

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 76

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-76-1 Repealed. [R 8/3/84]

§16-76-2 Objective. This chapter, adopted by the board of chiropractic examiners, hereafter referred to as "board," is intended to clarify chapter 442, Hawaii Revised Statutes, and to implement the administration thereof to the end that chapter 442, HRS, may be best effectuated and the public interest most effectively served. [Eff 3/16/73; am and ren §16-76-2, 7/30/81; am and comp 8/3/84; comp 6/28/85; comp 6/1/89; comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-5)

§16-76-3 Parliamentary procedure. Robert's Rules of Order, most current edition, shall govern the deliberations of the board when they do not conflict with other rules the board may adopt or with the laws of the State of Hawaii. [Eff 3/16/73; am and ren §16-76-3, 7/30/81; am and comp 8/3/84; comp 6/28/85; comp 6/1/89; comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-5)

§16-76-4 Definitions. As used in this chapter:

"Adjustment" means a precise procedure by a doctor of chiropractic by the use of active, active and passive, or passive movements directed toward the goal of restoring joints to their proper biomechanical and physiological relationship of motion and related neurophysiological function;

"Articulation" means a joint; the place of union or junction between two or more bones of the skeleton;

"Board" means the board of chiropractic examiners;

"Elastic barrier" means the point at which the patient cannot move a joint by the patient's own means and through which movement is obtained or caused by a practitioner's treatment;

"Extremity" means the distal or terminal portion of elongated or pointed structures; the arm or leg;

"Manipulation" means a manual procedure that involves a directed thrust to move a joint past the physiological range of motion, without exceeding the anatomical limit;

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"Mobilization" means movement applied once or repetitively within or at the physiological range of joint motion, without imparting a thrust or impulse, with the goal of restoring joint mobility;

"Modality" means a method of application of, or the employment of, any therapeutic agent; limited usually to physical agents;

"Palpate" means to feel with the hand; the application of the fingers with light pressure to the surface of the body to determine the condition of the parts beneath in physical diagnosis;

"Spinal" means pertaining to the spine or to the vertebral column, the ilium, the ischium, the occiput, the sacrum, the coccyx, or the pubes or to the spinal cord's functioning; and

"Subluxation" means any alteration of the normal anatomical, biomechanical, and physiological relationships and dynamics of contiguous spinal and extraspinal articular structures that can cause neural disturbances. [Eff and comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-5)

SUBCHAPTER 2

PROCESSING APPLICATION FOR LICENSE

§16-76-7 Application form for license. An application for a license to practice chiropractic shall be submitted on a form or forms prescribed and provided by the board, accompanied by the evidence, statements, documents, and all applicable fees as are required, and filed with the board at its office in Honolulu. [Eff 3/16/73; am and ren §16-76-7, 7/30/81; am and comp 8/3/84; comp 6/28/85; comp 6/1/89; am and comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-2)

§16-76-8 Educational requirements. (a) Each applicant for chiropractic licensure shall present evidence of having attended and graduated from a chiropractic college accredited by, or recognized as a candidate for accreditation by the Council of Chiropractic Education (CCE), or any chiropractic college accrediting agency recognized by the United States Department of Education (USDOE). Any student who has matriculated in a degree granting chiropractic college prior to October 15, 1984, shall be exempted from this provision.

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(b) Each applicant shall furnish proof of having acquired a minimum of sixty semester hours, or equivalent, of college credit leading toward a baccalaureate degree at an institution or institutions accredited at the college level

by an accrediting body that has been listed as nationally recognized by the USDOE.

(c) Doctor of chiropractic degree programs (including clinical experience) shall provide a curriculum designed and implemented in a manner in which students are able to integrate relevant information presented in the basic, clinical, and chiropractic sciences with the clinical, laboratory, and patient care experiences in clinical decision making. The total curriculum shall include a minimum of four thousand two hundred fifty-minute hours of the following:

- (1) The courses offered in the curriculum include, but are not limited to, at least the following subjects: anatomy; biochemistry; physiology; microbiology; pathology; public health; physical, clinical and laboratory diagnosis; gynecology; obstetrics; pediatrics; geriatrics; dermatology; otolaryngology; diagnostic imaging procedures; psychology; nutrition; biomechanics; orthopedics; first aid and emergency procedures; spinal analysis; philosophy, principles and practice of chiropractic; adjustive techniques; research methods and procedures; and professional practice ethics;
- (2) Courses offered in the curriculum shall be taught in sufficient depth to fulfill the standards of the doctor of chiropractic program as set forth by the CCE or any chiropractic accrediting agency recognized by the USDOE;
- (3) The chiropractic program shall require its doctor of chiropractic degree candidates, as conditions of graduation, to have met the following quantitative clinic requirements:
 - (A) Performed, in the clinical setting, at least twenty-five examinations with case history for the purpose of developing a diagnostic or clinical impression of the status of the patient relative to chiropractic care;
 - (B) Performed and interpreted, ordered and interpreted, or interpreted, in the clinical setting, at least twenty-five area radiographic (diagnostic imaging) examinations with written reports of findings;
 - (C) Interpreted, while in the degree program, clinical laboratory tests to include at least twenty-five urinalysis, twenty hematology procedures such as complete blood counts, and ten clinical chemistry, microbiology or immunology procedures or profiles on human blood and other body fluids;

