or excessive cholesterol in the blood was a product called Cholaplex which was described as "a nutritional concentrate containing extracts

of Calf Brain and Beef Liver, soluble fermentation residues, dehydrated extract of buckwheat (Green Leav) ageous extract of Bovine Orchic tissue [cow gonads] . . . yeast beef lipids and organic iodine protein complex." When asked how he diagnosed the presence of cholesterol in the blood, he replied "by physical examination," but admitted he did not take a blood specimen. There exists then the danger that a patient will be subjected to a medicine for a condition which does not exist, or fail to seek proper medical attention under the belief he is being "cured" by vitamins.

Thus, conceding that the vitamins prescribed may cause no harm themselves, may even be beneficial, and may be obtained without medical prescription, nevertheless, there are sufficient reasons to justify the legislative determination classifying the use of medicines, including vitamins, to cure ailments as the practice of medicine, and prohibiting chiropractors from utilizing medicines, including vitamins, to cure ailments.

III.

Was the petitioner, Mississippi State Medical Association required to prove irreparable harm and lack of an adequate remedy at law before an injunction could issue?

Appellant argues that the Mississippi State Medical Association had no standing to bring this suit, and even if they had standing, they failed to show the prerequisites for injunctive relief, e.g., no adequate legal remedy and the existence of irreparable harm.

The first contention, going to existence of standing, has no merit. In an analogous case where a county bar association brought suit against a chancery court clerk for the unauthorized practice of law, we held that the bar association was a proper party in a suit of that nature, stating, "They had an interest in the subject matter, responsibilities as officers of the court, and were affected by any unauthorized practice of law." Darby v. Miss. State Board of Bar Admissions, 185 So.2d 684,686 (Miss. 1966). On the issue of standing, there exists no reason to distinguish Darby. The State Medical Association has the same interest in preventing unlicensed practice as the State Bar Association.

However, with regard to the requirement of showing the usual prerequisites for injunctive relief, appellant stands on firmer ground. In Redmond v. State, 152 Miss. 54, 118 So. 360 (1928), a suit to enjoin the unauthorized practice of medicine, under a nuisance theory, this Court held that there must be a showing of irreparable harm and that there exists no other adequate remedy at law. In reaching that conclusion, the Court pointed out that the unlicensed practice of medicine "is not a nuisance per se, and if a nuisance at all, would be made such by the manner in which it was pursued." (152 Miss. at 78).

In requiring the establishment of prerequisites in such a case, the Court based its reasoning on the proposition that:

> It is a delicate, though often a necessary, thing to condemn a business operated by a citizen. It may result in great loss, or even ruin, to his business. (152 Miss. at 82).

We note that while the evidence in this case clearly established the possibility of harm, there was no showing that actual harm had in fact resulted. Additionally, Mississippi State Medical Association has not shown that there are no other available legal remedies at law.

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[3] In conjunction with the State Board of Bar Admissions.

It is argued that section 73-51-1 should be construed to allow suit by the Mississippi State Medical Association without the need to show irreparable harm or lack of other adequate legal remedy. Section 73-51-1 reads as follows:

> An action for an injunction may be brought and maintained in the name of any state board authorized to hold examinations and grant licenses to practice any profession to enjoin and prohibit any person from the practice of any profession required to be licensed by said board, when such person is practicing said profession and has not been granted a license therefor. (Emphasis added).

The argument of the Mississippi State Medical Association is that the statute was construed in an analogous case to obviate the need for showing irreparable harm, thus overruling the Redmond decision, Conway v. State Board of Health, 252 Miss. 315, 173 So.2d 412 (1965), and that in the Darby case, supra, we allowed a local bar association to bring suit without requiring a showing of irreparable harm or lack of legal remedy. This argument is not persuasive.

It is true that Conway construed suit under the statute to obviate the need for such a showing stating: "Section 8923-51 [now Mississippi Code Annotated section 73-51-1 (1972)] by implicatio assumes there was not an adequate remedy at law and that the injury was irreparable, i.e., the legislation was needed or else it would not have been enacted." (252 Miss. 324-25).

