



NORTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS

P.O. Box 185 · Grafton, ND 58237

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To: Bill Devlin, Chairman
Administrative Rules Committee
North Dakota Legislative Council

From: Lisa Blanchard
ND Board of Chiropractic Examiners Executive Director

Date: December 1, 2020

Re: ND Board of Chiropractic Examiners Proposed Administrative Rules

Thank you for the opportunity to address the administrative rule amendments adopted by the North Dakota Board of Chiropractic Examiners. Our section of the January 2021 Supplement can be found starting on Page 1.

The Administrative Rules Committee has asked for testimony related to the following questions:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

Yes, two rules are being updated to reflect changes enacted by the 66th Legislative session.

- The proposed amendments to 17-01-01-01(3) Board Membership address the changes made by H.B. 1279.
- The proposed addition to 17-01-01-02 Fees addresses changes made by S.B. 2306.

2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.

No

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

Adopting the Rules:

- The Board held their initial discussion of proposed changes to the Administrative Rules at their board meeting held on July 10, 2019. Continued discussions were held at board meetings on September 20, 2019, November 20, 2019, January 17, 2020, and May 21, 2020. The Board approved draft rules for public hearing on May 21, 2020.
- Full public notice and draft rules sent to Legislative Council on June 17, 2020 with the public hearing scheduled for August 3, 2020 at 10:00 AM CST.

Public Notice Information:

- Request provided to ND Newspaper Association on June 17, 2020 to publish notice once in each county newspaper (20 days elapsed between publication of the notice and date of the hearing) between 06/24/2020 – 06/30/2020.
 - The Board received copies of each publication and affidavit from NDNA July 10, 2020.
- A copy of the Proposed Rules, Full Notice, Abbreviated Notice, and Fiscal Note was provided electronically to all license holders on June 22, 2020.
- A copy of the Proposed Rules, Full Notice, Abbreviated notice, and Fiscal Note were uploaded to the Board’s website on June 22, 2020.

Public Hearing:

- Due to COVID-19, the public hearing was held via teleconference on August 3, 2020 at 10:00 AM CST. The toll-free dial-in information was included on all public notice documents.
- The written comment period concluded on August 17, 2020.

Board Consideration of Comments and Final Adoption:

- The Board held a special meeting on September 2, 2020 for consideration of all comments made during the public comment period and final adoption of the Rules.
- All comments received during the public comment period were considered and updates to the proposed rules were completed.
- Final adoption of the Rules occurred on September 2, 2020.

Attorney General Opinion as to the legality of Rules:

- The Board submitted their request to Attorney General on September 4, 2020.
- Attorney General approved rules as to their legality on September 23, 2020.

1. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.

SUMMARY - BY SECTION - OF ALL COMMENTS/SUGGESTIONS/QUESTIONS RECEIVED & BOARD RESPONSE/ACTION TAKEN		
<i>Section</i>	<i>Summary</i>	<i>Board’s Response/Action Taken</i>
17-01-01-01(3): Board Membership	Correct term expiration	To avoid conflict with the Century Code, we will remove "and one term expires each year"
17-01-01-02: Fees	#1: Questions on fees	The Board understands the concerns and opposition presented. Due to current litigation and the unknown and ongoing costs to be anticipated in the next year, and possibly beyond, the Board unanimously agreed that proceeding with the proposed increase of the fees is necessary. For FY2020, the Board anticipates a \$50,000 - \$100,000 deficit of Expenses over Income due to litigation. The proposed increase is anticipated to generate approximately \$45,000 annually, which will significantly decrease that deficit. Predicting the litigation expenses for 2021 and beyond is not
	#2: Fees for out-of-state active license holders	
	#3: opposes/questions/concerns on need for fee increase (provided with 2nd quarter financial reports)	
	#4: opposes/disagrees with need for fee increase	

