

Clearinghouse Rule 19-100

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

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

PROPOSED ORDER

An order of the Chiropractic Examining Board to **repeal** Chir 12.01 (1) (a) and (b) and 12.03 (1) (k); to **renumber and amend** Chir 12.01 (1) (intro.) and (4), 12.02 (1) (intro.), (a), (a) (Note), (b), and (c), and 12.03 (1) (c); to **amend** Chir 12.01 (2) and (3), 12.03 (1) (intro.), (b) 3., 4., 5., 9., 10., 11., 13., 15., 17., 19., 21., 22., 24., and 25., (d), (e), (f), (i), and (j), (2) (a) 1. to 9., and (3), 12.04 (intro.), 12.05 (1), and 12.06 (1) to (3); and to **create** Chir 12.01 (4) (a) to (e) and (5) and 12.03 (1) (am), (b) 10. (Note), and (c) 1. to 3., relating to nutritional counseling certification.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 446.02 (2) (c), Stats.

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides that examining boards, such as the Chiropractic Examining Board, “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains . . .”

Section 227.11 (2) (a), Stats., sets forth the parameters of an agency’s rule-making authority, stating an agency “may promulgate rules interpreting provisions of any statute enforced or administered by the agency. . .but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Related statute or rule:

None.

Plain language analysis:

The Board conducted an evaluation and update of ch. Chir 12 to ensure the definitions under s. Chir 12.01, the criteria for granting a certificate for nutritional counseling under s. Chir 12.02, and the criteria for approval of nutritional counseling educational programs under s. Chir 12.03 are consistent with current professional and academic practices and applicable Wisconsin statutes. As a result, the following updates have been made:

- A definition of “patient” is added to the definitions under s. Chir 12.01.
- The requirement under s. Chir 12.03 (2) (a) 5. that program subject matter is generally taught at the undergraduate or postgraduate level of a chiropractic college and relates to improving the clinical skills of a chiropractor is revised. The revised requirement is that program subject matter contributes to the advancement, extension, and enhancement of the clinical skills of a chiropractor and fosters the enhancement of general or specialized practice and values.
- Other provisions throughout ch. Chir 12 have been revised to provide clarity and conform to current drafting standards.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois: Illinois does not certify chiropractors in nutritional counseling. The statutory definition of chiropractic physician provides a chiropractor is not prohibited from providing advice regarding the use of non-prescription products (225 ILCS 60/2).

Iowa: Iowa does not certify chiropractors in nutritional counseling. Iowa statutes provide that licensed chiropractors who make dietetic or nutritional assessments or give dietetic or nutritional advice in the normal practice of their profession are exempted from the requirement to be licensed to practice dietetics (Iowa Code 2017, section 152A.3).

Michigan: Michigan does not certify chiropractors in nutritional counseling. By statutory definition, the practice of chiropractic includes the use of nutritional advice (MCL 333.16401).

Minnesota: Minnesota does not certify chiropractors in nutritional counseling. Minnesota statutes provide no person may engage in dietetics or nutrition practice unless the person is licensed as a dietitian or nutritionist (Minnesota Statutes 2016, section 148.630).

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of ch. Chir 12 to ensure the rules are consistent with current professional and academic practices and applicable Wisconsin statutes. No additional factual data or analytical methodologies were used to develop the proposed rules.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 8:30 a.m. on August 29, 2019, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chir 12.01 (1) (intro.) is renumbered Chir 12.01 (1) and amended to read:

Chir 12.01 (1) ~~“Administering”~~ “Administer” means ~~the direct application of a product to directly apply a nutritional supplement or direct the self-application of a nutritional supplement,~~ whether by ingestion or any other means, to the body of a patient or research subject. ~~by any of the following:~~

SECTION 2. Chir 12.01 (1) (a) and (b) are repealed.