However, there, suit was brought by the State Board authorized to issue the license as required by section 73-51-1. Similarly, in Darby, while we allowed the local bar association to have standing, we note that the state licensing board, e.g., the State Board of Bar Examiners, was a party to the suit, thus invoking the waiver of the usual injunctive prerequisites under the statute and the Conway decision.

In the present case, the state licensing board, e.g., the State Health Board, is not a party to the suit. In the

absence of the state licensing board as a party to the suit, the requirement of Redmond still exists. We are of the opinion that the legislature, being cognizant of the holding in Redmond, carefully limited its wording when enacting the statute. Thus, at present, the existing statutory remedies which obviate the need for showing irreparable harm and lack of adequate legal remedies [Miss. Code Ann. § 73-51-1 (1972) and § 73-6-29 (Supp. 1977)] must be brought in the name of the licensing agency or of some official state prosecutor. The likely purpose of this was to require an official state investigation before such serious charges are leveled at a defendant. This is not to say that a state professional association is precluded from bringing suit, but in such instances, the proof must satisfy the irreparable harm requirement and it must be shown that other legal remedies are not available or have failed of effectiveness. That was not done in this case and the injunction was erroneously issued. Therefore, the injunction is dissolved.

REVERSED AND INJUNCTION DISSOLVED.

PATTERSON, C.J., SMITH, P.J., ROBERTSON, P.J., SUGG, BROOM, LEE, BOWLING AND COFER, JJ., CONCUR.

FOR PUBLICATION

STATE OF MICHIGAN

IN THE COURT OF APPEALS

JUL 14 1978

FRANK J. KELLEY,
Plaintiff-Appellee,

and

MICHIGAN CHIROPRACTIC COUNCIL,
Intervening Plaintiff-Appellee,

-v-

No. 31216

JONAS RAGUCKAS, D.C., and
MARIE RAGUCKAS, D.C.,
Defendants-Appellants.

BEFORE: Holbrook, Jr., PJ; and Allen and Everett, JJ.

PER CURIAM

Plaintiff commenced this action in Ingham County Circuit Court on September 4, 1975, seeking to enjoin defendants, licensed chiropractors in Garden City, from performing certain acts allegedly outside the scope of their profession. These acts included the dispensing of drugs and the use of acupuncture. Plaintiff contends that the aforesaid conduct amounted to the unlicensed practice of medicine and constituted a public nuisance which should be enjoined.

Defendants responded to plaintiff's complaint, admitting that they dispensed drugs and performed acupuncture in treating their patients. However, defendants contended that such techniques were within the scope of

chiropractic and that the scope of the chiropractic profession should be determined by the State Board of Chiropractic Examiners.

On November 24, 1976, the trial court issued a final order granting plaintiff's motion for summary judgment and also issued a permanent injunction prohibiting defendants from dispensing drugs, performing acupuncture, and performing any diagnostic tests on patients except such tests as set forth in the Michigan Chiropractic Act. MCL 338.156; MSA 14.596. The Michigan Chiropractic Council intervened in the case by stipulation and order. Defendants now appeal as of right challenging the validity of the injunction.

I. JURISDICTION

Defendants first contend that plaintiff did not possess the authority to maintain the current action since the doctrine of "primary jurisdiction" prohibits such a suit until the proper administrative agency has reviewed the matter. The "primary jurisdiction" doctrine was set forth by this Court in White Lake Association v Whitehall, 22 Mich App 262, 280, 281; 177 NW2d 473 (1970).

"The primary jurisdiction doctrine has been explained as follows:

'In cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. Uniformity and consistency

in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances undelying legal issues to agencies that are better equipped than courts for specialization, by insight gained through experience, and by more flexible procedure.' Far East Conference v United States, 352 US 570,574,575 (1952) (72 S Ct 492, 96 L Ed 576.

* * *

'The principal reason behind the doctrine of primary jurisdiction is not and never has been the idea that administrative expertise requires a transfer of power from courts to agencies, although the idea of administrative expertise does to some extent contribute to the doctrine. The principal reason behind the doctrine is recognition of the need for orderly and sensible coordination of the work of agencies and of courts. Whether the agency happens to be expert or not, a court should not act upon subject matter that is peculiarly within the agency's specialized field without taking into account what the agency has to offer, for otherwise parties who are subject to the agency's continuous regulation may become the victims of uncoordinated and conflicting requirements.' 3 Davis, Administrative Law Treatise, § 19.01, p 5 ."

