

LYONS FAMILY CHIROPRACTIC

03-082 C

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Lyons Family Chiropractic Fax (608) 835-2832 Phone (608) 835-2884

Fax

To: Jennifer Helbur Fax: 266-0403
 Phone: _____ Date: 2.25.04
 Re: Hearing @ 8:30 Pages: 2 incl cover
"Our attitude towards life determines life's attitude towards us." - Earl Nightingale

Jennifer,
 I will not be able to attend this morning. Here is a statement for the record. Thank you for keeping me informed.

Dan

copies to members

Be Healthy by Choice, Not by Chance

602 Pleasant Oak Drive • Suite D • Oregon, WI 53575 • 608-835-2884

Lyons

Family Chiropractic

Dear Senators,

As President of the Alliance of Wisconsin Chiropractors I would like ~~voice our support of~~ clearing house rule 03-082. The main opposition to these changes is based upon two points, Section 2, which replaces the state licensure exam with the National Board part IV exam, and section 27, which grants the board the discretion to approve continuing education programs.

It is important to note that these changes are already in effect and that both of these issues have been the focus of WCA lawsuits against the board in the past year. In addition, the WCA has proposed legislation (AB356) that would take away the boards discretion in who can provide continuing ed. This piece of legislation has been widely opposed by both WCA members and non-members alike.

It is the position of the Alliance of Wisconsin Chiropractors that adopting the National Board Part IV is a good change for the following reasons.

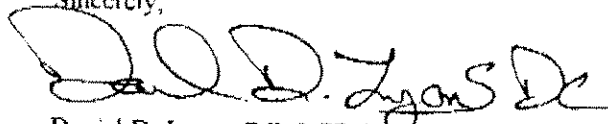
1. It reduces liability to the state of Wisconsin and the Board
2. It Places the testing procedures and grading process in the capable hands of the National Board of Chiropractic Examiners whose *sole purpose* is to administer and grade these examinations. In doing so it reduces the workload of the state board.
3. It is a fiscally responsible decision. By removing the cost of administering the state exam and accepting the National Board Part IV, the state will most likely make money instead of losing money or breaking even.

In the matter of who is capable of sponsoring continuing education, it is the position of the Alliance of Wisconsin Chiropractors that the board is fully competent to make those decisions and should remain in control of who can do so. The WCA's proposed legislation would require a rule change in order to add or remove a sponsoring organization to or from the list of acceptable sponsors. This self-serving action is a very ineffective and expensive way to manage continuing education. The WCA's push to change the continuing education statutes is largely if not entirely financial.

Adopting these changes will protect the public and the chiropractic profession by allowing the board to act quickly if needed where continuing education is concerned and save tax dollars by removing the liability and the cost of administering a state exam when there is an acceptable substitute already in place that is already accepted by most states.

As President of the AWC I apologize for my absence and I want it to be perfectly clear that we, at the Alliance of Wisconsin Chiropractors support the licensing board and their actions and that we support the adoption of these changes.

Sincerely,



Daniel D. Lyons DC, LCP (Hon)
President, Alliance of Wisconsin Chiropractors

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Halbur, Jennifer

From: Hoxtell, Wade
Sent: Wednesday, February 25, 2004 12:54 PM
To: Halbur, Jennifer
Subject: FW: Chiropractic rule changes

-----Original Message-----

From: Dr. Jeffrey M. Wilder [mailto:jmchiro@itis.com]
Sent: Wednesday, February 25, 2004 12:50 PM
To: sen.roessler@legis.state.wi.us
Subject: Chiropractic rule changes

Dear Senator Roessler,

Thank you very much for the public hearing this morning. The WCA is very appreciative of your leadership in allowing us the time to explain in detail our objections to the Examining Board's proposed rule changes.

Should you have any questions of the real-world implications of the proposed rule changes, I would be delighted to answer them.

I'm sure you realize the irony of the situation: the doctors want a higher standard in place for clinical proficiency; the Board favors a lesser standard. The doctors want their education from organizations with known institutional credibility; the Board wants to be able to determine which organizations are credible.

Thank you for your careful consideration of the position of the state's practicing chiropractors.

Dr. Jeffrey M. Wilder, DC, FACO
Board Certified Chiropractic Orthopedist
President, Madison Chiropractic
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Wisconsin Chiropractic Association

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**Testimony of Jeff Wilder, DC
In Opposition to Clearinghouse Rule 03082**

Good morning. My name is Dr. Jeff Wilder. I am the Chair of the Wisconsin Chiropractic Association's Government Affairs Committee. I appreciate the opportunity to testify on Clearinghouse Rule 03082 which would make many significant changes to the practice of chiropractic in Wisconsin.

The WCA urges this committee to reject these rule changes because the process used by the board in creating the rules was seriously flawed. When the examining board began this rule making process, their stated purpose was to clean up obsolete language and to make other minor changes. However, Dr. Steven Conway, the board member who prepared the rule changes, inserted rule changes that would greatly benefit his own organization, Allied Health of Wisconsin.

The rule changes were kept quiet until the public hearing was announced. At that time, the notice stated that the purpose of the public hearing was "to consider minor changes to conform the rules to current practices and to correct oversights and problematic language in the current rules." In fact, this summary completely misled the profession and was allow changes that are highly controversial and will have a major impact on the chiropractic profession. When the WCA learned of this deceit, we asked that the board re-schedule the public hearing until such time as the public could be properly notified about the scope of the hearing. The request was denied.

One of the purposes of a trade association is to notify our members about proposed changes in the law. We did so after learning the true intent of Clearinghouse Rule 03082. Dozens upon dozens of chiropractors wrote to the examining board asking that the controversial elements of the rule be eliminated. The board dismissed all of the responses by stating these doctors would never have written if they had not been informed of the rule changes by the WCA. In effect the board was stating that the profession has no right to comment on rules that they intended to be kept secret.

The initial conflict of interest on the part of Dr. Conway combined with the process used to deny the profession and public the right to fairly comment on these proposed rule changes are offensive to all who believe in open and honest state government.

Let me provide you with the details of the two most egregious examples. One of the so called "minor" rules changes proposes eliminating Wisconsin's practical exam. The practical exam is part of the process the state has used for decades to test the competency of an individual before they get a license to practice chiropractic in the state. The examining board decided unilaterally that they would substitute the national exam, known as Part IV, for the Wisconsin practical exam.

The examining board made this decision without a public hearing even though the practical exam is required by both statute and rule. The WCA immediately filed a lawsuit against the examining board because our attorneys assured us that the board was required to hold a public hearing before a change of this magnitude. In the first rulings in this case the court has ruled against the examining board on every procedural motion they have attempted to have the lawsuit dismissed. The decision of the court is part of the materials we have supplied to the committee.

Instead of allowing the lawsuit to determine the legality of their actions, the examining board passed emergency rules allowing them to discontinue Wisconsin's practical exam. The basis for determining there was an "emergency" was the fact that the WCA had filed a lawsuit against them. If we pause for a moment, you can appreciate the irony of their actions. First, the examining board takes an action that violates the law. Then, when they are caught, they declare that the act of catching them constitutes an emergency. And now, they want to end the ability of the court to find they violated the law by having you pass the rule

change that eliminates the required for a state run practical exam. And they call this a "minor change to existing rules".

The WCA opposes the elimination of the practical exam because we do not believe that the national exam adequately tests graduates for competency. According to Department of Regulation & Licensing records, approximately 40% of those taking Wisconsin's practical exam over the past 3 1/2 years have failed. A spokesperson for the Federation of Chiropractic Licensing Boards (FCLB) stated that only 13% of those taking the national Part IV failed its most recent exam. This disparity seems to verify the long held view that the national boards are not designed to adequately determine a graduate's minimum competency to practice.

This inadequacy may be directly related to a consumer safety feature built into the Wisconsin exam. Wisconsin has required that a candidate for licensure pass all parts of its exam. An examinee must re-take any portion of the exam they fail and, the entire exam if they fail two or more parts. This is not true of the national Part IV exam. The national pass/fail test score is based on the examinee's cumulative score. If an individual fails one or more sections of the test, they may still pass the overall exam if their test scores in other sections of the exam are sufficient to overcome the deficiency in other areas.

The board also proposes an extremely significant change to the continuing education rules by giving itself the authority to approve continuing education programs offered by any chiropractic organization. Before I begin my comments in this area, I think it is important to remind you that this section of the rules was inserted by Steve Conway who at the time served as legal counsel and lobbyist for Allied Health of Wisconsin who would greatly benefit from this rule change. The WCA believes that it was improper for him to suggest a rule change that would benefit his organization and while he has recently recused himself from voting on the matter, we believe that is closing the barn door a little late.