SECTION 3. Chir 12.01 (2) and (3) are amended to read:

Chir 12.01 (2) ~~“Dispensing”~~ “Dispense” means ~~delivering a product to deliver a nutritional supplement~~ to an ultimate user or research subject ~~by a chiropractor.~~

(3) “Nutritional counseling” means providing counsel, direction, guidance, advice, or a recommendation to a patient regarding the health effects of ~~vitamins, herbs~~ or nutritional supplements.

SECTION 4. Chir 12.01 (4) is renumbered Chir 12.01 (4) (intro.) and amended to read:

Chir 12.01 (4) (intro.) “Nutritional supplement” means a product, other than tobacco, that is labeled as a nutritional or dietary supplement or intended to supplement the diet and that contains or is a concentrate, metabolic, constituent, or extract of one or more of the following dietary ingredients: ~~a vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance for use by man to supplement the diet by increasing the total daily intake, or concentrate, metabolics, constituent, extract or combination of these ingredients; or is labeled as a nutritional or dietary supplement.~~

SECTION 5. Chir 12.01 (4) (a) to (e) and (5) are created to read:

Chir 12.01 (4) (a) A vitamin.

(b) A mineral.

(c) An herb or other botanical.

(d) An amino acid.

(e) A dietary substance for use by an individual to supplement the diet by increasing total daily intake.

(5) “Patient” means an individual with whom a chiropractor has an established chiropractor-patient relationship or who, based on the actions of the chiropractor, has a reasonable belief that an established chiropractor-patient relationship exists.

SECTION 6. Chir 12.02 (1) (intro.), (a), (a) (Note), (b), and (c) are renumbered Chir 12.02 (intro.), (1), (1) (Note), (2), and (3) and amended to read:

Chir 12.02 (intro.) The board shall grant a certificate for nutritional counseling to a ~~licensed~~ chiropractor licensed under ch. 446, Stats., who does all of the following:

(1) Submits an application ~~for a certificate~~ to the department on a form provided by the department.

(Note) Application forms are available on the department’s website at dsps.wi.gov, or by request to from the board office located at 1400 East Washington Avenue Department of Safety and Professional Services, P.O. Box 8935, Madison, Wisconsin 53708, or from the department’s website at: <http://dsps.wi.gov> call (608) 266-2112.

(2) Pays the fee specified ~~in~~ under s. 446.02 (2) (c), Stats.

(3) Submits evidence satisfactory to the board that ~~he or she~~ the applicant has ~~completed~~ received any of the following:

(a) ~~Received a~~ A postgraduate degree in human nutrition, nutrition education, food and nutrition, or dietetics conferred by a college or university that is accredited by an accrediting body ~~listed as nationally recognized by the secretary of the federal United States~~ department of education.

(b) ~~Received diplomate~~ Diplomate status in human nutrition conferred by a college of chiropractic accredited by the Council on Chiropractic Education, ~~(CCE) or~~ approved by the board, or accredited by an accrediting agency approved recognized by the United States office department of education or its successor.

~~(c) Received a A postgraduate degree in human nutrition conferred by a foreign school determined to be equivalent to an accredited college of chiropractic by the CCE Council on Chiropractic Education or approved by the board or another board approved accrediting agency, indicating that the applicant has graduated from a program that is substantially equivalent to a postgraduate or diplomate program under ~~subd. 1. or 2.~~ par. (a) or (b).~~

~~(d) Received a A degree from or otherwise successfully completed other recognition of successful completion of a postgraduate program after December 1, 2006 consisting of a minimum of 48 hours in human nutrition that is approved by the board as provided in under s. Chir 12.03, after December 1, 2006 at the time the program is completed.~~

SECTION 7. Chir 12.03 (1) (intro.) is amended to read:

Chir 12.03 (1) (intro.) To qualify for board approval as a nutritional counseling education program ~~under s. Chir 12.02 (1) (c) 4.~~, a program shall meet all of the following minimum requirements:

SECTION 8. Chir 12.03 (1) (am) is created to read:

Chir 12.03 (1) (am) The program consists of a minimum of 48 hours in human nutrition.