As thus defined, "primary jurisdiction is a flexible doctrine whose invocation is largely discretionary with the trial judge. Exceptions to the doctrine are recognized when the situation requires immediate equitable intervention or where the administrative remedies are not sufficient to give plaintiff the relief to which he or she is entitled. Such, we believe, is the case in the instant matter.

Abstention by the trial court while the Board of Chiropractic Examiners reviewed the scope of the chiropractic profession would accomplish very little. The Board of Chiropractic Examiners has already issued memoranda indicating that acupuncture is within the scope of the chiropractic act. MCL 338.157; MSA 14.597. The board had also indicated that it is their belief that

a chiropractor may administer non-narcotic chemicals when treating a patient in order to suppress pain or render the spine and its surrounding bones and tissues more amenable to successful manipulative treatment. Hence, the Board of Chiropractic Examiners had already expressed their opinion in respect to the use by chiropractors of the techniques at issue in the instant case.

However, the Board's views in respect to these procedures appear to be in conflict with the statutory and common-law definition of the chiropractic profession. Accordingly, the present case is ripe for adjudication by the courts. It should also be noted that plaintiffs' complaint alleged that defendants were engaged in the unauthorized practice of medicine contrary to MCL 338.1803(9); MSA 14.542(16)(1)(9). Such activity created an imminent threat to the general public and warrants immediate equitable intervention if the requisite proofs are established by the complaining party.[1] Further, defendant Marie Raguckas and the attorney who represented her in the trial court proceedings, each are members of the Board of Chiropractic Examiners. To refer the scope of practice issue back to the Board under the doctrine of primary jurisdiction is at best questionable. Accordingly, it is the opinion of this Court that the current suit was properly commenced in Ingham County Circuit Court.

II. DISPENSATION OF PRESCRIPTION DRUGS

Defendants next contend that the trial court erroneously interpreted the Michigan Chiropractic Act, MCL 338.156; MSA 14.596 in ruling that the Act did

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[1]The trial court concluded and we agree that plaintiffs did in fact establish a prima facie case for immediate equitable relief.

not authorize chiropractors to dispense drugs or to perform acupuncture.

> "The license provided for in this act shall entitle the holder thereof to practice chiropractic in the state of Michigan, and for the purpose of this act chiropractic is defined as 'the locating of misaligned or displaced vertebrae of the human spine, the procedure preparatory to and the adjustment by hand, of such misaligned or displaced vertebrae and surrounding bones or tissues for the restoration and maintenance of health.' A licensed doctor of chiropractic under this act may use x-ray and such analytical instruments as are approved by the Michigan board of chiropractic examiners in the examination of patients solely for the purpose of locating misaligned or displaced vertebrae of the human spine and for the procedures preparatory thereto.
>
> "The terms 'chiropractic', 'doctor of chiropractic', 'chiropractor' and 'all licensed doctors of chiropractic' mean a practitioner of chiropractic as defined in this act." MCL 338.156; MSA 14.596 (Emphasis supplied.)

Defendants argue that the words "procedures preparatory to" indicate that a chiropractor can dispense drugs in order to prepare a patient for treatment. Such an inference lacks merit on the basis of several grounds. The Pharmacy Act states that, unless a pharmacist's license is obtained, no one but physicians, dentists and veterinarians may prescribe drugs. MCL 338.1128; MSA 14.757(28). Since the term "physician" is not used anywhere within the chiropractic act, it logically follows that chiropractors were not intended to be able to dispense drugs. In addition, the Legislature could have easily specifically authorized chiropractors to dispense drugs, as was done in the case of osteopaths, MCL 338.101A(c); MSA 14.571 1(c) but failed to do so.

Defendants' position that they should be permitted to dispense drugs is directly contrary to the philosophical foundation of the chiropractic profession. The Michigan statutory definition is in accord with the

universally accepted view that the chiropractic profession is limited to the manual adjustment of the spine. Drugs play no part in the chiropractor's approach to health.

