

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION

700 Board of Chiropractic
Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10)
(24 **Del.C.** §706(a)(1) and (10))
24 DE Admin. Code 700

FINAL

ORDER

The Board of Chiropractic ("Board") was established to protect the general public, specifically recipients of Chiropractic services, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered. The Board was further established to maintain minimum standards of practitioner competency and delivery of services to the public. The Board is authorized by 24 **Del.C.** §706(a)(1) to make, adopt, amend, and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §706(a)(1), the Board proposed changes to its regulation 3.0 affecting the certification in a chiropractic specialty. Specifically, the proposed amendments to 3.0 Certification specify two nationally recognized certification bodies whose requirements for practitioner specialization are acceptable to the Board. One minor stylistic change was also included.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the *Delaware Register of Regulations*, Volume 10, Issue 7, at page 1126 on January 1, 2007. However, notice was not published in two (2) Delaware newspapers of general circulation, as required by 29 **Del.C.** §10115, so the public hearing could not be conducted on February 15, 2007 as originally scheduled. The public hearing was, therefore, rescheduled for March 15, 2007. Notice of the rescheduled public hearing was published in the *Delaware Register of Regulations*, Volume 10, Issue 9, at page 1467 on March 1, 2007 and in two (2) Delaware newspapers of general circulation at least 20 days prior to the rescheduled hearing.

Summary of the Evidence and Information Submitted

No written or verbal comments were received.

Findings of Fact

The Board finds that adoption of the proposed amendments appropriately reduces ambiguity by specifically identifying two nationally recognized specialty certification bodies acceptable to the Board.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

Text and Citation

The text of the final regulations is attached hereto and is formatted to show the amendments. A non-marked up version of the regulations as amended is attached hereto.

IT IS SO ORDERED this 17th day of May, 2007, by the **Board of Chiropractic of the State of Delaware**.

Dr. Michael Kelman, D.C., Secretary
Dr. William Cowan, III, D.C.

William Houghton
Prameela D. Kaza

700 Board of Chiropractic

1.0 Chiropractic Defined; Limitations of Chiropractic License

1.1 An adjunctive procedure not otherwise prohibited by Chapter 7 which aids and or assists the chiropractor in providing chiropractic care and includes by way of example and is not limited to:

- Acupuncture Procedures
- Physiological Therapeutics
- Diet and Nutritional Programs
- Rehabilitation/Exercise Programs

4 DE Reg. 1940 (06/01/01)

2.0 Officers; Meetings; Quorum

The Board will hold elections for the offices of President and Secretary at the regularly scheduled meeting in October of each year or as soon thereafter as practical. Vacancies occurring in an office shall be filled for the remainder of the term in the month following the vacancy or as soon thereafter as is practical.

3.0 Certification

Certification in any nationally recognized specialty for a licensee requires a minimum of ~~one hundred (100)~~ or more hours of certified training beyond and in addition to any courses or training received toward a degree of Doctor of Chiropractic. Certification in any nationally recognized chiropractic specialty or technique requires that the licensee shall have completed all requirements for recognition as a practitioner of such chiropractic specialty or technique by the American Chiropractic Association, the International Chiropractic Association, or any Board-approved nationally recognized certification body.

4.0 Continuing Education

4.1 Continuing Education for New Licensees:

4.1.1 At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be pro-rated as follows:

License Granted During First Year:	Credit Hours Required:
July 1 - December 31	24 hours
January 1 - June 30	18 hours

License Granted During Second Year:	Credit Hours Required:
July 1 - December 31	12 hours
January 1 - June 30	0 hours

4.2 Continuing Education for Licensees other than new licensees:

4.2.1 Unless otherwise excused by the Board for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence or inadvertence, all Chiropractors seeking renewal more than two (2) years from initial licensure or reinstatement of a lapsed license must attest to the satisfactory completion of twenty four (24) credit hours of Board approved continuing education within the immediately preceding two (2) year period. Effective July 1, 2006, of the required twenty four (24) credit hours of Board approved continuing education, a maximum of twelve (12) credit hours may be fulfilled by participating in online courses.

4.2.1.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted;

4.2.2 Attestation of continuing education shall be submitted to the Division of Professional Regulation, Dover, Delaware, no later than June 30th of the reporting year and shall be received every two (2) years after such date. Continuing education completed before June 30th of the reporting year shall not be carried over to the next renewal period. The Board has the right to conduct an audit of the proof of continuing education submitted by licensees.

4.2.2.1 All licensees shall maintain documentation of continuing education during

the licensure period to be submitted if their renewal application is selected for audit. Random audits will be performed by the Board to ensure compliance with the continuing education requirement. Licensees selected for the random audit shall submit the log and attendance verification.

4 DE Reg. 1940 (06/01/01)

8 DE Reg. 1586 (05/01/05)

9 DE Reg. 1766 (05/01/06)

10 DE Reg. 146 (07/01/06)

5.0 Issuance of License; Renewal; Inactive Status; Reinstatements; Retention of Patient Records

5.1 The Biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed one (1) year. Licenses renewal may be accomplished online at <http://dpr.delaware.gov>.

5.2 Inactive Status and Termination of Practice. Any licensee who seeks to be placed on inactive status or who is terminating his or her practice in this State or is leaving this State and is not transferring his or her records to another chiropractor shall notify the Board in writing and notify all patients treated within the last three (3) years by publication in a newspaper of general circulation throughout the State of Delaware and offer to make the patients records available to the patient or his or her duly authorized representative. Except in an emergency situation where as much notice as is reasonably possible shall be given, the notice by publication shall be made at least ninety (90) days prior to termination of the practice or leaving the State and must be published at least 3 times over this ninety (90) day period and must explain how a patient can procure his or her patient records. All patients who have not requested their records thirty (30) days prior to the termination of the licensee's practice or the licensee leaving the State shall be notified by first class mail by the licensee to permit patients to procure their records. Any patient records that have not been procured within 7 years after the licensee terminates his or her practice or leaves the State may be permanently disposed of in a manner that ensures confidentiality of the records.