	#5: opposes fee increase	possible at this time. The fiscal responsibility of the Board was questioned. For FY2020, if one does not include the Litigation expenses, the Board would be on track to end the year with a surplus for their normal operating expenses. The last fee increase was completed in 2014 due to a recommendation from the Legislative Audit and Fiscal Review Committee. The basis was a negative financial audit resulting from litigation that occurred in prior years. The Board discussed the future, monitoring the financial status, and implementing a reduction of the fees as soon as it is possible.
	#6: opposes fee increase	
	#7: opposes fee increase (provided with 2nd quarter financial reports)	
	#8: opposes fee increase	
17-01-02-02: Procedural rules	[Oral]: Robert's Rules of Order has been revised and current version is called Robert's Rules of Order Newly Revised. Should this be updated?	Accepted and updated as recommended.
17-02-01-01.2(5); 17-02-01-01.2(6): Definitions	[Oral]: Language Issue: college of chiropractic is antiquated. Current language of CCE is: Council on Chiropractic Education Accredited Doctor of Chiropractic Program. This occurs multiple times in Rules (only highlighted 2) and Law. Do we need to correct in Law first and then update Rules?	No action taken at this time. The Board discussed that both the Century Code and the Administrative Rules contain the antiquated/previously used title of the CCE. They will plan to update the Century Code in 2021 and follow-up with the Administrative Rules after the changes are made in 43-06.
17-02-01-01.2(6): Definitions	[Oral]: ...participate in the program... What is the "program"?	The Board agreed that program was not well defined and adds "the graduate intern" to define the program.
17-02-01-02.1(6): Reciprocity - Endorsement	CHRI definition	The Board agreed that the acronym should be spelled out and included a reference to the requirement in Century Code 43-06-11.1.
17-02-03-02: Reporting contagious/infectious diseases	[Oral]: ...in accordance with the state health department list... Should that be listed as ND Department of Health vs. state health department?	Accepted and updated as recommended.

17-02-04-07(5): Dry Needling	[Oral]: We do not have proposed changes in this section, however, council of chiropractic is incorrect - should be Council on Chiropractic Education (CCE)	No action taken at this time. The Board discussed that both the Century Code and the Administrative Rules contain the antiquated/previously used title of the CCE. They will plan to update the Century Code in 2021 and follow-up with the Administrative Rules after the changes are made in 43-06.
17-02-04-07(7): Dry Needling	[Oral - Public Hearing]: Question - Has the Board identified any education providers/programs for the continuing education?	Response: Yes, there are a few continuing education providers/programs available to fulfill this requirement.
17-02-04-07(10): Dry Needling	[Oral]: Same as previous regarding correction of CCE	No action taken at this time. The Board discussed that both the Century Code and the Administrative Rules contain the antiquated/previously used title of the CCE. They will plan to update the Century Code in 2021 and follow-up with the Administrative Rules after the changes are made in 43-06.
17-03-01-01(9): Unprofessional Conduct	[Oral]: Understands the removal of moral turpitude, but wondering if "psychological harm" should also be included? Or is that already covered in #2?	No action taken. The Board felt that psychological harm was included/covered in subsection #2.
17-03-01-01(19): Unprofessional Conduct	#1: opposed/concerns/vague	As drafted in the proposal, the Board understood and generally agreed with the concerns of those providing comment. Revisions were proposed and discussed as the Board felt strongly with their original intent for including the language. To further clarify the subsection, they added "or patient care directly delegated by said chiropractor to". Additionally, they removed "with patients and" after communication in the last line.
	#2: opposed/concerns	
	#3: opposed/concerns	
	#4: opposes/concerns	
	#5: opposes/concerns	
	#6: opposes/concerns	
	#7: opposes/concerns	
	#8: [Oral]: Concerns that this could be used inadvertently against an owner in malpractice situations? Malpractice claim is filed against employee as they are the treating doctor, however, could this open up claims against employer when they have no involvement. Agrees with intent, just highlighting possible issue.	

17-03-02-01(1): Professional Education	[Oral]: Wording is confusing. Suggests: Hours earned through a provider of approved continuing education (PACE) or board-approved continuing education program will be acceptable.	Accepted and updated as recommended.
17-03-02-01(d): Professional Education	[Oral]: Remove "the" before a medical or.....	Accepted and updated as recommended.
17-03-02-03: Report of Disciplinary Actions	[Oral]: Add "the" before chiropractic information network....	Accepted and updated as recommended.