That said, the WCA believes that this rule change will be extremely detrimental to the chiropractic profession for reasons far greater than the benefit it will give to a for-profit company. The rules currently allow chiropractors to obtain their chiropractic continuing education from any of our 16 colleges, the American Chiropractic Association, the International Chiropractic Association, the medical colleges, the osteopathic colleges or the WCA. The examining board proposes to give themselves the authority to add any other chiropractic organization to this list without defining what constitutes a chiropractic organization or any operational or quality standards for these organizations before they offer continuing education.

Members of the committee, this is wrong and will lead to significant quality problems from the day this rule is approved. Why is this so? Because anyone will be able to call themselves a chiropractic organization. Vendors who want to use chiropractic education to sell their products will certainly qualify. Those individuals who want to teach concepts that have never been taught at a chiropractic college will also be able to pass off their personal philosophies as chiropractic education. Whether you are a brand new student or a for profit company, they will all have to be allowed to offer continuing education because the examining board did not define any quality standards for the organizations they may approve.

Past examining boards have recognized that the organizations allowed to sponsor continuing education have significant responsibilities for instructing chiropractors on their clinical and administrative responsibilities, insuring that the chiropractic profession is professionally integrated into the health care delivery system, and that the profession interfaces properly with the host of administrative agencies that control elements of a chiropractor's practice. The education of chiropractors is an integral part of these responsibilities and, until a few years ago, the examining board has denied continuing education credit for groups attempting to take over this role.

What changed? Allied Health of Wisconsin exploited a loophole in the rule that allowed a college or a national trade association to delegate their sponsorship responsibilities to another organization. The loophole was caused because when the rules were drafted a number of years ago, neither the examining board nor the WCA contemplated that one of the named sponsoring groups would care so little about their integrity that they would sell or trade their "sponsorship rights or responsibilities" for as little as a \$100.

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This is something that would never be done by the UW Medical School or any other prestigious university or medical program.

As you know there is pending legislation that would fix this problem by defining the responsibilities of those that sponsor chiropractic continuing education. Instead of waiting for the legislature to reach a conclusion, Dr. Conway inserted this provision into the "minor rule changes" to give Allied Health an advantage if these rules were passed.

"For profit" organizations should not be allowed to run continuing education programs. While some groups may be professionally run; their participation taints the credibility of the programs. When "for profit" organizations are sold or traded sponsorship rights, you tend to see them offering education to enhance their "corporate" credibility or to support only the products they produce. In summary, these groups cannot escape their inherent conflicts of interest.

The chiropractic examining board has proposed many changes to the rules that truly are minor. We respectfully ask the committee to send this rule back to the chiropractic examining board and focus only on those changes. Thank you for the opportunity to testify. I would be pleased to answer any of your questions.

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 2

COUNTY OF DANE

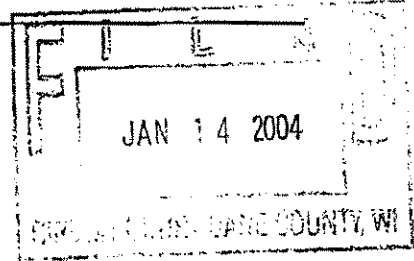
WISCONSIN CHIROPRACTIC
ASSOCIATION,

Plaintiff,

Vs.

WISCONSIN CHIROPRACTIC
EXAMINING BOARD,

Defendant.



Case No. 03CV1491

DECISION AND ORDER

Plaintiff Wisconsin Chiropractic Association seeks a declaratory judgment that the Wisconsin Chiropractic Examining Board has exceeded its statutory authority by issuing chiropractic licenses to applicants who have not passed or taken Wisconsin's practical examination prior to licensure. Defendant Board moves to dismiss the complaint. The Association moves for leave to file its Second Amended Complaint. For the reasons set forth in this decision, the court grants the Association's motion and denies the Board's motion to dismiss.

PROCEDURAL HISTORY

By complaint filed May 16, 2003 the Association alleged that on December 19, 2002 the Board voted to accept the certificate of the National Board of Chiropractic Examiners in lieu of the Wisconsin Board's own practical examination.¹ The complaint alleges at ¶ 7 that 40% of chiropractic license applicants fail the Wisconsin practical

¹ Wis. Stat. § 446.02 authorizes the Chiropractic Examining Board to promulgate rules establishing educational and examination requirements for licensure as a Wisconsin chiropractor. Wis. Admin. Code Ch. CHIR 2 establishes the examination requirements applicable to this action.

examination but only 13% of applicants fail the National Board practical examination. The Association requested a declaration that the Board's adoption of the national certification violates Wisconsin law. The Board moved to dismiss the complaint on grounds of sovereign immunity, lack of a justiciable controversy, the Association's lack of standing, and failure to state a claim upon which relief could be granted.

On June 28, 2003 the Board adopted an emergency rule deleting the requirement that license applicants pass the Wisconsin practical chiropractic examination and on August 8, 2003 the Association amended its complaint to add the allegation that the Board's promulgation of the emergency rule exceeded its authority.² The Board moved to dismiss the amended complaint. With its brief in opposition to the Board's motion to dismiss, the Association on November 6, 2003 moved for leave to file its second amended complaint asserting Wis. Stat. § 227.40 as the statutory basis for its claim. Briefing concluded December 10, 2003 and both motions are now ready for decision.

DISCUSSION

I. Sovereign immunity and the second amended complaint.

In response to the original and first amended complaints, the Board argued that the state's sovereign immunity deprives the court of personal jurisdiction over it, citing a host of cases summarized in *Turkow v. DNR*, 216 Wis. 2d 273, 281-282 (Ct. App. 1998). Sovereign immunity derives from the Wisconsin Constitution and means that the state may not be sued without its consent, and a plaintiff cannot proceed against the state unless it can point to a legislative enactment authorizing suit. The Board does not dispute, and appropriately so, that Wis. Stat. § 227.40 constitutes the legislature's consent

² A copy of the Wis. Admin. Register No. 571, July 2003, p.4, containing the text of the Board's finding of emergency is attached to this decision.

to suit for purposes of challenging the validity of an administrative rule (Board's reply brief at fn. 4). Thus, if leave to amend is granted, the Board's second amended complaint remedies the personal jurisdictional defect by its explicit reliance on § 227.40 as the basis for this action.

Wis. Stat. § 802.09(1) provides that following an initial amendment of pleadings a party "may amend the pleading only by leave of court or by written consent of the adverse party, and leave shall be freely given at any stage of the action when justice so requires." The Association asserts that its intent throughout this action has been to challenge the validity of the Board's emergency rule (or its failure to promulgate a rule) and that the Association's failure to cite § 227.40 was simply typographical error. In essence, the Association argues that its pleading defect is technical, not fundamental, and that this court therefore is competent to grant leave to correct the error by amending the complaint.

In *Novak v. Phillips*, 2001 WI App 156, 246 Wis. 2d 673, the court determined that the trial court has subject matter jurisdiction to determine whether leave to amend a jurisdictionally defective pleading should be granted. A trial court's decision whether to grant leave to amend pleadings is discretionary. *Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, 239 Wis. 2d 406, 415. In this case, the second amended complaint is identical to the first amended complaint but for the *ad damnum* clause at page 5, substituting Wis. Stat. § 227.40(1) for § 804.04(1). There is no prejudice to the Board caused by this amendment, for the Board has been on notice as to the substance of the claim against it since the filing of the original complaint on May 16, 2003. Indeed, the only allegations changed between the original and second amended complaints concern

the Board's own adoption of the emergency rule in June 2003 which codified the December 2002 Board action.

Accordingly, the court grants the Association leave to file its second amended complaint. Because the legislature has waived the Board's sovereign immunity for purposes of declaratory judgment actions to test the validity of administrative rules in § 227.40(1), the court has personal jurisdiction over defendant Board.

II. The Association's Standing.

Defendant Board asserts that the Association lacks a legally protected interest in the Board's decision to accept national certification as a demonstration of chiropractic qualification and that the complaint fails to present a justiciable controversy (amended motion to dismiss, ¶¶ 2-3). Because standing is a subset of justiciability, these claims will be considered together.

To maintain an action for declaratory judgment, the plaintiff must show a justiciable controversy. Justiciability requires: (1) a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy—that is to say, a legally protectible interest; and (4) the issue involved in the controversy must be ripe for judicial determination. *Putnam v. Time Warner Cable*, 2002 WI 108, ¶ 41, 255 Wis. 2d 447, 472. The third element of justiciability—expressed as standing—is at issue in this case. Standing to maintain a declaratory judgment action requires that a party have a personal stake in the outcome and be directly affected by the issues in controversy. *Lake Country Rac. & Ath. Club v. Vil. Of Hartland*, 2002 WI App 301, ¶ 15, 259 Wis. 2d 107, 115.