"Although the doctor of chiropractic recognizes the place for drugs and surgery in therapeutics, he does not employ those procedures. As the result of his clinical experiences, he knows that the chiropractic approach offers successful results in a wide range of illnesses." Dr. Julius Dintenfass, Chiropractic: A Modern Way to Health (New York 1970), p 78.

"Medical doctors, though under no compulsion to do so, rely chiefly upon drugs and surgery in ministering to the sick. Though there are notable exceptions, they tend for the most part to be either apathetic and skeptical or frankly antagonistic to the use of manipulation as a curative agent.

"Doctors of osteopathy, on the other hand, while they too are trained and licensed to prescribe drugs and to perform surgical operations, also make use of manipulative procedures.

"In contrast to both of these kinds of doctor, the doctor of chiropractic gives no medicine and practices no surgery. This is not because he feels that he has the answer to every health problem and believes that drugs and surgery are never necessary. It is because he is convinced that the chiropractic way offers safest, sanest, and most promising approach to the great majority of human ailments. He is trained to recognize those conditions which cannot be expected to respond successfully to this approach and when he encounters them, promptly refers the patient to some other kind of doctor. This leaves him free to give his undivided attention to the science and art of chiropractic, a field sufficiently complex and challenging to merit such specialization." Dr. Julius Dintenfass, Opportunities in a Chiropractic (New York 1967), p 8.

"Chiropractic has been variously defined as a drugless method of treating human ailments, chiefly by manipulations of the spinal column with the hands, or as the science of palpating, analysing, and adjusting the articulations of the human spinal column and adjacent tissues by hand." 58 ALR 3d 590.

It is the conclusion of this Court that the Legislature of this State intended to authorize the practics of chiropractic as generally recognized and understood.

The contention that the statutory language "procedure preparatory to manual adjustment" authorizes the chiropractor to dispense drugs is violative of the intent of the Michigan Legislature. A logical extension of this argument would allow chiropractors to do anything as long as it was somehow "preparatory to" the manual adjustment of spinal vertebrae. Accordingly, we rule, as a matter of law, that chiropractors are not authorized to dispense drugs to their patients.

III. ACUPUNCTURE

Courts from several jurisdictions have ruled that a general license to practice medicine is required before one may engage in the practice of acupuncture. State v Rich, 44 Ohio 2d 195; 73 Ohio App 2d 487; 339 NE2d 630 (1975), Louisiana State Board of Medical Examiners v Moran, 290 So2d 383 (La App 1974), State v Won, 19 Ore 580; 528 P2d 594 (1974), Commonwealth v Schatzberg, 371 A2d 544 (Pa Comm 1977). Risks involved in the practice of acupuncture by non-physicians have been identified as improper use of needles leading to infection, bruising, needles breaking in the body, delay in diagnosis and serious illnesses. The penetration of the skin with needles is a surgical act. Note, Regulating the Practice of Acupuncture: Recent Developments in California, 7 UCD L Rev 385, 391-392, 396 (1974). Further, the majority of state licensing boards addressing the question consider acupuncture as the practice of medicine or osteopathy. Two states, Indiana and Kansas, forbid the use of acupuncture by licensed physicians.

Pisani, Acupuncture: The Practice of Medicine? 38 Albany Law Rev 633 (1974).

The issue of the right of a chiropractor to perform acupuncture has been addressed in several states. All decisions have denied the right. State v Won, 10 Ore 580; 528 P2d 594 (1974), Commonwealth v Schatzberg, 371 A2d 544 (Pa Comm 1977), State v Rich, 44 Ohio 2d 195; 73 Ohio App 2d 487; 339 NE2d 630 (1975). The Pennsylvania decision is particularly pertinent since that state's statutory definition of chiropractic, like Michigan, includes "preparatory to" language. Defendant's excellent and comprehensive brief does not cite nor have we discovered any authority to the contrary. We thus conclude that as a matter of law a chiropractor is not authorized to perform acupuncture in this State.

