

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

*Joint Committee for
Review of
Administrative Rules
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hr_AC-EdR_RCP_pt01a
- 97hr_AC-EdR_RCP_pt01b
- 97hr_AC-EdR_RCP_pt02

- Appointments ... Appt
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- Clearinghouse Rules ... CRule
- 97hr_JCR-AR_CRule_98-192
-
- Committee Hearings ... CH
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- Committee Reports ... CR
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- Executive Sessions ... ES
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- Hearing Records ... HR
-
- Miscellaneous ... Misc
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- Record of Comm. Proceedings ... RCP
-

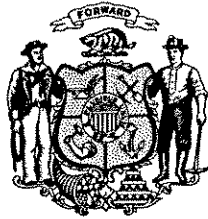
CHIEF, 3, 3, 37 DEFINITIONS, APPLICATIONS,
98-192 TEM/PERMITS, RENEWAL

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-192

AN ORDER to repeal Chir 2.02 (2) and 3.03 (2) (c) and chapter Chir 7; to amend Chir 1.01, 1.02 (intro.), 2.02 (intro.), (1), (3), (4), (5) and (6) (intro.), (a) and (b), 2.025, 2.03 (1) and (2) (title), (intro.) and (b), 2.04, 2.05, 2.07 (2) and (3), 2.08, 2.09 (1), 2.10 (1) (intro.), (a), (b) and (c) and (3), 2.11 (2) and (3), chapter Chir 3 (title), 3.01, 3.02 (1) (b), 3.03 (1) (e) and (f) and (2) (intro.), (b), (e), (f), (g) and (h), 3.035 (1) (intro.) and (b) and (3), 4.05 (1) (a), (b) 1., 2., 3. and (c) and (2) (a) and (b), 6.02 (18) and 9.04 (6); and to create a Note following Chir 2.02 (3), 2.02 (7), a Note following 3.03 (1) (c) 3., 3.03 (2) (k) and 6.02 (30), relating to definitions, applications, examinations, temporary permits and renewal.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

12-01-98 RECEIVED BY LEGISLATIVE COUNCIL.
12-23-98 REPORT SENT TO AGENCY.

RS:PS;jt;kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

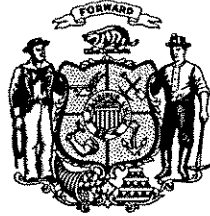
Comment Attached YES NO

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CLEARINGHOUSE RULE 98-192

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

4. Adequacy of References to Related Statutes, Rules and Forms

The rule analysis cites, as statutes interpreted, s. 446.04 (1), (4) and (5), Stats. Section 446.04, Stats., generally relates to unprofessional conduct and the three cited subsections pertain, respectively, to: conduct of a character likely to deceive or defraud the public; splitting fees for chiropractic services with persons other than an associate licensed chiropractor; and use of unprofessional advertising. The rule includes three provisions, in SECTIONS 9, 25 and 26, that relate to the conduct of a person taking a chiropractic examination or making material misstatements, omissions or falsifications in applying for or renewing a license. However, the rule does not contain any provisions relating to fee splitting or unprofessional advertising. Therefore, the references to subs. (4) and (5) should be removed. Reference should be made to s. 446.02 (2) (b), Stats., which requires the chiropractic examining board to promulgate rules establishing educational requirements for obtaining a license, including requiring a provision that, beginning July 1, 1998, an application must be accompanied by evidence that the applicant has obtained a bachelor's degree and has graduated from a college of chiropractic approved by the examining board. The board may also wish to cite s. 446.02 (3g) (b), Stats., which directs the board to promulgate rules establishing additional requirements for obtaining a license and s. 446.02 (3r), Stats., which permits the board to promulgate rules providing for the granting of a temporary permit to practice chiropractic to an individual licensed in another state, territory or country and establishing requirements for practicing chiropractic under a temporary permit. Those subjects are covered in the rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The first and third sentences of the analysis are awkwardly worded. For greater clarity, the phrase “is modifying” in the first sentence could be changed to “proposes to change the term” and the phrases “clinical examination” and “practical examination demonstrating clinical competence” should be placed in quotation marks to highlight the proposed change in terminology. A period should be inserted after the word “practice” on line 5. The third sentence is not a complete sentence and does not make sense as written. It should be reviewed and rewritten. On line 10 of the analysis, the word “that” should be inserted after the word “indicating.” On line 12, the terms “certificate of education” and “official certified transcript” should be placed in quotation marks.