2. The approximate cost of giving public notice and holding any hearing on the rules and approximate cost (not including staff time) of developing and adopting the rules.

The approximate cost of publishing the Notice and the Attorney General's opinion were \$3,860.50.

3. An explanation of the subject matter of the rules and the reasons for adopting those rules.

See pages 6 – 9.

4. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued.

No regulatory analysis was required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000.00, and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.

5. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

Not applicable.

6. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.

Fiscal Note attached - page 10.

7. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.

Not applicable.

Thank you for your consideration of these rules.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

The page number of the supplement has been included for each section.

*The proposals that received public comment are noted with a *.*

Page 3

***17-01-01-01(3) Board Membership:**

The amendment updates the subsection according to House Bill number 1279, enacted during the most recent legislative session, adding a certified chiropractic clinical assistant and a consumer member to the board.

17-01-01-01(5) Executive Director:

The amendment expands who the Executive Director reports to.

17-01-01-01(6) Inquiries:

The purpose is to streamline the rules and remove unnecessary information.

Page 3-4

***17-01-01-02(2), (3), and (5) Fees:**

These amendments increase select licensure fees to maintain operational functions required for the board to meet the statutory duties in N.D.C.C. 43-06. Also included is language per Senate Bill number 2306, enacted during the most recent legislative session, concerning the waiving of fees for a provisional license or temporary permit for military spouses.

Page 5

***17-01-02-02 Procedural rules:**

The amendment updates and clarifies the language regarding the manner in which the proceedings of the board are conducted.

Page 6

17-01-03-02 Duties of secretary-treasurer:

These amendments correct a spelling issue and delegates what board member performs the duties of the secretary-treasurer in his/her absence.

17-01-03-02 Duties of executive director:

The amendment simplifies and updates the language regarding the duties of the executive director.

Page 7-8

***17-02-01-01.2(3)(a), (c), (d), and(f) Definitions:**

Please note there is some renumbering of existing subsections that occurs in this section.

These proposed rules add expanded definitions for Direct supervision, Graduate Intern, Intern, and Preceptorship found in N.D.C.C. 43-06-02(2) and 43-06-02(3). It also defines the scope of abilities for the Graduate Intern and Intern.

Page 8

17-02-01-02. Application for licensure:

This amendment updates the method of securing an application. Additionally, the language regarding the jurisprudence requirement is being removed from this section and moved to a more appropriate section of the administrative rules (moving to 17-02-01-08 – Examination subjects & requirements).

Page 8-9

17-02-01-02.1. Reciprocity or Endorsement:

This title update includes the term endorsement which will better match language used by other jurisdictions for license portability.

17-02-01-02.1(3), (4), (6), and (7). Reciprocity or Endorsement:

(3) This removes unnecessary language as it is already addressed in the Administrative Rules under 17-02-01-08.

(4) This removes unnecessary language/application as it is no longer applicable due to the proposed addition of Endorsement to the title.

* (6) This amendment adds the Criminal History Record Check requirement for this type of applicant.

(7) This removes unnecessary language.

Page 9

17-02-01-04. Photograph:

This updates the title and specifications due to the advancement of technology and updates the aging of the photo.

17-02-01-08(3), (4), and (8). Examination subjects and requirements:

(3) & (4) These changes remove unnecessary licensure barriers.

(8) This adds the language for the jurisprudence examination and affidavit requirements (this is being moved from 17-02-01-02).

Page 10

17-02-01-10. Licenses issued:

This removes antiquated and vague moral character verbiage and replaces it with clearer terminology.

17-02-01-10.1. License displayed:

This adds a notification requirement for branch offices and a specified timeframe in which all location change notifications to the board office should be made.

17-02-01-13(1) and (3). License renewal and fees:

(1) This update clearly defines the license renewal deadline, updates the questionnaire location, and adds the reporting of the continuing education credits to this section for clarity.

(3) This removes the examination requirements and replaces with a reapplication requirement. Additionally, we removed the jurisprudence requirement language as it is already a requirement in the application process.

Page 10-11

17-02-01-15. Lapsed licenses:

This removes unnecessary language.

Page 11

17-02-01-16(3). Reactivation of an inactive license:

This removes incorrect and unnecessary terminology.