Defendant Board challenges the Association's standing to maintain this action because the legislature has vested the Board, and the Board alone, with plenary authority to determine who may practice chiropractic in Wisconsin. According to the Board, the Association lacks standing because it has "exactly zero" authority over Wisconsin's chiropractic practical examination (Board's initial brief at 10). This argument veers off course. If standing were to be determined solely by the authority to regulate, only the Board could challenge its own rules.

Instead, the court analyzes the Association's standing using the two-part test articulated in *Wisconsin's Environmental Decade, Inc. v. PSC (WED I)*, 69 Wis. 2d 1, 10, 230 N.W. 2d 243 (1975):

The first step under the Wisconsin rule is to ascertain whether the decision of the agency directly causes injury to the interest of the petitioner. The second step is to determine whether the interest asserted is recognized by law.

In *Wis. Hosp. Ass'n v. Nat. Resources Bd.*, 156 Wis. 2d 688, 702, 457 N.W. 2d 879 (Ct. App. 1990), the court applied the *WED I* test to a declaratory challenge to an administrative rule pursuant to § 227.40, noting that "[s]tanding for purposes of challenging an administrative decision is similar to the statutory requirements to challenge an administrative rule."

When standing is challenged on the basis of the pleadings, as in this case, the court accepts as true all material allegations of the complaint and construes the complaint in favor of the plaintiff, granting standing even if "the claims are no more than a 'trifle,'" *Town of Eagle v. Christensen*, 191 Wis. 2d 301, 316, 529 N.W. 2d 245 (Ct. App. 1995). The plaintiff alleges that it is an association of licensed Wisconsin chiropractors whose purpose is to "develop and enhance the professional services of chiropractors to the

public" (second amended complaint, ¶ 1). The Association further alleges that chiropractors who have not passed the Wisconsin practical examination will be eligible for membership in the Association (*Id.* at ¶ 14).

The reasoning of *WED I* and *Wis. Hosp. Ass'n* controls the question of standing in this case. Both cases hold that associations possess standing to challenge administrative decisions on behalf of their members. In *WED I*, the plaintiff environmental organization represented members who were customers in the area affected by the Public Service Commission's order establishing a natural gas priority system. In *Wis. Hosp. Ass'n*, plaintiff business and hospital associations sought declaratory relief concerning hazardous air contaminant standards promulgated by DNR rule. In neither case did the plaintiffs have independent statutory authority to regulate, as the Board urges the court to require as a precondition of standing in this case. At the pleadings stage of the proceedings, the court must resolve doubts in favor of plaintiff's standing and, as the court in *Wis. Hosp. Ass'n* stated, 156 Wis. 2d at 702, "[i]t is impossible to reconcile *WED* with a holding that the associations lack standing to bring the instant action." For purposes of this motion, then, the allegations of the complaint stating the Association's purpose and its members' interest in maintaining standards for chiropractic licensure are sufficient to defeat the Board's motion to dismiss for lack of standing.

III. Failure to state a claim.

Even if plaintiff survives, as it has, dismissal on jurisdictional or standing grounds, the Board contends that the complaint must nonetheless be dismissed for failure to state a claim upon which relief can be granted. The Board initially argued that the general authority granted boards in Wis. Stat. § 440.07(2) to utilize "test service

providers" bars plaintiff's claim. Now that this action is a declaratory challenge to an administrative rule, the Board questions which of its actions is being challenged (reply brief at 4). If it is the December 2002 vote to accept the national examination, the Board asserts that the vote is not a rule and is therefore beyond the scope of § 227.40. If, on the other hand, the Association challenges the June 2003 emergency rule, the Board reasons that the complaint fails to state a claim because the Board had statutory authority to adopt the emergency rule ratifying its earlier vote.³

The problem with the Board's position is that it deprives anyone and everyone, including the Association, of any review of the Board's actions changing the examination standard for chiropractic licensure. The Board's December 2002 "vote," however, could be considered a rule: "Section 227.40 logically encompasses policies or other statements, standards, or orders that meet the definition of 'rule' under Wis. Stat. § 227.01(13) but have not been promulgated as required by Wis. Stat. § 227.10." *Heritage Credit Union v. Office of Credit Unions*, 2001 WI App 213, ¶ 24, 247 Wis. 2d 589, 607.

Alternatively, plaintiff alleges that the June 2003 emergency rule conflicts with the Board's enabling statute; § 227.40(4)(a) provides that a rule must be held invalid if "it violates constitutional provisions or exceeds the statutory authority of the agency or was promulgated without compliance with statutory rule-making procedures." *See: Seider v. O'Connell*, 2000 WI 76, 236 Wis. 2d 211. At this early stage of the proceedings, when pleadings are to be taken at face value, the court cannot dismiss this action for failure to state a claim upon which declaratory relief may be granted. To do so would insulate from all review the Board's emergency rule and the action that preceded it. As the

³ The Board also advances the legally dubious proposition that the filing of this lawsuit justifies the finding of emergency.

Wisconsin Supreme Court stated in *Liberty Homes, Inc. v. DILHR*, 136 Wis. 2d 368, 383-384, 401 N.W. 2d 805 (1987):

Although agency rules have the full force and effect of legislative enactments, these rules do not receive the active scrutiny by the legislature that bills receive . . . The process of agency rulemaking though admittedly a very public process, e.g., sec. 227.02 (public hearing and notice requirements) is nevertheless a delegated process. For these reasons we believe that the courts should not presume conceivable facts to sustain agency rulemaking.

Even more so, the emergency rulemaking authority established in § 227.24 by definition dispenses with the very procedural requirements that ensure public input and agency accountability. The Board's argument that there have been no reported cases on the validity of an administrative finding of emergency does not mandate dismissal of this challenge for failure to state a claim.⁴ Accordingly, the court denies the defendant's motion to dismiss for failure to state a claim upon which relief can be granted.

ORDER

For the reasons stated, the court hereby GRANTS the motion of plaintiff Wisconsin Chiropractic Association for leave to file its second amended complaint, and DENIES the Wisconsin Chiropractic Examining Board's motion to dismiss the complaint.

Dated this 14th day of January 2004.

BY THE COURT:



Maryann Sumi, Judge
Circuit Court Branch 2

⁴ The court notes that the Chiropractic Examining Board has proposed a permanent rule adopting the national examination along with other changes to Wis. Admin. Code Ch. CHIR. Wis. Admin. Reg. No. 573, Sept. 30, 2003, pp. 18-23. The emergency rule has been extended through January 23, 2004. Wis. Admin. Reg. No. 576, Dec. 31, 2003, p.4.



Wisconsin Chiropractic Association

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Pres WCA

**Testimony of Sherry Walker, DC
In Opposition to Clearinghouse Rule 03082**

Good Morning. My name is Dr. Sherry Walker. I am President of the Wisconsin Chiropractic Association and I am pleased to testify here to day on behalf of our twelve hundred members throughout Wisconsin.

Last Wednesday, we brought close to 4,000 doctors and patients to the Capitol for an Assembly hearing. Instead of bringing all of those people back one week later, our board of directors rescheduled their patient appointments so they could join me here today. We are here because over the last few years the chiropractic examining board seems to be more concerned with playing politics than in legitimately protecting the interests of consumers.

ADDRESS

Let me give you a couple of examples that were not covered by Dr. Wilder's testimony. Under current rules, the examining board is required to conduct audits to make sure that chiropractors have the malpractice insurance required by law. Under the proposed changes to Chir 3.07, the board deletes the mandatory nature of this responsibility and makes it an option. The legislature made this a mandatory responsibility because they know that in the small percentage of cases where a chiropractor injures a patient, the patient deserves fair compensation for the injury.



It seems logical that a chiropractor who does not have professional liability insurance is also one that is likely to take other types of shortcuts in their practice. The public deserves this protection of periodic audits by the state and, by minimizing this responsibility, the examining board is degrading the quality standards of the chiropractic profession

*Not so
L.P.*

The proposed rule changes to Chir 3.09 allows the examining board to waive the CPR requirement in cases of hardship or retirement from practice. It is wrong to allow a waiver of this requirement for some chiropractors. The public has a right to expect that a chiropractor who holds a license to practice has the same minimum qualifications as every other chiropractor. If a chiropractor is not capable of performing CPR, it is reasonable to ask whether they are minimally qualified to practice at all.

In yet another of the so called "minor rule changes" the board changes the clinical applications for the use of laser therapy. Our current rules state that it is a prohibited practice for a chiropractor to use laser applications. You would expect that the examining board would enforce this rule. It does not. The examining board ignores chiropractors that routinely advertise that they provide laser services in violation of the law.