b. In SECTIONS 2, 15, 18 and 22, what is the rationale for changing the phrase “the fee specified in s. 440.05 (1), Stats.” to the fee *required under* s. 440.05 (1), Stats.? Is this intended to be a substantive change? “The fee specified . . .” is used throughout the statutes and administrative rule.

c. In s. Chir 2.02 (3), for consistency with statutory language in s. 446.02 (2) (b), Stats., the phrase “listed as” should be inserted after “accrediting body” on line 2. This comment also pertains to the language in s. Chir 2.02 (6) (a) in SECTION 6.

d. In the Note to SECTION 5, the phrase “federal department of education” should not be capitalized.

e. In the treatment clause to SECTION 6, the comma following “(5)” should be replaced by the word “and.”

f. In s. Chir 2.02 (6) (intro.), the word “and” on line 2 should be changed to “or.”

g. In the treatment clause to SECTION 8, the first comma should be replaced by the word “and.” Also, on the second line of s. Chir 2.025, the phrase “shall be” should be replaced by the word “are,” as this is current language.

h. In s. Chir 2.04, the phrase “who violated” on line 4 should be changed to “violates” and the phrase “who otherwise cheated or acted” on line 5 should be changed to “otherwise cheats or acts.”

i. Section Chir 2.07 (2) changes the current requirement of a passing grade of 75 on the state law examination to a grade “determined by the board to represent minimum competence to practice.” Will the board make this determination for each individual applicant taking the exam, for all applicants taking the exam at a particular sitting or for all applicants taking examinations at any time? How will applicants know what the board has determined to be minimum competence? Will this be included in the administrative rules? The same comment pertains to s. Chir 2.07 (3).

j. In s. Chir 2.09 (1) (intro.), the word “clinical” on line 1 should be stricken-through, the word “practical” should be inserted and underscored following “clinical” and the phrase

“demonstrating clinical competence” should be inserted and underscored following the word “examination.”

k. In the treatment clause to SECTION 12, the comma following the “(b)” should be replaced by the word “and.”

l. In SECTION 14, the title of ch. Chir 3 is changed from “Licensure” to “Licensure Registration and Renewal.” It is suggested the word “Licensure” be changed to “License,” since licensure refers to the act or practice of granting licenses, while a license is the item being registered or renewed. Also, it is suggested that the title to s. Chir 3.01 be changed to read “Registration and Renewal of License.” Finally, in the text of s. Chir 3.01, the phrase “of registration of license” on line 3 could be changed to “of license registration.”

m. In s. Chir 3.03 (2) (e), for consistency with other rule and statutory provisions, the phrase “United States” on line 3 should be replaced by the word “federal.”

n. In the treatment clause to SECTION 22, the comma following “(intro.)” should be replaced by the word “and.” Also, in s. Chir 3.035 (1) (intro.), the word “pay” on line 2 should be changed to “pays” and the word “each” on line 3 should be changed to “all.”

o. In s. Chir 6.02 (18), the comma following “misrepresentation” on line 2 should be deleted and the word “a” should be inserted after the word “for” on line 3.

p. In s. Chir 6.02 (30), where can the rules of conduct of an examination be found? [See also s. Chir 2.04.]

q. In s. Chir 9.04 (6), should semesters be referenced, as well as trimesters and academic quarters?