Page 12

17-02-02.1-02. License suspension:

This allows for specifications to be included in orders or agreements.

Page 13

17-02-03-01. Filing addresses:

There are no content changes. This simply reformats the single section into 2 separate subsections for clarity.

***17-02-03-02. Reporting contagious or infection diseases:**

This updates the existing language from community to region and adds the state department of health list for the specific diseases.

Page 14

17-02-04-02. Signing death certificates:

This updates the existing language from patient to individual.

17-02-04-03. Advertising:

This removes the language regarding American chiropractic association code of ethics adopted by this state to match the proposed repeal of 17-03-01-04.

Page 14-15

17-02-04-06(10). Needle acupuncture:

This adds an exemption from additional licensure by board of integrative health care, if applicable.

Page 15

17-02-04-07(6), (7), (8), (9), and (10). Dry needling:

(6) This corrects the terminology.

*(7), (8), & (9) Adds an annual continuing education requirement to maintain the certification along with specific requirements for reinstatement if the certification is allowed to lapse.

Page 16

17-03-01-01. Unprofessional Conduct:

Please note there is some combining, moving, and renumbering of existing subsections that occurs in this section.

(2) This adds an additional legal definition and includes additional individuals to further define who this subsection pertains to.

(3) This decreases the retention duration for patient records.

(4) This revises and updates the legal definitions included in the subsection (original subsection #11 is combined into this).

(7) This removes the outdated term moral turpitude and redefines.

Page 17

***(9)** This removes the outdated term moral turpitude and redefines for clarity.

(11) This moves and combines the language from this subsection with subsection (4) above.

(12) Adding "willful" for further legal definition.

(15) Previously part of original subsection (16): We separated the original subsection for clarity. This updates the term scope.

(16) & (17) Previously part of original subsection (16) – We separated the original subsection for clarity. No content changes from the original language - just separated.

***(19)** The purpose is to add a definition regarding patient care and the responsibility of chiropractor.

(20)(a) This adds and defines the term specialist.

Page 18

(20)(g) & (h) This removes these existing barriers on advertising.

(22) This update adds significant other.

Page 18

17-03-01-02(3). Marketing:

This removes the term telemarketing and replaces with marketing.

17-03-01-04. Code of ethics:

This repeals the previously adopted code of ethics as the items included in this code already exist in either law or administrative rules and this eliminates concerns regarding the adoption of a specific organization's language.

Page 19

17-03-02-01(1), (5), and (6). Professional education:

Please note there is some combining, moving, and renumbering that occurs in this section.

***(1)** This adds PACE (Providers of Approved Continuing Education) as accepted hours.

(b original) This is removed as it has been moved above as these hours do not require board approval.

(b new) This expands to add co-sponsorship as an option.

(e & f original) These are combined in the new subsection d.

***(d new)** This combines previous subsections (e & f) for simplicity, updates terminology from medical to health-related, and removes the naming of specific trade associations.

(5) This lowers the quantity of professional boundary hours required in this subsection by 1 to match the number of hours required in this topic by the neighboring jurisdictions.

Page 20

17-03-02-01(6) This removes the new doctor seminar requirement as it is a burden to the new license holders and has been replaced with an online jurisprudence examination.

17-03-02-02(1). Peer review:

This updates the appointments to the committee from the President to the full board.

***17-03-02-03. Report of disciplinary actions:**

This updates the section to include the option of utilizing a reporting agent, the titles of the databanks, and updates to the location where the board will publish final disciplinary actions.

Page 21

ARTICLE 17-04 CERTIFIED CHIROPRACTIC CLINICAL ASSISTANT

This adds a new article to Title 17 regarding the Certified Chiropractic Clinical Assistants.

17-04-01-01. Lapsed Certifications:

This adds a section to the new chapter regarding lapsed certifications.

17-04-01-02. Reactivation of a lapsed certification.

This adds a section to the new chapter regarding the process and requirements an individual will need to complete to reactivate a lapsed certification.