The board now proposes to change the rules to merely prohibit invasive laser applications. The rule change was proposed without discussion with the profession and without clinical justification. If it is time for a change in this rule, the WCA believes that it would be more appropriate to define the clinical conditions for which a chiropractor may use laser than to focus on technologies.

Again, in proposed rule changes to Chir 10, the examining board suggest changes to the rules that allow chiropractors to delegate a portion of their work to unlicensed professionals. As President of the WCA, I am somewhat embarrassed to admit that a percentage of chiropractors do not take

*Sherry Walker
CPR*

*Public
CPR
L.P.*

*WCA Rule
must be
approved
prior to
change
when in use*

*Dr. Wilder's testimony - 1 of reasons I came to WCA
Standards were completely - send back
Serving Wisconsin's health care needs since 1911*

their clinical responsibilities to their patients seriously. They allow their staff to provide services to patients without the training required by the law.

The response of the examining board has not been to audit chiropractors to insure their staff has the training necessary to take x-rays and provide physical therapy services. Instead, they focus on subtle wording changes that will do nothing to get at the root cause of these problems.

I would also like to comment on the proposed elimination of Wisconsin's practical exam. In my role as WCA President, I frequently get to talk with new graduated chiropractors. Invariably the discussion comes around to the passing of Wisconsin's exam. Our exam requires chiropractors to pass every section of the test. If they do not pass a section, they must re-take that section. If they failed 2 or more sections, they have to take the entire test over.

This is not true of the national exam. Under the national scoring system, a person can fail a section of the test and still get an overall passing grade if they do well on the other test sections. As a doctor I am offended by this short cut. One of the sections of the exam tests the competency of a doctor to x-ray a patient properly. If you were a pregnant woman and knew that an improper x-ray could cause serious harm or death to your unborn child, would you want your chiropractor taking that x-ray if you knew he or she failed that part of their national exam? This can't happen with Wisconsin's practical exam. It can, and will, if our exam is eliminated.

Here is another fact about the national exam that speaks to its quality. We have learned that an individual may get a passing grade on the national exam even though they answered less than 50% of the test questions correctly. Less than 50%. I understand that teachers sometime have to adjust a test score because of a bad question or two but allowing individuals to receive a chiropractic license based on a score in which they answered less than half of the questions correctly is not only wrong, we believe it poses a threat to the health and safety of the public.

The WCA filed suit against the Chiropractic Examining Board because we believe they violated Wisconsin law by failing to have a public and legislative hearing before this change was made. Our attorneys informed us that our chances for winning this lawsuit are very good and, by proposing these rule changes, the examining board is attempting to cover up their previous error. We believe that patients deserve to know that every chiropractor in Wisconsin is minimally competent to practice in all areas of their practice and the scoring methodology for the Part IV exam does not provide this assurance.

The examining boards proposed rules on continuing education are yet another example of a board that seems to protect vested interests instead of focusing on public health and safety. For example, I am holding up 3 recent publications written specifically for the chiropractic profession. They are full of ads and articles about how a doctor can build a million dollar practice. The focus is not on improving clinical skills or improving the quality of patient care. And yet, under the rule proposed by the examining board, the so called "education" offered by these groups will have to be approved for continuing education credit.

The WCA understands that there is a critical need to control the spiraling costs of health care. We know that if the current system continues it will mean that more and more of the population will go uninsured and that simply cannot be allowed to occur.

One of the most basic steps we can take as a health care profession is to insure that chiropractors are minimally qualified as they enter practice and that the continuing education they receive is completely focused on improving their clinical skills. We want our examining board to focus on

substantive?

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A

enforcing the chapters upon chapters of rules and regulations that already exist because in doing so they will improve the quality of care received by our patients.

I respectfully ask that you send these rules back to the examining board with the request that they be re-submitted as originally intended with only minor corrections and changes. Thank you for your time and I would be pleased to answer any of your questions.

Testimony on Clearinghouse Rule 03-092

Before The SENATE COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING AND LONG-TERM CARE Senator Carol Roessler, Chair

**February 25, 2004
300 Southeast, State Capitol**

Statement of Director of Education and Examinations Dr. Barbara Showers representing the Department of Regulation and Licensing

Over 100 comments were received in connection with these proposed rule changes by the Chiropractic Examining Board. Many of the commenters opposed the use of the Part IV exam as the practical exam component of the licensure examination requirement. Most comments were in the same format, addressing two topics in the same order – the CE rules changes and the exam changes.

The comments about the exam were often very brief and generic, and seemed based on limited information about the examination itself. Commenters who were opposed to the examination were aware that the national Part IV examination has a higher pass rate than the state's previous practical examination and used this fact alone to infer that the exam set a lower standard. Commenters opposing the use of Part IV did not address the specifics of the Part IV examination.

A few commenters who supported the Part IV examination had actually taken both examinations and gave specifics in their comments as to why they thought the Part IV examination was superior to the state's previous examination, such as,

“...the Part IV exam is taken over two days and covers a wide range of material, including patient histories, differential diagnosis, orthopedic and neurologic testing, case management and radiology. In comparison the Wisconsin practical exam, that I took, was much less comprehensive and consisted of much fewer questions, cases and x-rays (John R Fisher, Jr., D.C.)”

Another commenter said,

“As a recent graduate who took both exams, I can testify that the Part IV examination is a much more comprehensive and “real life” examination than the state examination. First, the Part IV examination is more of a test of tertiary clinical thinking than the Wisconsin exam. The Wisconsin test merely tests your ability to memorize and regurgitate (especially the orthopedic tests). For example, on the Part IV examination, you are asked to take a patient's history. Then, based on that history, you need to perform the necessary testing based upon what that patient has told you, then come up with diagnoses based upon the testing you did. Just like in real practice, if you didn't ask the right questions to begin with, your diagnoses will be wrong. The use of trained actors rather

than fellow test takers in the examination makes a big difference, as well. The X-rays used are current and of better quality than the radiographs used at the state exam. Also, the Part IV exam material changes every time it is given. The material on the Wisconsin exam does not change very often; you can ask any other recent graduate what was on it, and chances are, your test will be very similar. (Jessica L. Goessl, D.C.)”

The record should show that the Part IV examination is a professionally developed and defensible examination, based on a recent job analysis survey of over 3,000 professional practitioners, nationwide (*Job Analysis of Chiropractic, National Board of Chiropractic Examiners, 2000*). It is developed with expertise from the 14 colleges of chiropractic around the country to reflect current practices in the field. Procedures used to develop and administer this examination, and to set the cut score, are in accord with professional testing standards of the American Psychological Association, American Educational Research Association and the National Council on Measurement in Education. Forty-four states currently accept or require it in lieu of their own practical examination.

The Part IV examination integrates clinical practice into one comprehensive examination. The Wisconsin examination separately assessed selected components of practice in a three part examination. Both examinations test skills in physical diagnosis, adjusting and x-ray. The Wisconsin examination was prepared and administered by knowledgeable Wisconsin chiropractors, but did not have the benefit of input from schools of chiropractic.

The cut score on the Part IV examination was set by expert committees of practitioners and licensing board representatives using a Modified Angoff approach, which is a standard approach to competency-based licensure test cut score setting that is highly regarded and accepted in the professional testing field. Each item of the examination was evaluated to assess what percent of competent entry level practitioners would get it correct. The combined result for each form of the practical examinations was the cut score. To achieve this score, a candidate must get approximately 75% of the total possible points. The forms of the Part IV practical are equated to be of equal difficulty, and a scaled score, rather than a percent correct, is reported. Wisconsin's examination was also comprised of multiple forms designed to be of comparable difficulty, but they were not equated to assure that this occurred. The cut score was set at a fixed 75% of each part. This was considered a reasonable score in the judgment the Board, but was not supported by an Angoff analysis.

In response to the specific themes of the comments received, I would suggest that the Committee consider the following points:

Comment: The change would negatively impact quality of chiropractic in Wisconsin.

Response:

As described in detail above, the examination is a professionally developed examination, with content supported by a recent national survey of over 3,000 professional practitioners, and 14 chiropractic schools around the country.

Forty-four states currently accept or require it in lieu of their own practical examination.

Part IV is a longer, more comprehensive and up-to-date examination than the Wisconsin practical examination. It is a defensible examination which meets professional testing standards. It includes the same areas as the Wisconsin practical, with additional content in key areas, such as case management skills.

Comment: Part IV passes more people than the Wisconsin examination, therefore is a lower standard.

Response:

The fail rate on an examination does not, of itself, indicate whether the standards are high or low. If candidates are well-prepared by their schools, the fail rate will be low, even for a difficult exam.

Wisconsin has no schools of chiropractic. Preparation by out of state schools will be directed to the Part IV national examination, not the Wisconsin examination.