IV. DIAGNOSIS

At the trial court proceedings two civil cases were consolidated and tried together. One case involved defendants herein who were charged with dispensing the prescription drug Darvon and performing acupuncture. The second case charged one Gerald J. Hall with engaging in unauthorized diagnosis by drawing blood samples, taking blood pressure, performing "breast and pap" tests to detect cancer. The trial court's written opinion dated June 3, 1976, concluded by enjoining all defendants from "performing any diagnostic tests on patients, including 'pap and breast' tests and blood pressure tests, except such tests as are expressly and specifically set forth in the chiropractic act, MCL 338.156; MSA 14.596".

Subsequent to the opinion of June 3, 1976, the case of defendants herein was severed from that of Gerald J. Hall who moved from Michigan, forfeited his license as a chiropractor and has taken no appeal to this court. Nevertheless, the order dated November 24, 1976, from which the instant appeal is taken, in addition to enjoining appellants herein from dispensing drugs and performing acupuncture, enjoins appellants in language precisely the same as appears in the June 3, 1976 opinion from performing diagnostic tests.

We find nothing wrong with paragraph 3 of the order per se. The problem is that the two defendants in this appeal were not performing any of the alleged improper diagnoses. Chiropractors must use some diagnostic procedures, provided such procedures are within the scope of practice permitted by the chiropractic act. Janssen v Mulder, 232 Mich 183; 205 NW 159 (1925). See also Bauer v State S Car ; 227 SE2d 195 (1976). The real question is what diagnostic tests exceed the statute. The instant record is totally inadequate to justify discussion in this case of the scope of diagnostic methods of chiropractic medicine. That issue should properly be decided on an adequate record involving practitioners charged with exceeding the statutory authority. In this case Jonas and Marie Raguckas were not so charged. Because they were not so charged and nothing in the record suggests that, as to them, improper diagnosis was conducted, paragraph number 3 on page 2 of the injunctive order is set aside. For

the same reasons, paragraph number 5 enjoining defendants from advertising is set aside. In all other respects the order of summary judgment and injunctive order dated November 24, 1976, is approved.

Affirmed in part, reversed in part in accordance with this opinion. No costs, a public question being involved.

'Chiropractic Orthopedist' illegal in California

The Superior Court for the State of California has ruled that the use of the term "chiropractic orthopedist" is improper and contrary to the law.

In the courts findings, the judge said the use of the term "chiropractic orthopedist" violates the Chiropractic Act of the State of California and sections of the Business & Professions Code that prohibit practicing medicine without a proper license or holding oneself out as being entitled to practice a healing art for which he or she is not licensed. The court also determined that the term "chiropractic orthopedist" is inherently misleading and likely to cause deception of the public.

This ruling is the result of a case filed by an individual chiropractor in California against the California State Board of Chiropractic Examiners.

The plaintiff, a licensed chiropractor, charged that the term "chiropractic orthopedist," as authorized by the defendant Board, is contrary to the laws of the State of California and violates ethical standards of the chiropractic profession. He asked that the court mandate the Board to vacate its statement of position regarding the use of the term as a specialty designation by chiropractors.

The plaintiff's primary contentions were:

1) That a chiropractor may not lawfully practice medicine in California, and holding him or herself out as a "chiropractic orthopedist" is practicing medicine.

2) That a chiropractor may not use the term "orthopedist" as a designation of chiropractic specialty because there is only one form of practice in the field of chiropractic.

3) That licensed chiropractors may not use any other designation of a specialty.

4) That the defendant Board failed to follow statutory procedures in adopting the resolution authorizing the use of the term "Chiropractic Orthopedist."

The defendant's major contentions were:

1) The use of the word "orthopedist" does not reflect a designation of a specialty.

2) The term "orthopedist" is not one which belongs exclusively to one branch of the healing arts — ie. the medical branch.

3) That a section of the California Chiropractic Act supersedes the provisions of the California Medical Practices Act proscribing the use of terms which might mislead the public to believe one not qualified is a medical doctor.

4) That in the absence of a showing that the term "chiropractic orthopedist" is misleading, the Board is without authority to prohibit its use and such a prohibition would be a violation of the right to commercial speech.