Fiscal Note

Prepared May 14, 2020

The proposed fee increase in 17-01-01-02(2) will annually affect the active license holders. As of 5/14/2020, the Board has 446 active license holders. With an increase of \$100.00 per active license holder, the projected total additional income for the Board will be \$44,600.00 for 2020. The number of active license holders in North Dakota has remained relatively unchanged in the past three years, therefore, the projected annual income total is estimated to be similar to the above dollar amount for the fiscal years beyond 2020.

The proposed fee increase in 17-01-01-02(3) will only affect a license holder with an inactive license that would like to reactivate their license to the active status. The increase is to match the difference in fees between the inactive and active status. On average, the Board processes zero – three reactivations annually. The projected annual income for the Board is less than \$1,000.00.

The proposed fee increase in 17-01-01-02(5) will only affect an active license holder that does not submit their annual license renewal fee by the renewal deadline. This administrative late fee should be an incentive to license holders to complete their renewals in a timely manner and is 100% avoidable. On average, zero – five active license holders fail to renew their licenses by the renewal deadline. The projected annual income for the Board is \$1,500.00 or less.

Richter, Vonette J.

From: Devlin, Bill R.
Sent: Tuesday, November 10, 2020 5:06 PM
To: Richter, Vonette J.
Subject: Fwd: Dear Chairman Devlin and committee members

Not sure if you got this?

From: Dr. Jake Schmitz <drjakedc4u@gmail.com>
Sent: Tuesday, November 10, 2020 4:54 PM
To: Devlin, Bill R.; Poolman, Nicole; Boschee, Joshua A.; Becker, Rick C.; Koppelman, Kim A.; Marschall, Andrew; Pyle, Brandy L.; Ruby, Dan J.; Satrom, Bernie L.; Steiner, Vicky L.; Toman, Nathan P.; Weisz, Robin L.; Heckaman, Joan M.; Klein, Jerry J.; Lemm, Randy; Rust, David S.
Subject: Dear Chairman Devlin and committee members

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Hello Representative Devlin, chair of the administrative review committee, and committee members,

I am opposing two of the proposed rule changes from the ND state board of chiropractic examiners, which will be addressed below.

Rule #1) 17-01-01-02.2 – “For renewal of a license, four hundred dollars for active status...”

I oppose this from the understanding that the state board currently has a yearly surplus of money. The board currently has over \$300,000.00 at its disposal. If this rule change goes through, it will add roughly an additional \$50,000.00 to the yearly surplus, which as I have stated above, is already more than is necessary to perform their duties. The main reason the board has decided to increase due, thereby increasing the burden on the license holders, is because they have budgeted a loss for this fiscal year. Even if the board takes this same budgeted loss for the next 5 years in a row, which is highly unlikely, it will still have the more than \$50,000.00 in the bank. The board has an unrealistic fear about not having enough money to pursue multiple legal cases at the same time. However, the history of the board demonstrates the unlikelihood of that happening, since the board averages only one case per decade that proceeds to a hearing. The other reason the board gives for needing extra funds is due to the expansion of members that were added last legislative session. Even with the increased members and the financial costs associated with that increase, the board has enough money to cover the costs and still have a yearly surplus.

Also, the board has enough money to prosecute its current case, and still has plenty to perform the required duties, even without an increase in dues. If nothing else, and before

an increase in dues is even considered, the board should have an independent council, or the state auditor, look into how to limit fruitless spending. According to the board's yearly budget, thousands of dollars are spent fulfilling obligations to other state boards, other associations (FCLB/FARB), trips for members traveling to seminars, and paying association dues that do not help the profession of chiropractic within the state of North Dakota. A real conversation is needed to look into whether this current board is spending the state's money wisely, instead of asking licensees for more. There is even evidence of the current board members paying themselves more than is prescribed in the board's own policy manual. The board paid itself a full per diem when the meeting in question was less than two hours, not even a 2/4 per diem. This occurred during a special meeting on 4.29.20. At best this is an example of unethical wasteful spending. At worst, this is fraud, which is very concerning. When this was brought to the board members' attention, it was disregarded. The president of the board, Dr. Dion Ficek, stated in their September 2nd, 2020 meeting, that the board has the right to pay a full per diem, no matter how long the meeting goes. This statement is at odds with the board's own policy manual, where it is explicitly written that each hour constitutes a 1/4 per diem.