SECTION 9. Chir 12.03 (1) (b) 3., 4., 5., 9., and 10. are amended to read:

Chir 12.03 (1) (b) 3. Analysis of laboratory data including hair, saliva, urine, and blood samples.

4. Symptoms of severe vitamin and nutritional deficiencies, and the toxicity of excess vitamin and mineral supplementation, herbals, or other nutritional supplements.

5. Protein, carbohydrates, and fat macronutrient needs, and symptoms of deficiencies of any of these nutrients.

9. The Codex Alimentarius Commission.

10. ~~The Dietary supplement health~~ Supplement Health and ~~education act~~ Education Act of 1994, ~~P.L. 103-417~~ and related regulations.

SECTION 10. Chir 12.03 (1) (b) 10. (Note) is created to read:

Chir 12.03 (1) (b) 10. (Note) The Dietary Supplement Health and Education Act of 1994 is also known as Public Law 103-417.

SECTION 11. Chir 12.03 (1) (b) 11., 13., 15., 17., 19., 21., 22., 24., and 25. are amended to read:

Chir 12.03 (1) (b) 11. Etiology of organ system dysfunction, and internal medicine diseases and conditions.

13. The efficacy, safety, risks, and benefits of glandular products, chelation therapy, and therapeutic enzymes.

15. Sports nutrition, endurance, body building, and exercise physiology.

17. Contraindications, side effects, and toxic effects of botanicals, nutritional supplements, and diet products.

19. Nutrition relating to infants, pregnancy, and lactation.

21. Adolescent ~~nutrition~~ nutritional needs.

22. Male and female ~~nutrition~~ nutritional needs.

24. Food, drug, and nutritional ~~supplements~~ supplement interactions.

25. ~~Safety and~~ The safety, efficacy, – risks, and benefits of nutritional supplements.

SECTION 12. Chir 12.03 (1) (c) is renumbered Chir 12.03 (1) (c) (intro.) and amended to read:

Chir 12.03 (1) (c) (intro.) ~~The program sponsor agrees to provide a responsible person to monitor and verify the attendance of each registered chiropractor at the program, and the program sponsor agrees to keep the records of attendance for 3 years from the date of the program and to furnish each participant with evidence of having attended the program.~~ agrees to do all of the following:

SECTION 13. Chir 12.03 (1) (c) 1. to 3. are created to read:

1. Provide a responsible person to monitor and verify attendance at the program.
2. Keep records of attendance for at least 3 years from the date of the program.
3. Furnish each participant with evidence of having attended the program.

SECTION 14. Chir 12.03 (1) (d), (e), (f), (i), and (j) are amended to read:

Chir 12.03 (1) (d) ~~The program sponsor shall not assign or delegate its~~ Any assignment or delegation of a program sponsor's responsibilities to monitor or record attendance, provide evidence of attendance, compare course content with subject matter content required under sub. (1) (b), or provide information on instructors or other aspects of the program unless the assignment or delegation is specifically identified in the application for approval under sub. (2) and approved by the board.

(e) ~~The program sponsor has reviewed and validated the program's content to insure~~ ensure its compliance with par. (b).

(f) ~~When a~~ Any course instructor ~~of the program that~~ is on the undergraduate or postgraduate faculty of a chiropractic college, ~~the program sponsor has provided written verification that the course instructor~~ has been appointed in accordance with the accreditation standards of the Council on Chiropractic Education.

(i) ~~The program shall include~~ includes a written assessment instrument, ~~that is~~ that is designed to ensure ~~that~~ the chiropractor actively participated in the presentation of material and derived a measurable benefit from participation. There shall be an assessment or test at the conclusion of each 12 hours of education. A score of 75% or higher shall be considered a passing score.

(j) ~~The program shall contain~~ contains a reasonable security procedure to ~~assure that~~ ensure the chiropractor enrolled is the actual participant.

SECTION 15. Chir 12.03 (1) (k) is repealed.

SECTION 16. Chir 12.03 (2) (a) 1. to 9. and (3) are amended to read:

Chir 12.03 (2) (a) 1. ~~Be~~ The application shall be on a form provided by the board.