5.3 Retention of Patient Records. Patient records must be retained by the Chiropractor or arrangements made for the maintenance and retention of patient records for seven (7) years from the date of the last treatment.

5.4 Whenever a patient changes from the care of one Chiropractor to another Chiropractor and upon the request of either the new Chiropractor or the patient the previous Chiropractor (a) may charge for the reasonable expenses of copying the patient's records and upon receiving payment for such expenses, shall transfer the patient's records to the new Chiropractor, or (b) if there is no copying charge, shall transfer the records of the patient to the new Chiropractor, within a reasonable time frame. Alternatively, if the patient and new Chiropractor agree, the Chiropractor may forward to the new Chiropractor a summary of the patient's records in lieu of the entire record at no charge to the patient. If a patient changes care from one Chiropractor to another Chiropractor, and fails to notify the previous Chiropractor or leaves the care of the previous Chiropractor for a period of 7 years from the date of the last treatment and fails to notify the previous Chiropractor, or fails to request the transfer of records to the new Chiropractor, then the previous Chiropractor shall maintain said records for a period of 7 years from the date of last treatment, after which time the records may be permanently disposed of in a manner that ensures confidentiality of the records.

5.5 This rule shall not apply to a Chiropractor who has seen or treated a patient on referral from a Chiropractor and who has provided a record of the diagnosis or treatment to another chiropractor, hospital or agency which has provided treatment for the patient.

5.6 A Chiropractor or the personal representative of the estate of a Chiropractor who disposes of patient records in accordance with the provisions of this rule is not liable for any direct or indirect loss suffered as a result of the disposal of a patient's records.

4 DE Reg. 1940 (06/01/01)

5 DE Reg. 270 (09/01/01)

7 DE Reg. 36 (07/01/03)

10 DE Reg. 146 (07/01/06)

6.0 Grounds for Discipline

6.1 Unprofessional Conduct in Advertising. Any Licensee who advertises or holds out to the public that he or she is a specialist in any specific chiropractic or adjunctive procedure without having a valid current certification as having special training and/or certification in such procedure or procedures from a recognized certification body is guilty of unprofessional conduct.

6.2 Examples of Unprofessional Conduct in Advertising and Promotional Practices. The following advertising and promotional practices are deemed to be misleading, false, deceptive, dishonorable and/or unethical and shall constitute unprofessional conduct by a licensee:

6.2.1 The use of testimonials without written permission of that doctor's patient.

6.2.2 Offering free or discounted examinations unless all charges associated with such examinations, including all x-ray fees and charges, are conspicuously set out in writing at the time of and in conjunction with such offer and unless such examinations are offered regardless of the availability of insurance coverage of any recommended subsequent treatment.

6.2.3 The use of unjustified or exaggerated claims, promises or statements which guarantee or strongly imply cure or successful treatment or are otherwise false, fraudulent, deceptive, or misleading.

6.2.4 Willful failure to identify licensee as a Doctor of Chiropractic, Chiropractor or Chiropractic Physician.

6.3 Unprofessional conduct with Patient, Employees, or Co-workers. Sexual misconduct in violation of a statute of the State of Delaware or any State or Commonwealth where such conduct takes place, involving a licensee and a patient, employee or co-worker shall be deemed to be unprofessional conduct.

4 DE Reg. 1940 (06/01/01)

5 DE Reg. 270 (09/01/01)

7.0 License to Practice

A Chiropractor licensed elsewhere but not licensed in the State of Delaware may practice chiropractic within the State of Delaware only in consultation with a duly Delaware licensed Chiropractor for not more than ten (10) consultations in any twelve (12) month period, which consultations shall be limited to examination, recommendation or testimony in litigation.

8.0 Voluntary Treatment Option

Any member of the public or a licensee may make a written report, signed by the complainant, of chemical dependency or impairment affecting any person regulated by the Board pursuant to 29 **Del.C.** §8807(n).

8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

8.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of

Professional Regulation and the chairperson of the participating Board.

8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in section 8.8.

8.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

8.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

8.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

8.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

8.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

8.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

8.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

8.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

8.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

8.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

8.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the

potential for disclosure and specify those to whom such information may be disclosed.

4 DE Reg. 1940 (06/01/01)

9.0 Crimes substantially related to the practice of chiropractic

9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of chiropractic in the State of Delaware without regard to the place of conviction:

- 9.1.1 Manslaughter. 11 **Del.C.** §632.
- 9.1.2 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
- 9.1.3 Murder in the second degree. 11 **Del.C.** §635.
- 9.1.4 Murder in the first degree. 11 **Del.C.** §636.
- 9.1.5 Rape in the second degree. 11 **Del.C.** §772.
- 9.1.6 Rape in the first degree. 11 **Del.C.** §773.
- 9.1.7 Continuous sexual abuse of a child. 11 **Del.C.** §778.
- 9.1.8 Dangerous crime against a child. 11 **Del.C.** §779.
- 9.1.9 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 9.1.10 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.

9.2 Crimes substantially related to the practice of chiropractic shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

8 DE Reg. 997 (01/01/05)

10 DE Reg. 1126 (01/01/07)

11 DE Reg. 348 (09/01/07) (Final)