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CHIROPRACTIC EXAMINING BOARD
CHIROPRACTIC EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 98-)

PROPOSED ORDER

An order of the Chiropractic Examining Board to **repeal** Chir 2.02 (2), 3.03 (2) (c) and chapter Chir 7; to **amend** Chir 1.01, 1.02 (intro.), 2.02 (intro.), (1), (3), (4), (5), (6) (intro.), (a) and (b), 2.025, 2.03 (1), (2) (title), (2) (intro.) and (2) (b), 2.04 (title), 2.04, 2.05, 2.07 (2), (3) (title) and (3), 2.08, 2.09(1), 2.10 (1) (intro.), (a), (b), (c) and (3), 2.11 (2) (title), (2) and (3), ch. Chir 3 (title), 3.01 (title) and 3.01, 3.02 (1) (b), 3.03 (1) (e), (f), (2) (intro.), (b), (e), (f), (g) and (h), 3.035 (1) (intro.), (b) and (3), 4.05 (1) (a), (b) 1., 2., 3., (c), (2) (a) and (b), 6.02 (18) and 9.04 (6); and to **create** a Note following Chir 2.02 (3), 2.02 (7), a Note following 3.03 (1) (c) 3., 3.03 (2) (k) and 6.02 (30), relating to definitions, applications, examinations, temporary permits and renewal.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats.

Statutes interpreted: s. 446.04 (1), (4) and (5), Stats.

In this proposed rule-making order the Chiropractic Examining Board is **modifying** clinical examination to practical examination demonstrating clinical competence to reflect the actual nature of the examination. Rather than having a specific passing grade, which may change, the rule is amended to indicate that to pass the examination each applicant shall receive a grade determined by the board to represent minimum competence to practice. If after review of a failed examination the applicant's application shall be deemed incomplete and the applicant may be reexamined. If reexamination is not available within 6 months of the date of the examination the applicant failed, then the applicant may request a hearing. The section on cheating on examinations is expanded to include violation of rules of conduct or otherwise acting dishonestly. A section is created indicating ^{that} an otherwise qualified applicant with disabilities shall be provided with reasonable accommodations to comply with the Americans With Disabilities Act. In Chapter Chir 2, certificate of education is replaced with official certified transcript for consistency with Chapter Chir 3. Notes are created to indicate where an individual may obtain information regarding approved institutions and programs relating to licensure by endorsement. The requirement that an applicant submit a current passport-type photograph for admission to the examination is repealed since photographs no longer are a useful check of personal identification. Testing administration firms and department proctors routinely require a

picture ID, usually a driver's license, at the examination site. Requiring that an applicant send a picture also creates unnecessary administrative processing for staff. Chapter Chir 7, access to public records, is repealed as that is addressed in section 19.35, Stats.

TEXT OF RULE

SECTION 1. Chir 1.01 and 1.02 (intro.) are amended to read:

Chir 1.01 Authority. The rules in chs. Chir 1 to 40 11 are adopted under authority in ss. 15.08 (5) (b), 227.11 (2) and ch. 446, Stats.

Chir 1.02 Definitions. (intro.) As used in chs. Chir 1 to 40 11:

SECTION 2. Chir 2.02 (intro.) and (1) are amended to read:

Chir 2.02 Applications. (intro.) An applicant for the practical examination demonstrating clinical competence for license as a chiropractor shall make application on a form prescribed by the board at least 30 days prior to the date of the next scheduled examination and shall also submit:

(1) The fee ~~specified in~~ required under s. 440.05 (1), Stats. *why change?*

SECTION 3. Chir 2.02 (2) is repealed.

SECTION 4. Chir 2.02 (3) is amended to read:

Chir 2.02 (3) ~~A~~ An official certified transcript sent directly to the board from a college or university accredited by an accrediting body nationally recognized by the secretary of the federal department of education, or a post-secondary technical college showing completion by the applicant of a minimum of 60 credits in post-secondary academic education as specified in s. 446.02 (2), Stats. *listed as* *see 446.02 (2)(b)*

SECTION 5. A Note following Chir 2.02 (3) is created to read:

Note: Accrediting bodies nationally recognized by the secretary of the Federal Department of Education include the New England Association of Schools and Colleges, the Middle States Association of Colleges and Schools, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, and the Western Association of Schools and Colleges.

SECTION 6. Chir 2.02 (4), (5), (6) (intro.), (a) and (b) are amended to read: *2nd*

Chir 2.02 (4) ~~A~~ An official certified transcript sent directly to the board from a chiropractic college accredited by the commission on accreditation of the council on chiropractic education, or approved by the board, ~~sent directly to the board by the college.~~

(5) Proof of successful completion of the initial licensure examinations of the national board of chiropractic examiners.