Based on these objections, I respectfully request the Legislative Council deny the state board's request to increase licensing fees, and keep the current fees where they are at (\$300 per year).

Rule #2) 17-03-01-01.19: "Chiropractor shall be responsible for all patient care provided by them, or patient care directly delegated by said chiropractor to their agent or employee. For the purposes of this subsection, "patient care" shall include the practice of chiropractic, patient record keeping, patient billing, insurance billing, and communication with insurance companies."

Several issues arise with this proposed change to the administrative code. Firstly, which "chiropractor" is responsible? Is it the doctor who adjusted the patient, or the office owner, who typically is also a chiropractor, or both? The fact this rule change is so ambiguous makes it at best unconscionable, and at worst, unconstitutional. ***Respondent Superior*** is the legal term for holding employers responsible for the actions of the employees under their control. The only instance where *Respondent Superior* applies in medical practice is when an unqualified person makes an error due to being improperly supervised while they were fulfilling their stated duties. If the owner has delegated the patient care relationship to another DC, then he/she is not liable for the care, outside of financial ramifications of the care delivered. This, of course, assumes the DC caring for the patient has been properly licensed by the board, fulfilling the owner's responsibility to ensure adequate qualifications. Also, *Respondent Superior* only applies to the doctor that has the relationship with the patient, meaning the person who is "in control" of the patient's interaction. A licensed chiropractic assistant (CCCA) would also fall under this distinction, since the actions delegated would be covered by his/her license, making that person liable for his/her own actions.

An example of the absurdity of this rule can be seen in the second sentence of the proposed rule. As written, a chiropractor as owner would have his/her license liable to the quality of the notes done by an associate doctor. Doctors are responsible for the notes done by themselves for the patients they treated. That responsibility cannot be passed on to the owner, since that falls under the purview of each individual DC's license. Another example that demonstrates the flaws in this rule would be a front desk worker's conversations with a patient. The owner cannot be held liable for the words leaving another person's mouth. If that worker offends a patient, for whatever reason, should the chiropractor's individual license be held liable? To hold an owner's license liable for the words of another is unconscionable. What about when an insurance billing specialist (hired specifically for their knowledge and experience with insurance billing) makes an unintentional clerical error on a bill to an insurance company? Does the owner put his/her license on the line for every possible mistake an employee could make in regards to billing? People make mistakes, no matter their level of training. With this rule in place, why would anyone want to hire any employees?

Respondeat Superior also makes clear the boundaries of responsibility. When a physician delegates to a specialist, he/she isn't liable for the actions of that specialist. The specialist is responsible for his/her own actions under his/her own individual license. In other words, a licensed CCCA/DC cannot claim inadequate training to pass liability to the superior. The board should not pass the liability to the owner either, since the board is the party responsible for ensuring adequate credentials for the licensing of CCCA's and DC's. It is their responsibility to ensure the individual is qualified to fulfill their duties. By this same mindset, wouldn't the state board then be held liable, since they are in fact the party responsible for ensuring adequate qualifications? Also, since the board has practicing chiropractors on it, wouldn't their licenses be subject to the same punishment this proposed rule is trying to enforce? As you can see, there are many issues with this proposed rule.

Secondly, ***Vicarious Liability*** only applies to the owner's financial responsibility when an error is caused by an employee. It would be considered a violation of property rights to punish a practicing chiropractor's license when he/she wasn't involved in the issue outside of their ownership of the practice. Yes, an owner is financially responsible for everything that happens in his/her practice. However, the owner's individual license is not liable. If the owner is complicit in the negligence, act or misdeed, that's one thing. But, making the owner's license liable in a general and subjective way is a violation of due process and individual property rights. This administrative rule has a sole purpose of piercing the corporate veil. Corporate laws are set up to shield an owner from personal liability due to the actions of another. This rule removes that shield and circumvents the protections allotted to the owner. If a front desk clerk stole money from a patient without the knowledge of the owner, the way the rule is written, the owner's license could be punished. The owner may not even have been present. The owner might have multiple clinics with another doctor as "manager" of that location. According to this rule, he/she would still be punished for the actions of the staff member that was completely out of his/her control. Also, by this rule the owner of a franchise (who might not even live or practice in ND) could be liable, since this rule doesn't have any boundaries.