(Note) Application forms are available on the department's website at dsps.wi.gov, or by request to the board office located at 1400 East Washington Avenue Department of Safety and Professional Services, P.O. Box 8935, Madison, Wisconsin 53708, or from the department's website at: <http://dsps.wi.gov> call (608) 266-2112.

2. Identify The application shall identify the name and address of the program sponsor and describe how the program sponsor qualifies under ~~s. Chir 12.03 sub.~~ (1) (a).

3. Describe The application shall identify the time and ~~place~~ location of the program.

4. Be The application shall be complete as prescribed in this subsection and filed with the board no later than 75 days prior to the program date. An application is not considered complete until such time as all information required to be submitted with the application, and any supplementary information requested by the board, is received by the board.

5. Include The application shall include satisfactory evidence, of the program sponsor's verification showing to the satisfaction of as determined by the board, that the program subject matter is generally taught at the undergraduate or postgraduate level of a chiropractic college and relates to improving contributes to the advancement, extension, and enhancement of the clinical skills of a chiropractor and fosters the enhancement of general or specialized practice and values. A detailed course outline or syllabus describing the subject matter of the program, and the amount of time devoted to each section of the outline or syllabus shall be attached to the application.

6. Describe The application shall describe the names and qualifications of all instructors, and if applicable, whether an instructor ~~of the program~~ who is an undergraduate or postgraduate faculty member of a sponsoring college was appointed in accordance with accreditation standards of the Council on Chiropractic Education.

7. Identify The application shall identify whether the program sponsor intends to assign or delegate any of its responsibilities to another person or entity, and if so, include all of the following:

a. A specific description of the ~~assignment or delegation~~ assigned or delegated responsibility.

b. The name, address, and qualifications of the person or entity who is assigned or delegated to perform the responsibility, including name, address and qualification to perform the responsibility.

c. ~~The~~ A description of the method by which the program sponsor intends to assure that ensure the delegated or assigned responsibility is performed.

8. Include The application shall include a description of the written assessment instrument, that is designed to ensure that the a chiropractor has actively participated in the presentation of material and derived a measurable benefit from participation.

~~9. include~~ The application shall include a reasonable description of the security procedure that will be used to assure that the ensure a chiropractor enrolled in the program is the actual participant.

(3) Programs shall be approved for one hour of education credit for every 50 minutes of instruction. Continuing education credit may not be ~~awarded~~ approved for meals, breaks, and testing or assessment periods.

SECTION 17. Chir 12.04 (intro.) is amended to read:

Chir 12.04 (intro.) The board may deny approval of an application submitted under s. Chir 12.03 (2) for any of the following reasons:

SECTION 18. Chir 12.05 (1) is amended to read:

Chir 12.05 (1) The program sponsor, an instructor, or a person or entity delegated or assigned a responsibility has a financial, personal, or professional interest ~~which that~~ conflicts directly with the performance of responsibilities ~~in~~ under this chapter.

SECTION 19. Chir 12.06 (1) to (3) are amended to read:

Chir 12.06 (1) A chiropractor ~~shall~~ may not delegate to any chiropractic assistant or other person any recommendations, analysis, advice, consultation, or dispensing with respect to ~~vitamins, herbs, or~~ nutritional supplements. Nothing in this subsection may be construed to prevent chiropractic assistants or administrative employees from processing sales of ~~vitamins, herbs, or~~ nutritional supplements.

(2) ~~After December 1, 2008 a~~ A chiropractor ~~shall~~ may not sell, barter, trade, or give away ~~vitamins, herbs or~~ nutritional supplements unless the chiropractor holds a certificate for nutritional counseling and except as consistent with the provisions of this chapter.

(3) A chiropractor ~~shall~~ may not deliver, dispense, administer, transfer, or sell a ~~product~~ nutritional supplement unless ~~that product~~ the nutritional supplement is prepackaged for use by consumers and labeled in accordance with the requirements of state and federal law.

SECTION 20. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