The Wisconsin examination might cause more people to fail if it doesn't match the current teachings of the profession.

The 44 chiropractic regulatory boards that use the national exam do not agree that a practical exam must separately test x-ray, physical diagnosis and adjusting, as the Wisconsin exam does. The Part IV exam is a more comprehensive examination of overall clinical competence which results in a single pass/fail determination. It is more reflective of the real world than isolated assessments of certain skills without a case management context.

Passing performance standards on Part IV were set by chiropractic professionals who reviewed the specific content of the examination before making the determination of an appropriate level of performance to protect the public. This standard setting procedure was in accord with professional licensing examination testing standards for all licensing examinations, and is defensible as a standard that protects the public.

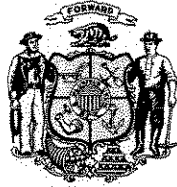
Comment: The change would admit more chiropractors to Wisconsin when there are already enough.

Response:

The purpose of the licensing examination is to protect the public from incompetent practitioners. It should not be a means of excluding those competent to practice in order

to reduce competition for those already here. The public deserves access to the full range of qualified practitioners who wish to

WISCONSIN STATE SENATE



Carol Roessler
STATE SENATOR

February 26, 2004

Secretary Donsia Strong Hill
1400 East Washington Avenue, Room 173
Madison, WI 53707

Dear Secretary Strong Hill,

On February 25, 2004, the Senate Committee on Health, Children, Families, Aging and Long Term Care held a public hearing on Clearinghouse Rule 03-082, relating to minor changes to conform the rules to current practices and to correct oversights and problematic language in the current rules.

As chair of this Committee, I am writing to inform the Department of Regulation and Licensing and the Chiropractic Examining Board that the Committee voted 9-0 to request further modifications to CR 03-082. This request is in response to concerns expressed at the hearing relating to part IV of the national exam (Sections 7 through 14) and continuing education (Section 27).

I ask that you please respond in writing as to whether the Department agrees to work with the Committee on making modifications.

Sincerely,

A handwritten signature in cursive script that reads "Carol Roessler".

Carol Roessler, Chair
Senate Committee on Health, Children, Families, Aging and Long Term Care

Cc: Chris Klein
James Rosemeyer

Halbur, Jennifer

From: Tom Moore [temoore@chartermi.net]
Sent: Friday, February 27, 2004 5:12 PM
To: Halbur, Jennifer
Subject: Re: Letter to DRL regarding CR 03-082

Jennifer:

Thank you - This looks good.

Tom

----- Original Message -----

From: "Halbur, Jennifer" <Jennifer.Halbur@legis.state.wi.us>

To: <temoore@chartermi.net>

Sent: Friday, February 27, 2004 4:54 PM

Subject: Letter to DRL regarding CR 03-082

> <<2-26-04 ltr to drl cr 03 082 chiro rule.doc>>
>
> Tom,
>
> Here is a copy of the letter Senator Roessler sent DRL regarding CR
03-082.
> I have sent a hard copy as well.
>
> Thanks,
> Jennifer
>

Halbur, Jennifer

From: RLeonard@aol.com
Sent: Friday, February 27, 2004 5:32 PM
To: Jennifer.Halbur@legis.state.wi.us
Cc: temoore@chartermi.net
Subject: Letter to DRL regarding CR 03-082
Jennifer,

Thank you very much for forwarding this to us.

Regards,

Russ Leonard
Executive Director
Wi Chiropractic Assn

02/27/2004

Jim Doyle
Governor

**WISCONSIN DEPARTMENT OF
REGULATION & LICENSING**

1400 E Washington Ave
PO Box 8935
Madison WI 53708-8935
Email: web@drl.state.wi.us
Voice: 608-266-2112
FAX: 608-267-0644
TTY: 608-267-2416

Donsia Strong Hill
Secretary



March 8, 2004

Via FAX (608) 266-0423

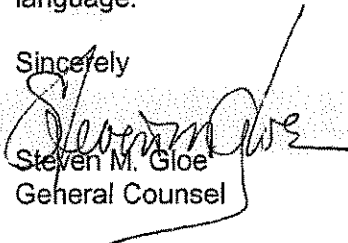
CAROL ROESSLER
CHAIR -SENATE COMMITTEE ON HEALTH
CHILDREN FAMILIES AGING AND LONG TERM CARE
STATE CAPITOL
PO BOX 7882
MADISON WI 53707-7882

RE: CR 03-082

Dear Senator Roessler:

Thank you for your 02/26/2004 letter to Secretary Strong Hill. The Department of Regulation and Licensing is willing to work with the Committee regarding this rule. Members of department staff are meeting this week to review the proposed rules draft, and we will get back to you in the very near future regarding proposed alternative language.

Sincerely


Steven M. Giese
General Counsel

*Carol -
We need to talk
about next steps.
The Dept. needs to
know what changes
the committee wants
made. The C.E.
and federal exam lang?
Jennifer*

Based on the concerns raised during the Health Committee hearing on the proposed Chiropractic Examining Board rule changes we would suggest the Examining Board consider the following rule revisions.

Major Concerns

Part IV Exam

Work with the Wisconsin Chiropractic Association to determine an acceptable passing score for each section of the national Part IV exam. This creates a "win-win" situation for Wisconsin. The state saves the cost of administering a separate exam and the public can have confidence that a new graduating doctor is competent in all areas before they enter practice.

Continuing Education

The Examining Board should eliminate this portion of the rule and return to approving continuing education programs in the manner it did several years ago.

Minor Concerns

The Health committee assumes that further discussion between the Examining Board and the WCA would result in rule changes in these areas.

The examining board should define the clinical conditions for which a chiropractor may use lasers in their practice.

The examining board should propose rule changes that would insure that chiropractic assistants are properly trained before taking x-rays or assisting in the application of physical therapy modalities.

State Senator
Carol Roesler



Memorandum

TO: Carol
FROM: Jennifer
DATE: March 12, 2004
SUBJECT: CR 03-082 relating to Chiropractors.

The Senate Health Committee sent CR 03-082 back to the Department of Regulation and Licensing for modifications. As you probably recall, the two main issues of concern expressed at the Committee hearing were:

- *1. Adoption of Part IV of the national exam in lieu of a state-administered exam to demonstrate clinical skills.
- *2. Authority provided to the Board to approve a provider of continuing education not listed in the rule.

The Committee did not indicate to the Department what changes the Committee would like to see made. The rule analysis indicates that the rule makes **minor changes** to the existing rules regulating the practice of chiropractic. The two changes listed above are not minor. They are not necessarily bad, but they are not minor. This rule another battle between the Chiropractic Examining Board and the Wisconsin Chiropractic Association.

minor

* The WCA does not feel that Part IV of the national exam tests graduates for competency. WCA states the following, "Approximately 40% of those taking Wisconsin's practical exam over the past 31/2 years have failed. Only 13% of those taking the national Part IV failed its most recent exam."

* The WI. Board of Chiropractic Examiners believes that Part IV of the federal exam does a better job of testing clinical competency than the state practical exam. The Board argues that, "The Part IV is actually a tougher exam than our State Practical and a higher fail rate of the State exam is not due to toughness of the exam but examinee confusion generated by improperly worded test questions, poor x-ray film quality and inadequate testing procedures."

Review
Steps
down

need
to
clarify
WCA
13/2

The issue of the Board having the authority to approve continuing education programs offered by any chiropractic organization is the same debate that arose during the SB 275 (chiropractic bill) discussions. Most other professions allow their Board to determine C.E. courses. The WCA claims that it is afraid of companies offering courses and promoting their products. WCA would like to put more restrictions on who can offer C.E. courses in an effort to improve the image of the chiropractic profession.

A decision needs to be made regarding whether or not you want the C.E. language and Part IV of the exam removed or if you want to meet and discuss possible alternatives. Another option may be to have the Dept. remove those sections from this rule and then

Voice: 608-266-5300
Fax: 608-266-0463

continue discussions about the Part IV exam and C.E. courses. It is important to keep in mind though that the Part IV exam is in place. WCA has legally challenged the Board's authority to do this.

Let me know if you have an idea as to what you would like to see happen. If you are not sure, maybe a meeting with between you and Laura Rose would be helpful just to talk through some of the issues brought up at the hearing.

Chiro
draft

March 16, 2004

3/18
Need to hear
back from Tom
more res *.
Send mm. 3/22

James Rosemeyer
1400 East Washington Avenue, Room 173
Madison, WI 53707

Dear James,

As you know, On February 25, 2004, the Senate Committee on Health, Children, Families, Aging and Long Term Care voted 9-0 to request further modifications to CR 03-082, relating to minor changes to conform the rules to current practices and to correct oversights and problematic language in the current rules.