Thirdly, what is the punishment going to be for the owner? The way this rule is written, the punishment is up to the discretion of the sitting board members. The fact that no standard is written means they can punish at will, which means the default standard is completely subjective. That is akin to saying an owner of a car (parent) has a teenager who gets pulled over for speeding. Even though the owner/parent wasn't present at the time, he would still have action taken against his driver's license (a ticket or citation) according to the wording of this rule. That action would also (the way the proposed rule is written) be completely discretionary depending on the police officer's mood that day. Not only is that unfair, the owner of the car is also being punished for a crime he/she did not commit. For a rule to be enforceable, it has to have very clearly delineated boundaries that everyone knows and can follow. This proposed rule does not meet those criteria.

How does this rule play out within a partnership? What if 3 chiropractors (a partnership) hire an associate chiropractor for their office? They assign him duties to perform, all within the scope of his licensure. He is young, and fresh out of the chiropractic school. One of the partners is tasked with monitoring the young DC. Due to his inexperience, he makes a mistake during patient care, causing a complaint to be filed with the state board. Which chiropractor is at fault? How is the punishment doled out by the board? Do all the partners' licenses get punished, even the ones who had nothing to do with patient care? Should his monitor get punished, even though the duties he was performing were within the scope of licensure given to him by the board? Or does the liability rest solely with the associate, since he is licensed to perform those duties? As you can see, this rule has many flaws, making it inappropriate as an addition to the administrative code. This rule change will make it unlikely chiropractors will hire associate doctors to work for them, which deprives them of an opportunity to work. Not every chiropractor has a desire to own their own practice. It appears the state board thinks the best way to practice is for a single chiropractor to operate with as few employees as possible to limit liability.

All of these concerns were raised to the sitting board members at their September 2nd, 2020 board meeting. In response to these pertinent questions and troubling legal inconsistencies, the board members disregarded these concerns as "conspiracy theories" and moved on without a discussion to the legal ramifications of this proposed rule change. This is directly in violation to NDCC 28-32-11 ***"The agency or commission shall consider fully all written and oral submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency or commission shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule."***

Based on these considerations, I respectfully request this rule be stricken completely and not allowed to be entered into the ND Administrative Code for Chiropractors.

Maximum Blessings,

Dr. Jake Schmitz

Owner of Freedom Chiropractic Health Center (Fargo and Grand Forks)
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Richter, Vonette J.

From: Devlin, Bill R.
Sent: Wednesday, November 11, 2020 6:39 PM
To: Richter, Vonette J.
Subject: Fwd: opposition to rule changes for chiropractic board

FYI

From: Amanda Carvalho <meridianchiropracticclinic@gmail.com>
Sent: Wednesday, November 11, 2020 5:46 PM
To: Devlin, Bill R.; Poolman, Nicole; Boschee, Joshua A.; Becker, Rick C.; Koppelman, Kim A.; Marschall, Andrew; Pyle, Brandy L.; Ruby, Dan J.; Satrom, Bernie L.; Steiner, Vicky L.; Toman, Nathan P.; Weisz, Robin L.; Heckaman, Joan M.; Klein, Jerry J.; Lemm, Randy; Rust, David S.
Subject: opposition to rule changes for chiropractic board

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Hello Representative Devlin and committee members.

I am writing because I oppose two of the proposed rule changes from the ND state board of chiropractic examiners, which will be addressed below.

Rule #1) 17-01-01-02.2 – “For renewal of a license, four hundred dollars for active status...”

I oppose this rule because the board has nearly half a million dollar surplus and I don't believe that they need any more revenue to perform their duties. They have more than enough funds to cover their projected expenses. Increasing the license renewal fee is NOT necessary.

Rule #2) 17-03-01-01.19: "Chiropractor shall be responsible for all patient care provided by them, or patient care directly delegated by said chiropractor to their agent or employee. For the purposes of this subsection, "patient care" shall include the practice of chiropractic, patient record keeping, patient billing, insurance billing, and communication with insurance companies."