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- (D) Demonstrated an ability to palpate specific anatomical landmarks associated with spinal segments and other articulations; selected and effectively utilized palpatory and other appropriate methods to identify subluxations of the spine and other articulations; performed a minimum of two hundred fifty adjustments (or manipulations), at least two hundred of which must be spinal, occurring during at least two hundred fifty separate patient care visits;
- (E) Integrated the elements of the basic, chiropractic, clinical sciences and clinical instruction into clinical decisions;
- (F) Ordered, performed, and integrated the data utilizing appropriate services from those listed above for case management and follow-up for a minimum of ten different outpatients; and
- (G) Demonstrated proficiency upon completion of the course of study in the clinical competencies consistent with the CCE Standards or any chiropractic accrediting agency recognized by the USDOE.

The board shall establish an addendum to the rules which shall list specific courses as examples of the courses addressed in (1) for the purpose of clarification and which may from time to time be amended to reflect current trends and changes in chiropractic curriculum. The board shall refer to these changes in the minutes of its meetings.

- (4) Programs accredited by the CCE or any accrediting agency recognized by the USDOE may be deemed approved by the board.
- (5) This approval may be subject to review if there are changes in the program's or the accrediting body's philosophy, curriculum, or objectives, or at any time the board determines it necessary for good cause. [Eff 3/16/73; am and ren §16-76-8, 7/30/81; am and comp 8/3/84; comp 6/28/85; am and comp 6/1/89; am and comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-2)

§16-76-9 National board examination requirement. Each applicant for chiropractic licensure shall be required to pass the National Board of Chiropractic Examiners' (NBCE) examinations which include parts I, II, III, IV, the Special Purpose Examination for Chiropractic, and physiotherapy in accordance with section 442-6, HRS. [Eff and comp 6/1/89; am and comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-6)

SUBCHAPTER 3

EXAMINATION

§16-76-12 Repealed. [R 6/1/89]

§16-76-13 Physiotherapy requirement for valid current licensees. (a) All persons holding valid current licenses prior to June 4, 1984, may seek a waiver for the special written examination in physiotherapy modalities provided:

- (1) The licensee has passed the physiotherapy portion of the NBCE examination; or
- (2) The licensee is licensed in any other state, territory, or the District of Columbia, wherein the license requirements with respect to physiotherapy modalities are found by the board to be comparable or more stringent than the requirements of the NBCE.

(b) All other current licensees seeking approval of the board to use physiotherapy modalities shall show proof of having taken a physiotherapy course of at least forty hours from a chiropractic college accredited by, or recognized as a candidate for accreditation by, any chiropractic accrediting agency recognized by the USDOE and shall pass a special written physiotherapy examination administered by the board. Any licensees failing to pass the special written examination may be reexamined at the next regular examination. Should the licensee fail to pass the special written physiotherapy examination a second time, the licensee shall be required to show proof of having successfully completed forty additional hours of physiotherapy courses from a chiropractic college accredited by, or recognized as a candidate for accreditation by, any chiropractic agency recognized by the USDOE to be eligible to retake the special written physiotherapy examination.

(c) Beginning June 1, 1989, applicants for licensure shall be required to pass the NBCE physiotherapy examination. [Eff 3/16/73; am and ren §16-76-13, 7/30/81; am and comp 8/3/84; am and comp 6/28/85; am and comp 6/1/89; am and comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-6)

§16-76-14 Repealed. [R 9/22/01]

§16-76-15 Repealed. [R 9/22/01]

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§16-76-16 Repealed. [R 9/22/01]

§16-76-17 Repealed. [R 9/22/01]

SUBCHAPTER 4

PRACTICE OF CHIROPRACTIC

§16-76-20 License required to practice chiropractic, either as an individual or under supervision, or in employment of a licensed chiropractor. Any person who is found practicing chiropractic before receiving a license from the board may be denied licensure. [Eff 3/16/73; am and ren §16-76-20, 7/30/81; comp 8/3/84; comp 6/28/85; comp 6/1/89; am and comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-5)

§16-76-21 Certificate of licensure. The certificate of license shall be designated "License To Practice Chiropractic" and shall authorize the holder to practice chiropractic as defined in section 442-1, HRS, and also to use all necessary mechanical, hygienic, and sanitary measures incident to the care of the body, including x-ray equipment for diagnostic purpose and physiotherapy modalities. [Eff 3/16/73; am and ren §16-76-21, 7/30/81; am and comp 8/3/84; am and comp 6/28/85; am and comp 6/1/89; am and comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-8)

§16-76-21.01 Inactive license. (a) A licensee who has an unencumbered active license in another state and who does not intend to practice chiropractic in Hawaii may request inactive status at any time during the biennium by writing to the board, or by indicating so on the license renewal form.