This request was made in response to concerns expressed at the public hearing relating to continuing education and part IV of the national exam. To further clarify, the Committee suggests that the Chiropractic Examining Board follow through with the rule revisions listed below.

Part IV of the National Examination

Work with the Wisconsin Chiropractic Association to determine an acceptable passing score for each section of the national Part IV exam.

Continuing Education

Section 27. Chir 5.02 (1) (a)

Remove the following language from this section: **“or another chiropractic organization approved by the board.”**

Section 27 Chir 5.02 (1) (b)

Remove the following language from this section: **“The board will not approve credit from continuing education regarding a technique or practice which the board has determined to be unsafe or ineffective.”**

*

In addition to the above-mentioned modifications, the Committee assumes that further discussion will also occur between the Board and the Wisconsin Chiropractic Association regarding the use of lasers by chiropractors.

Thank you for your attention to this issue.

Sincerely,

CAROL ROESSLER
State Senator
18th Senate District

Cc: Jacqueline Rothstine
Secretary Donsia Strong Hill
Chris Klein
Tom Moore

CR/jhS:\DOCS\Jennifer\Health Committee\Rules\3-16-04 2nd chiro rule letter to DRL.doc



March 22, 2004

Carol Roessler
STATE SENATOR

James Rosemeyer
1400 East Washington Avenue, Room 173
Madison, WI 53707

Dear James,

As you know, On February 25, 2004, the Senate Committee on Health, Children, Families, Aging and Long Term Care voted 9-0 to request further modifications to CR 03-082, relating to minor changes to conform the rules to current practices and to correct oversights and problematic language in the current rules.

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Thank you for your attention to this issue.

Sincerely,

A handwritten signature in cursive script that reads "Carol".

CAROL ROESSLER
State Senator
18th Senate District

Cc: Jacquelynn Rothstein
Representative Underheim
Secretary Donsia Strong-Hill
Chris Klein
Tom Moore

CR/jhS:\DOCS\Jennifer\Health Committee\Rules\3-16-04 2nd chiro rule letter to DRL.doc

Jim Doyle
Governor

WISCONSIN DEPARTMENT OF
REGULATION & LICENSING

1400 E Washington Ave
PO Box 8935
Madison WI 53708-8935
Email: web@drf.state.wi.us
Voice: 608-266-2112
FAX: 608-267-0644
TTY: 608-267-2416

Donsia Strong Hill
Secretary



APP 14 2004

April 8, 2004

State Senator Carol Roessler
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Roessler:

The Chiropractic Examining Board (Board) met today by teleconference and reviewed your letter of March 22, 2004, in which you requested that the Board make modifications to Clearinghouse Rule 03-082. Please be advised that the Board is willing to work with your committee and the Wisconsin Chiropractic Association (WCA) to reach a satisfactory resolution of this matter. To date, however, we have not yet reached any agreement with the WCA about the items of concern raised in your letter. We look forward to continuing discussions with both the WCA and with your committee so that an agreement can be achieved, and will continue to keep you apprised of any developments.

Very truly yours,

James A. Rosemeyer, D.C.
By JBR

James A. Rosemeyer, D.C.
Chairperson
Chiropractic Examining Board

March 22, 2004

As you know, On February 25, 2004, the Senate Committee on Health, Children, Families, Aging and Long Term Care voted 9-0 to request further modifications to CR 03-082, relating to minor changes to conform the rules to current practices and to correct oversights and problematic language in the current rules.

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In addition to the above-mentioned modifications, the Committee assumes that further discussion will also occur between the Board and the Wisconsin Chiropractic Association regarding the use of lasers by chiropractors.

Thank you for your attention to this issue.

Sincerely,

CAROL ROESSLER
State Senator
18th Senate District

Cc: Jacquelynn Rothstein
Representative Underheim
Secretary Donsia Strong-Hill
Chris Klein
Tom Moore

Halbur, Jennifer

From: Seaquist, Sara
Sent: Thursday, April 29, 2004 3:34 PM
To: Showers, Barbara; Rose, Laura; Nania, Kimberly; 'chirrolaw@aol.com'; 'mwf@charter.net'; 'cglocke@taraweb.com'; 'tlcchiro@newnorth.net'; 'jimrosemeyer@centurytel.net'; 'bearlak@chibareum.net'; O'Neill, Eileen; Sen. Brown; Klein, Christopher
Cc: Halbur, Jennifer
Subject: Meeting on May 6th

The meeting regarding the chiropractic rule (cr 03-082) has been scheduled for **May 6th @ 9am in room 400SE** in the capitol.

I contacted a few of you yesterday about this meeting; however, if all board members attend, this will be a formal board meeting and will have to be publicly noticed, include a minute-taker, etc. Therefore, I've been told that Susan Feith and James Rosemeyer will be representing the board at this meeting.

If you have any questions, please contact me at (888-736-8720).

Thank you,

Sara Seaquist
Office of Senator Carol Roessler
1-888-736-8720/ (608) 266-5300
Sara.Seaquist@legis.state.wi.us

5-6-04

- Agreement @ one time. Vote delayed to May 15th / 31st

- Dec. 2002 - passed to go to Part IV of exam.

46 states take nat'l exam

44^{8th thru} states take scores of 375

Q: WLA said there is a process issue here. You did not ^{had} have auth to use Part IV.

- WLA wants a different cert score: wants 475

at issue - is process; Did Board have auth to decide on Part IV by vote rather than by ^{emph.} rule.

~~to WLA~~

- Nat'l exam people chose 375. ^{min passing score}
Is 475 defensible

Board ~~regulates~~ not charged with setting minimal competency.

- Board invited WLA to offer into defending / validate the 475 #.

- Nat'l exam folks will be @ May 15th mtg.

- Jim has worked w/ Russ + lawyer

- Sherry writes testimony.

* Jim - Brd does not conduct audits she mentions

- CRK - ~~writes~~ for circumstances like person in Iraq who is not here + can't get certified.

- Users - Brd evaluating.

- Pass fail: Can pass exam if fail a section of exam ... Jim - this is how Nat'l exams are.

- Nat'l Council of which accredits Ohio colleges is in trouble.

Jim's idea in rule - not concerned - propose to expand who they can approve for C.E. unless in case in the future the Nat'l Council may not be around (due to finances).

- Why can't Brd have auth. to appt.

who can ~~approve~~ accredit an inst. to do C.E.

(A) Brd fine w/ remaining from rule because it does go beyond minor change - larger issue for another day

Control the Board... who is in control
Allied / WCA - out of hand.

- CR ques. When are Sherry + Russ coming from?

Jim Bosp: Great Assoc - But things are becoming
centered around Russ & Sherry + Jeff -
Have good intentions - doesn't think
Board members are given all of their
information - not all details - don't know all
the facts.

- For higher std. for yourself you get Board Certification -
this sets individuals apart.

- Protection of public - Board members take seriously

Cut Scores

Barb Snows

- scores usually don't rise to the level of cut throat.
- 12% fail rate w/ 375 cut rate. (need 75% of pts to make cut
Reasons:

Part IV based on current knowledge. Schools teach to
the Part IV - not WI exam. WI exam - out of
date.

- Public member strongly supports the Part IV test.

- Brd does not have authority, to require all parts of the exam. Barb - no.

- Must pass 4 nat'l exams - By the time they get to part IV, they have passed parts 1-3.

[Could fail a section of part IV exam but still pass - not 4 exams to this.

- Reciprocity - not true rec. but if all 4 parts

- Brd can't say that passing 475 is a higher rate - they can't defend it + could get sued. WCA not concerned about.

at/ comms in from other state - passed all nat'l exams - passed IV w/ a 375 or 400 - now can't pre. in WI. could sue.

→ speculation - no way to know for sure - is theoretically possible.

Score is aggregate - 1 score for all 4 parts of exam.

- Could fail 25% of the pts. Must pass 75% of pts. to pass. Could fail all 25% in 1 area - not likely.

Final
parts
1-4

Standards for Phys. + Testing

" level should dep. on level + part. + should not be adjusted to fence people out.

* Barb Sunday Copy.

2 states Mich + Ill don't have practicals
FL has own exam

Some states you only need parts 1-3.

- ~~Meeting in Feb.~~

March 23 - emer. rule expired.

- Next steps:

~~mtg w/ both groups.~~

CR mtg w/ Tom Moore

Rep to Bd - Rec to remove C.E. lang

Superior state PTB - not have to pass all
L than

Bl close
offices

MEETING ON CR 03-082 RELATING TO THE PRACTICE OF CHIROPRACTIC

MAY 6, 2004

ATTENDANCE:

Kim Nania- yes
Barb Showers- yes
Jaclyn Rosteen- legal council, yes
Jim Rosemeyer- Chair, yes
Susan Fieth- public member, yes
Laura Rose- left message
Sen. Brown- someone will attend (SS talked to Sherry)
Sen. Schultz- Eileen will attend

Carol -
Summary of
last mtg. we
had.