(6) (intro.) Applications for an initial license to practice chiropractic in this state received on ~~and~~ after July 1, 1998, shall include all of the following:

(a) ~~A certificate of education signed and sealed by the chancellor, dean or registrar of~~ An official certified transcript sent directly to the board from a college or university accredited by an accrediting body nationally recognized by the secretary of the federal department of education, stating that the applicant has graduated from that college or university with a bachelor's degree; ~~and,~~ *listed as*

(b) ~~A certificate of professional education signed and sealed by the chancellor, dean or registrar of~~ An official certified transcript sent directly to the board from a college of chiropractic accredited by the council on chiropractic education and approved by the board stating that the applicant has graduated from the college with the degree of doctor of chiropractic.

SECTION 7. Chir 2.02 (7) is created to read:

Chir 2.02 (7) An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

and
SECTION 8. Chir 2.025 ^{or} 2.03 (1), (2) (title), (2) (intro.) and (2) (b) are amended to read:

Chir 2.025 Time for completing applications and taking examination. *are (current lang.)* An application is incomplete until all materials described in s. Chir 2.02 ~~shall be~~ ^{are} filed with the board. All application materials described in s. Chir 2.02 shall be filed with the board within one year from the date the first item is filed. If an application is incomplete for more than one year, or if an applicant fails to take an examination within one year from the date the application is complete, the applicant shall begin the application process anew in order to take the practical examination demonstrating clinical competence for a license as a chiropractor.

Chir 2.03 (1) STATE LAW EXAMINATION. An applicant shall pass an examination on state laws including but not limited to ch. 446, Stats., and chs. Chir 1 ~~through 7 to 11.~~

(2) (title) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL EXAMINATION COMPETENCE. (intro.) An applicant shall pass each part of a ~~clinical~~ practical examination demonstrating clinical competence which includes the following parts:

(b) X-ray interpretation.

SECTION 9. Chir 2.04 (title), 2.04 and 2.05 are amended to read:

Chir 2.04 (title) Unauthorized assistance or cheating on examinations. The board may withhold the ~~score grade, deny release of grades or deny issuance of a credential~~ of an applicant who gives or receives unauthorized assistance during the state law or clinical practical examination demonstrating clinical competence, who violated rules of conduct of an examination, or who otherwise cheated or acted dishonestly respecting an examination. The board may consider this applicant for retesting at a future time.

conduct

x
examination

Chir 2.05 Controls. The board chairperson or, examiner, or examination provider personnel may announce time limits and other necessary controls prior to the examinations. A valid driver's license bearing the applicant's photograph or an official photo identification card shall be required for admission to all examinations.

are

SECTION 10. Chir 2.07 (2), (3) (title) and (3) are amended to read:

Chir 2.07 (2) STATE LAW EXAMINATION. To pass the state law examination, each applicant shall receive a grade of ~~75 or above~~ determined by the board to represent minimum competence to practice.

where will be set forth

Chir 2.07 (3) (title) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL EXAMINATION COMPETENCE. To pass the clinical practical examination demonstrating clinical competence, an applicant shall receive a grade of ~~75 or above~~ determined by the board to represent minimum competence to practice on each part of the examination.

into here

SECTION 11. Chir 2.08 and 2.09 (1) are amended to read:

Chir 2.08 Announcement of results. Examination results shall be released to the candidate applicant after all papers are graded and the results have been approved by the board.

Chir 2.09 (1) (intro.) In case of failure of an applicant on the clinical examination, all grades below ~~75~~ passing shall be reviewed by the board or by 2 members designated by the chairperson.

practical
demonstrating clinical competence

SECTION 12. Chir 2.10 (1) (intro.), (a), (b) ^{*and*} (c) and (3) are amended to read: *x*

Chir 2.10 (1) (intro.) An applicant wishing to claim examination error must file a written request for board review in the board office within 30 days of the date the examination was reviewed. The request shall include all of the following:

(a) The applicant's name and address;

(b) The type of license applied for;

SECTION 17. Chir 3.03 (1) (e) and (f) are amended to read:

Chir 3.03 (1) (e) Has successfully completed a ~~clinical~~ practical examination demonstrating clinical competence which, in the board's judgment, is substantially equivalent to the practical examination demonstrating clinical competence administered by the board.