I do not support the idea of vicarious liability. I, as a chiropractic associate, hold my own license, and that license gives me the authority to make my own clinical decisions and interact with patients in an autonomous way. I do not expect that anyone else would be held liable for my interactions with patients or insurance companies. I do not want the pressure of knowing that my employer's LICENSE TO PRACTICE is on the line for any mistakes that I should make. I do believe that any business that employs me would take on financial liability for any billing errors on my behalf, but if a chiropractor happens to own the business that employs me, that chiropractor's ability to practice should be INDEPENDENT of anyone's actions but their own.

September 2nd, 2020 the board did hear the concerns that chiropractors in ND had submitted, however these concerns were disregarded and the board chose to move forward to your committee none-the-less.

Richter, Vonette J.

From: Devlin, Bill R.
Sent: Friday, November 13, 2020 9:59 AM
To: Richter, Vonette J.
Subject: Fwd: Dear Chairman Devlin and committee members...

FYI

From: W. F. <drwillyfielhaber@gmail.com>
Sent: Friday, November 13, 2020 9:53 AM
To: Devlin, Bill R.; Poolman, Nicole; Boschee, Joshua A.; Becker, Rick C.; Koppelman, Kim A.; Marschall, Andrew; Pyle, Brandy L.; Ruby, Dan J.; Satrom, Bernie L.; Steiner, Vicky L.; Toman, Nathan P.; Weisz, Robin L.; Heckaman, Joan M.; Klein, Jerry J.; Lemm, Randy; Rust, David S.
Subject: Dear Chairman Devlin and committee members...

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Hello Representative Devlin, chair of the administrative review committee, and committee members,

I am opposing two of the proposed rule changes from the ND state board of chiropractic examiners as outlined below.

Rule #1) 17-01-01-02.2 – “For renewal of a license, four hundred dollars for active status...”

I do not support the proposed rule change increasing fees by 33% to \$400.00. This is a very difficult time and many chiropractors are struggling to keep going and keeping staff members fully employed. We have staff on leave, people who are afraid to work, etc... Our board has a tremendous amount of money in reserves and there is no need to further cushion and expand this reserve at the expense of the members. When there is more money sitting in an account we all know what happens...it is far more likely it gets spent on things that are not likely necessary. I do not see the need for further increasing the large amount of cash in reserves and I believe it leads to inefficient operations and overspending. 33% increases in expenses far exceeds reasonable.

Based on these objections, and others not mentioned here, but raised by my fellow chiropractors, I respectfully request the Legislative Council deny the state board's request to increase licensing fees, and keep the current fees where they are at (\$300 per year).

Rule #2) 17-03-01-01.19: "Chiropractor shall be responsible for all patient care provided by them, or patient care directly delegated by said chiropractor to their agent or employee. For the purposes of this subsection, "patient care" shall include the practice of chiropractic, patient record keeping, patient billing, insurance billing, and communication with insurance companies."

I strongly oppose this proposed rule change. This rule change would lead us straight into full on "vicarious liability". We are all individually licensed professionals and our individual commitment to the board and our patients to do things the right way is required to practice in ND. The weight of removing or sanctioning an individual's license is weight enough to insure they are doing things as they have committed to do them. Adding the additional weight of "vicarious liability" to individuals who have opened their practice up to support associate doctors and team members is absolutely back breaking and not acceptable. There is absolutely no need or acceptable reason for the board to be able to subjectively penalize and determine

liability and consequences and spread them around as they see fit. Absolutely ridiculous. As tightly and as professionally trained as our states Chiropractic Assistants and Chiropractic Doctors are, people are people and mistakes can be made. Those mistakes need to be corrected and resolved as fast as possible, but to put my entire livelihood and 20+ yrs of professional reputation at risk for something that I can't fully and completely control is in no way acceptable. This should not even be considered. I know there are other legal arguments against this which you have heard from my fellow chiropractors and likely others. I don't see how a doctor of any discipline would see this as reasonable or even necessary.

Based on these considerations, I respectfully request this rule be stricken completely and not allowed to be entered into the ND Administrative Code for Chiropractors.

If anyone has any questions or would like elaboration please contact me.

Thank you for your time and review of these objections.

Respectfully,

Willy Fielhaber, DC

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