"Sherry
CherBlocke"
lead
need

HISTORY

WCA challenged the Board

- In December 2002, the Board voted to use Part IV of the National Exam.
- WCA challenged the Board's authority to use Part IV without an emergency rule in place. So, WCA challenged the process by which the Board put Part IV of the exam into place.
- After the Board voted and agreed to use Part IV of the exam, it went ahead with the emergency rule-making process. An emergency rule was put into place and was extended twice. The last extension expired in mid March. The rule cannot be extended anymore.
- The Board continues to use Part IV of the exam.
- In sum, the issue is process: Did the Board have the authority to decide on the use of Part IV by vote rather than by emergency rule.

AGREEMENT

Agreement between WCA and the Board regarding CR 03-082

- There was a preliminary agreement between some of the members of the Board and the Wisconsin Chiropractic Association (WCA). Jim could not commit to the agreement...a Board vote was necessary.

EXAM

Part IV of the National Exam

- According to Barb Showers, exam scores normally do not rise to the level of cutthroat. Another conflict between the Board and the Association.
- Part IV of the exam is based on current knowledge. Schools teach information on this exam, not the information on the state exam. The state exam is out of date.
- Taking part ~~VI~~ could help with reciprocity.

- A person must pass 4 parts of a national exam. By the time a person gets to the part IV exam, they have already passed parts 1-3.
- The score is aggregate. So, there is 1 total score for all 4 parts of the exam combined.
- A person could fail 25% of the points and still pass the exam. A person must pass 75% of the points to pass the exam.
- Theoretically a person could fail a section of the part IV exam and still pass the exam. However, this is speculation. It is not likely that a person would fail 25% of the points in one area. There is no way to know if this has happened because the test scores are not public.
- 2 states, Michigan and Illinois do not use the national exam...they don't have practicals.
- Florida uses its own exam.
- In some states a person only needs to take parts 1-3 of the national exam.

Cut Score

- The Board agrees with the national standard of 375 while WCA wants a score of 475.
- There is a 12% fail rate with a 375 cut rate (a person needs 75% of the points to make the cut...or pass).

• The Standards for Educational and Psychological Testing book states the following:
"The level of performance required for passing a credentialing test should depend on the knowledge and skills necessary for acceptable performance in the occupation or profession and should not be adjusted to regulate the number or proportion of persons passing the test."

- The national experts working on the exam chose the cut score of 375. → passing
- While the Board would seek a higher standard for Wisconsin than other states, it is not believed that changing the cut score to 475 creates this higher standard.
- It is not known if using a cut score of 475 is defensible.
- The Board invited the WCA to provide information defending/validating a cut score of 475. No information was provided to the Board.
- The Board can't say that a passing score of 475 is a higher standard and could be sued. Example: A person coming from a different state who has passed all 4 parts of the national exam would be not be able to practice in WI. if we had a cut score of 475 and that person had a score of 375 or even 400. This person could sue.
- The Board's next meeting is May 15th. The national exam folks will be at the meeting and available to answer any questions.
- 46 states take the national exam.
- 44 of those 46 states use a cut score of 375.

encl.
on

Accept

CONTINUING EDUCATION

- The language in the rule which states, "or another chiropractic organization approved by the board," was Jim's idea. Dr. Conway got a bad rap.
- Jim wanted to expand the Board's authority in this area due to concerns surrounding the financial stability of the National Council which does the accreditation for

- North Carolina
- Virginia

chiropractic colleges. The ultimate fear is that the National Council may not be around sometime in the very distant future due the financial trouble.

- Jim rhetorically asked, "Why can't the Board have the authority to appoint who can accredit an institution to do C.E.?"
- **The Board is fine with removing the C.E. language from the rule because it does go beyond minor changes and is a larger issue for another day.**

WCA TESTIMONY

- Sherry's testimony referenced audits conducted by the Board. Jim clarified that the Board does not conduct audits.
- CPR certification issue-Jim said the Board proposed waiving the requirement for the purpose of extraordinary circumstances like: a person in Iraq who returns but could not keep up with his or her certification would not be able to practice chiropractic upon his or her return to WI.
- Lasers-Board is evaluating.



Wisconsin Chiropractic Association

521 E. Washington Avenue
Madison, WI 53703
Tel. (608) 256-7023 • Fax (608) 256-7123

May 14, 2004

Senator Carol Roessler
PO Box 7882
Madison, WI 53707-7882

Dear Senator Roessler:

On February 25, 2004, the Senate Committee on Health, Children, Families, Aging and Long Term Care voted 9-0 to request further modifications to CR 03-082. The Committee specifically asked the Chiropractic Examining Board to negotiate with the WCA over the provisions concerning Part IV of the national exam (Sections 7 through 14) and continuing education (Section 27).

Yesterday, after removing the provision relating to continuing education, the Chiropractic Examining Board (CEB) voted to send the rule back to your committee without modifying the provision relating to the Part IV exam. We are deeply opposed to the action taken by the CEB. The WCA believed it had an agreement with the CEB on Part IV and we are deeply concerned that the CEB reneged on this agreement without any communication with the WCA.

The examining board designated two of its members (including its Chair), a representative of the DRL and the attorney representing the State to meet with the WCA and its legal counsel to attempt to resolve the issues relating to Part IV.

At the conclusion of its April 1st meeting, the CEB and the WCA reached a unanimous agreement on the issue of Part 4. The WCA agreed to a rule change allowing the national Part IV exam to replace Wisconsin's practical exam as long as the CEB set by rule a passing grade of 475. Yesterday, without any additional communication with the WCA, the CEB voted to send the rule back to your committee without modifying the passing grade to 475. The Chair of the CEB who had personally agreed to support this change, reneged on his agreement without explanation.

Based on the CEB's action, we respectfully ask your committee to reject CR 03-082.

History of the Part IV rule

For decades the State of Wisconsin has required students who applied for a chiropractic license to pass a practical exam administered by the state. The practical exam tests the competency of an individual before they get a license to practice chiropractic in the state.

On December 19, 2002 the CEB decided unilaterally that they would substitute the national exam, known as Part IV, for the Wisconsin practical exam.

The CEB made this decision without a public hearing even though the practical exam is required by both statute and rule. The WCA immediately filed a lawsuit against the CEB because our attorneys assured us that the board was required to hold a public hearing before a change of this magnitude. In the first rulings in this case, the court has ruled *against the CEB* on every procedural motion. We provided the decision of the court to the committee at your public hearing.

Instead of allowing the lawsuit to determine the legality of their actions, the CEB passed an emergency rule allowing them to discontinue Wisconsin's practical exam. The basis for determining there was an "emergency" was the fact that the WCA had filed a lawsuit against them. If you pause for a moment, you can appreciate the irony of their actions. First, the CEB takes an action that violates the law. Then, when they are caught, they declare that the act of catching them constitutes an emergency.

The emergency rule has expired. Instead of respecting the law and re-instituting Wisconsin's practical exam, the CEB has continued to license individuals based on the Part IV exam.

One of the purposes of a trade association like the WCA is to notify our members about proposed changes in rules. We did so after learning the true intent of CR 03-082. Dozens upon dozens of chiropractors wrote to the examining board asking that the controversial elements of the rule be eliminated. The board dismissed all of the responses by stating these doctors would never have written if they had not been informed of the rule changes by the WCA. In effect the board was stating that the profession has no right to comment on rules that they intended to be kept secret.

The WCA opposed the adoption of the Part IV exam because we do not believe this exam adequately tests graduates for competency. According to Department of Regulation & Licensing records, approximately 40% of those taking Wisconsin's practical exam over the past 3 ½ years have failed. A spokesperson for the Federation of Chiropractic Licensing Boards (FCLB) stated that only 13% of those taking the national Part IV failed a recent exam. This disparity seems to verify the long held view that the Part IV exam is not designed to adequately determine a graduate's minimum competency to practice.


This inadequacy may be directly related to a consumer safety feature built into the Wisconsin exam. Wisconsin has required that a candidate for licensure pass all parts of its exam. An examinee must re-take any portion of the exam they fail and, the entire exam if they fail two or more parts. This is not true of the Part IV exam. The Part IV pass/fail test score is based on the examinee's cumulative score. If an individual fails one or more sections of the test, they may still pass the overall exam if their test scores in other sections of the exam are sufficient to overcome the deficiency in other areas.