(f) Has successfully completed the special purpose examination in chiropractic, if the applicant has not taken the ~~examination~~ initial licensure examinations of the national board of chiropractic examiners.

SECTION 18. Chir 3.03 (2) (intro.) and (b) are amended to read:

Chir 3.03 (2) APPLICATION PROCEDURE. (intro.) Each applicant shall file a completed, ~~notarized~~ application on forms provided by the board. The application shall include all of the following:

(b) The fee ~~specified in~~ required under s. 440.05 (1), Stats. *License renewal 1/1/88 sec 2*

SECTION 19. Chir 3.03 (2) (c) is repealed.

SECTION 20. Chir 3.03 (2) (e), (f), (g) and (h) are amended to read:

Amend Chir 3.03 (2) (e) A certified transcript verifying that the applicant has a bachelor's degree from a college or university accredited by an accrediting body nationally recognized by the secretary of the United States department of education ~~verifying a bachelor's degree~~ if the applicant first applies for any license to practice chiropractic in any jurisdiction on or after July 1, 1998. The transcript shall be sent directly to the board by the college or university. *✓*

(f) Verification of successful completion of a ~~clinical~~ practical examination demonstrating clinical competence. The verification shall be forwarded directly to the board from the state that administered the examination.

(g) Proof of successful completion of the special purpose examination in chiropractic ~~in lieu of or~~ the examination of the national board of chiropractic examiners. The proof of completion shall be forwarded directly to the board from the institution that administered the examination.

(h) Proof of successful completion of the state law examination ~~with a grade of 75 or above.~~

SECTION 21. Chir 3.03 (2) (k) is created to read:

Chir 3.03 (2) (k) An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

SECTION 22. Chir 3.035 (1) (intro.); (b) and (3) are amended to read:

Chir 3.035 (1) (intro.) The board may grant a temporary permit to practice chiropractic to any chiropractor who files an application prescribed by the board, pay^s the fee ~~specified in~~ required under s. 440.05 (6), Stats., and meets each of the following conditions:

(b) The applicant will be practicing chiropractic only as a chiropractor for participants in an athletic or ~~artistic~~ performing arts event, or as an instructor in a specific chiropractic education seminar approved for continuing education by the board.

(3) A chiropractor holding a temporary permit to practice chiropractic may not use the temporary permit to provide relief services or practice coverage for the practice of any chiropractor licensed in this state. All temporary permits issued by the board shall bear the legend "limited to sporting or ~~artistic~~ performing arts events and approved educational purposes."

SECTION 23. Chir 4.05 (1) (a), (b) 1., 2., 3. and (c) are amended to read:

Chir 4.05 (1) (a) Obstetrics and abortions, except nothing in this paragraph may be construed to prevent the practice of chiropractic as described in s. Chir 4.03 during a patient's pregnancy.

(b) 1. Surgery.

← 2. Subcutaneous administration of substances; ~~or~~.

← 3. Acupuncture by needle insertion or laser application.

(c) Colonic irrigation; ~~or~~.

SECTION 24. Chir 4.05 (2) (a) and (b) are amended to read:

Chir 4.05 (2) (a) Acuclips.

(b) Pfeiffer technique; ~~and~~.

SECTION 25. Chir 6.02 (18) is amended to read:

Chir 6.02 (18) Obtaining or attempting to obtain a license through fraud or misrepresentation, or making any material misstatement, omission or falsification in connection with an application for license, registration or renewal.

SECTION 26. Chir 6.02 (30) is created to read:

Chir 6.02 (30) Giving or receiving unauthorized assistance, violating rules of conduct, or otherwise cheating or acting dishonestly respecting any examination required for the granting of a license or registration to practice chiropractic.

conduct

SECTION 27. Chapter Chir 7 is repealed.

SECTION 28. Chir 9.04 (6) is amended to read:

Chir 9.04 (6) Provides a list to the board ~~every three months~~ 45 days prior to every trimester or academic quarter of the chiropractors in Wisconsin who will be acting as preceptors in the program.

*as there as
year*

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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12/1/98