In its ruling, the court said "Defendant is correct when it asserts that 'the pivotal point here is the degree to which the term has taken on some meaning in the public mind.' Plaintiff has demonstrated by convincing evidence that in the public mind the term 'orthopedist' is associated with the medical profession."

The court cited the definition of the practice of chiropractic in a section of the California Administrative Code governing chiropractors:

". . . the basic principle of chiropractic is the maintenance of structural and functional integrity of the nervous system. A duly licensed chiropractor may only practice or attempt to practice or hold himself out as practicing a system of treatment by manipulation of the joints of the human body, by manipulation of anatomical displacements, articulation of the spinal column, including the vertebrae and cord, and he may use all necessary mechanical, hygienic, and sanitary measures incident to the care of the body in connection with said system of treatment, . . . and not including measures as would constitute the practice of medicine, surgery, osteopathy, dentistry, or optometry, and without the use of any drug or medicine included in materia medica. . ."

Therefore, the court did "not perceive that chiropractic is a healing art within which there are specialties," but agreed that "there is one form of chiropractic."

In so finding, the court ruled for the plaintiff chiropractor and ordered that the California Board of Chiropractic Examiners vacate its state of position regarding the use of "chiropractic orthopedist" as a specialty designation by chiropractors.

StateLines

MICHIGAN

The state attorney general has ruled that all chiropractic treatment available to patients of a health maintenance organization (HMO) must be done by a licensed chiropractor. State-licensed HMOs cannot require subscribers to take chiropractic treatment from medical doctors or osteopaths. Attorney General Frank Kelley said "A person who seeks chiropractic services expects the practitioners to adhere to that system. Thus . . . neither a doctor of medicine nor a doctor of osteopathy renders chiropractic services."

NEW HAMPSHIRE

According to the NEW YORK STATE CHIROPRACTIC ASSOCIATION NEWSLETTER, the Supreme Court of New Hampshire has ruled that the New Hampshire Board of Chiropractic Examiners is authorized to conduct oral clinical examinations of persons applying for New Hampshire chiropractic licenses who have passed the first two parts of the National Boards. The ruling is the result of several complaints by applicants questioning the legality of the Board's oral addition to the written examination.

KANSAS

Three Kansas chiropractors have succeeded in overturning portions of Kansas medical laws which prohibited doctors and chiropractors from using any advertisements, regardless of their content. The suit was filed by the chiropractors against the Kansas Board of Healing Arts, which enforces the state's medical laws. A federal judge found segments of the state law prohibiting any form of advertising to be unconstitutional. He declared the "use and distribution of literature advertising professional abilities" was not ground for revocation or suspension of a doctor's license. He also voided a law against advertising prices for professional services or corrective devices and struck down an administrative regulation that barred all advertising by doctors.

However, his ruling did leave intact some parts of the advertising laws, those that specified medical advertising which is false or misleading and which overcompliments a doctor's services is illegal. In other words, if doctors are truthful, they can advertise.

Winona Daily News
The daily record
Friday, June 22, 1979 7a

Orders signed in death suit

Several orders have been signed by Winona County District Court Judge Glenn Kelley concerning the case of Sylvia Boettcher, 1596 Circle Dr., trustee for the heirs of Edward Boettcher, against R. C. Cone, D.C., and the Winona Cone Chiropratic Office.

The case involves the March 26, 1978, death of Edward Boettcher, who became ill and died after he went to consult Dr. Cone on March 4, 1978. Boettcher died of an intercranial hemorrhage due to a probable ruptured aneuryism.

Kelley has granted the defendant's summary judgment concerning the second count of the complaint, which asks for punitive damages. In granting summary judgment, Kelley also denied the plaintiff's motion for $750,000 for punitive damages against Cone.

Kelley also ordered that since summary judgment was granted Cone will not be required to turn over information concerning his real estate, personal property or other assets.

However, Kelley has ordered Cone shall be required to answer several questions in the interrogatories and has ruled Mrs. Boettcher is entitled to know to what extent Cone was prescribing medicines, drugs and vitamins.

In ordering certain questions answered, Kelley states, Mrs. Boettcher will be furnished with that information, but privileged doctor-patient information concerning others not involved in the case will not be revealed.