Here is another fact about the national exam that speaks to its quality. The WCA has learned that an individual may get a passing grade on the Part IV exam even though they are awarded less than 50% of the total available points for the exam. Some "equalization" or "curving" of a test may be necessary; however, a test that individuals can pass by obtaining less than half of the available points indicates either a severely flawed test or an unqualified student.

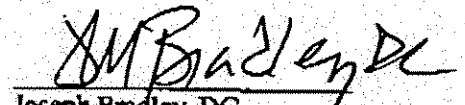
We believe that patients deserve to know that every chiropractor in Wisconsin is *minimally competent* to practice in all areas of their practice and the scoring methodology for the Part IV exam does not provide this assurance.

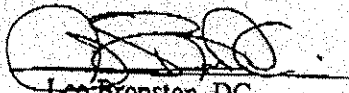
We raised these issues before the Senate Health Committee and the committee wisely voted to send the rule back to the CEB. The CEB has ignored the request of the committee and has reneged on the very fair compromise the CEB's representatives agreed to with the WCA. We respectfully ask you to, once again, reject CR 03-082 until the issue of the Part IV exam is properly addressed.

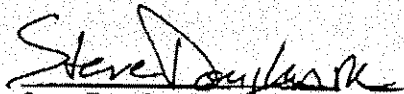
Sincerely,

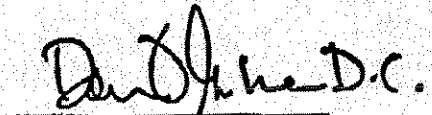

Sherry Walker, DC
President

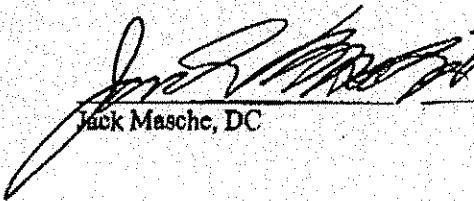

Randall Adams, DC


Joseph Bradley, DC

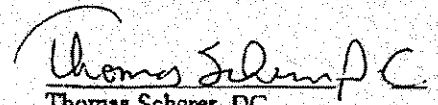

Leo Bronston, DC

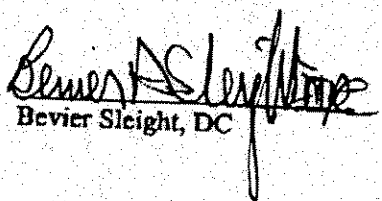

Steve Douglas, DC

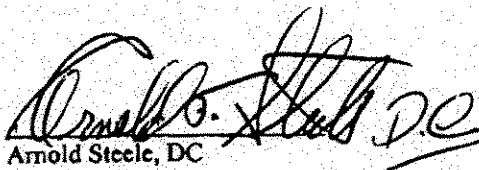

Donn Gurske, DC

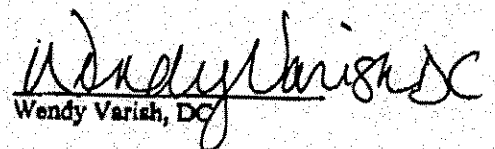

Jack Masche, DC


Michael McMahon, DC


Thomas Scherer, DC


Bevier Sleight, DC


Arnold Steele, DC


Wendy Varish, DC

TIMBER LAND CHIROPRACTIC

MAY 20 2004

Dr. Scott Henrichs
Dr. Wendy Henrichs

May 14, 2004

Senator Carol Roessler
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Roessler:

Yesterday the Chiropractic Examining Board (CEB) voted to return CR 03-082 to your committee for approval. The CEB did not make any changes to the section of the rule pertaining to the National Part IV Exam. In fact, we were told that addressing the Part IV issue would jeopardize the rule. I am writing to you today to express my objection and to ask that you reject CR 03-082 in its current form. While I sit on the CEB, I am writing to you as member of the public.

I thought that the board was going to have a detailed discussion regarding your May 6, 2004 meeting with representatives of the board. However, neither of these participants would give us details of that meeting. I was very disappointed that the CEB Chair did not honor the agreement he and the boards representatives reached with the WCA on April, 2004 regarding the Part IV exam. I was also very surprised that a member of the CEB who has a significant relationship with Allied Health of Wisconsin chose to vote on the Part IV matter instead of recusing himself to avoid an obvious conflict of interest.

After listening to a presentation from the NBCE I remain deeply concerned over the scoring methods used by the NBCE. I believe that it is possible for an individual to fail one of the three content areas and still pass the examination. This is a grave threat to the health and safety of the public.

Once again, I would greatly appreciate it if the committee would reject CR 03-082 until the Part IV issue has been adequately addressed. Thank you for your consideration.

Sincerely,



Wendy M. Henrichs, D.C.

TIMBER LAND CHIROPRACTIC

FACSIMILE TRANSMITTAL SHEET

To: Senator Carol Roessler	From: Dr. Wendy Henrichs
FAX NUMBER: 608-266-0423	Date: May 15, 2004
COMPANY:	TOTAL NO. OF PAGES INCLUDING COVER: 2
PHONE NUMBER: 608-266-5300	SENDER'S REFERENCE NUMBER:
Re: CR 03-082	YOUR REFERENCE NUMBER:

URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 PLEASE RECYCLE

NOTES/COMMENTS:

TIMBER LAND CHIROPRACTIC

Dr. Scott Henrichs
Dr. Wendy Henrichs

May 14, 2004

Senator Carol Roessler
P.O. Box 7882
Madison, WI 53707-7882

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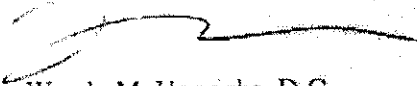
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Sincerely,


Wendy M. Henrichs, D.C.

Kim called → she
no reason he should recuse himself because he's on the CEB - Part IV writing to do with

Jim Doyle
Governor

**WISCONSIN DEPARTMENT OF
REGULATION & LICENSING**

1400 E Washington Ave
PO Box 8935
Madison WI 53708-8935
Email: web@dri.state.wi.us
Voice: 608-266-2112
FAX: 608-267-0644
TTY: 608-267-2416

Donsia Strong Hill
Secretary



May 18, 2004

Senator Carol Roessler, Chairperson
Senate Committee on Health, Children, Families,
Aging and Long-Term Care
Room 8 South, State Capitol
Madison, WI 53702

Re: Clearinghouse Rule 03-082

Dear Senator Roessler:

On March 22, 2004, the Senate Committee on Health, Children, Families, Aging and Long Term Care requested that the Chiropractic Examining Board review and modify CR 03-082, relating to minor changes to conform the rules to current practices and to correct oversights and problematic language in current rules, especially related to the board's adoption of Part IV of the national examination in lieu of a state-administered examination to demonstrate clinical competence. The board met on April 8, 2004, via a teleconference, and agreed to work with the committee to address the proposed modifications.

A meeting was held on May 6, 2004, with you. Also in attendance at that meeting were two representatives from the board, James Rosemeyer, D.C., chair, and one of the public members, Susan Feith. Also present at the meeting were Kimberly Nania, Bureau Director, Bureau of Health Service Professions; Barbara Showers, Director, Office of Education and Examinations; and Jacquelynn Rothstein, legal counsel to the Chiropractic Examining Board. The Chiropractic Examining Board met on May 13, 2004, and agreed to amend Clearinghouse Rule 03-082. More specifically, the board agreed to remove the proposed amendment to s. Chir 5.02 (1) (a), which is found in Section 27 of the pending proposed rule-making order. Section Chir 5.02 (1) (a) will read:

Chir 5.02 (1) (a) The program is sponsored by the Wisconsin chiropractic association, the American chiropractic association, the international chiropractors association, a college of chiropractic approved by the board, or a college of medicine or osteopathy accredited by an agency recognized by the United States department of education.

Letter to Senator Roessler
May 18, 2004
Page 2

The proposed change to s. Chir 5.02 (1) (b) will remain. The final version of Section 27 of Clearinghouse Rule 03-082 is amended to read:

Chir 5.02 (1) (b) The program subject matter relates to improving the clinical skills of a chiropractor and is generally taught at the undergraduate or postgraduate level of a chiropractic college meeting the requirements of s. Chir 2.02 (6) (b). The board will not approve credit for continuing education regarding a technique or practice which the board has determined to be unsafe or ineffective.

A copy of the entire proposed rule-making order is attached, with the amendment to s. Chir 5.02 (1) (b).

Thank you for your time and consideration of these rules. I understand that this request extends the committee review period for 10 working days under s. 227.19 (4) (b) 2., Wis. Stats.

Sincerely,

Kimberly Nania, Ph.D.
By JBR

Kimberly Nania, Ph.D.
Director
Bureau of Health Services

cc: Chiropractic Examining Board
Jacquelynn Rothstein, Legal Counsel
Barbara Showers, Director, Office of Education
and Examinations