(b) The licensee shall be required to pay a non-refundable fee of no less than \$25 for inactivation of the license. Fees provided in chapter 16-53, shall supersede the fees in this section.

(c) It shall be the responsibility of each licensee on inactive status to keep abreast with current licensing and renewal requirements. [Eff and comp 9/22/01] (Auth: HRS §451D-3) (Imp: HRS §§451D-3, 26-9)

§16-76-21.02 Reactivation of inactive license. (a) A licensee on inactive status may reactivate a license to active status by submitting an application of reactivation of inactive license on a form approved by the board.

(b) If inactivation and reactivation fall within the same biennium, the licensee shall be required to pay a non-refundable fee of no less than \$25 for reactivation of the license. Fees provided in chapter 16-53, shall supersede the fees in this section.

(c) However, if activation is requested at renewal, for the next biennium, the licensee shall be required to submit payment of the current renewal fee and compliance resolution fund fee, as provided under section 16-53-27, provided the licensee:

- (1) Meets all current renewal requirements;
- (2) Has a current, active chiropractic license in at least one other state throughout the period in which the license was inactive in the State; and
- (3) All current, active chiropractic licenses held in other states are unencumbered at the time of application. [Eff and comp 9/22/01] (Auth: HRS §451D-3) (Imp: HRS §§451D-3, 26-9)

§16-76-22 Repealed. [R 6/1/89]

§16-76-23 Repealed. [R 6/1/89]

§16-76-24 Change of address. Licensees shall notify the board of any change in writing of address within thirty days of the change. [Eff 3/16/73; am and ren §16-76-24, 7/30/81; am and comp 8/3/84; comp 6/28/85; am and comp 6/1/89; comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-14)

§16-76-25 Scope of practice of chiropractic. Chiropractic is a practice of the healing arts:

- (1) The purpose of which is to restore or maintain human health in which patient care or first aid, hygienic, nutritional, or rehabilitative procedures are administered;
- (2) Which addresses specific vertebral adjustment, manipulation, mobilization, and treatment of the articulation and adjacent tissues

of the spinal column, musculoskeletal structure of the body, and nervous system; and

- (3) Which is subject to the limitations contained in section 442-1, HRS. [Eff and comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-1)

§16-76-26 Minimal clinical competencies. The following addresses the minimal acceptable clinical competencies necessary to the practice of chiropractic. They identify the knowledge, skills, and attitudes required of the non-specialist, primary care doctor of chiropractic:

- (1) History taking or the element of patient evaluation in which relevant and appropriate information regarding the patient's status is obtained;
- (2) Physical examination, an element of the evaluation in which information regarding the clinical status is elicited by selecting and using appropriate instruments and examination procedures;
- (3) Neuromusculoskeletal examination, the foundation of the chiropractic approach towards evaluating the patient's health problems that are often associated with the spine and extremities. The spine and its relationship to nervous system function are also viewed as important factors in the patient's general health. A neuromusculoskeletal examination involves the use of:
 - (A) Inspection, palpation, percussion, range of motion, and appropriate procedures in a correct, orderly, safe and hygienic manner; and
 - (B) Instruments and equipment in an appropriate, safe, and hygienic manner;
- (4) Psychosocial assessment, to recognize:
 - (A) The interrelationships among the biological, psychological, and social factors which contribute to or affect patient behavior and well being and that affect the patient's ability to report symptoms and comply with or respond to chiropractic care;
 - (B) The clinical indications for referral to or collaborative care with appropriate mental health professionals, agencies, or programs; and
 - (C) Circumstances that legally require the reporting of patient information to appropriate authorities;

- (5) Diagnostic studies, which are those elements of patient evaluation in which objective data regarding the patient's clinical status are elicited, and which include the use of diagnostic imaging, clinical laboratory, and specialized testing procedures. The doctor of chiropractic may:
 - (A) Perform and interpret, order and interpret, or interpret appropriate imaging examinations;
 - (B) Take, process, and interpret plain film radiographs;
 - (C) Perform, order, and interpret clinical laboratory examinations;
 - (D) Obtain and process laboratory samples;
 - (E) Perform, order, and interpret other relevant procedures indicated by the clinical status of the patient;
 - (F) Order or conduct diagnostic studies with attention to following professional protocol, and provide appropriate patient instructions and follow-up; and
 - (G) Record data obtained from diagnostic studies whether personally conducted or ordered;
- (6) Case management which includes:
 - (A) Developing and recording a patient care plan, case follow-up, the referral or referral and collaborative care necessary in the chiropractic management of a patient;
 - (B) Appropriately and effectively communicating with the patient as to the health care needs and alternatives to chiropractic care that may be indicated;
 - (C) Identifying and initiating appropriate drugless health care regimen;
 - (D) Performing appropriate chiropractic adjustments, manipulations and mobilizations;
 - (E) Referring the patient when clinically indicated, for consultation, continued study, and care; and
 - (F) Establishing clear outcomes for care that can be used to evaluate clinical progress; responding to changes in patient status or failure of the patient to respond to care and recognizing when the patient has achieved resolution or maximum therapeutic benefit;
- (7) Adjustment, which is a precise procedure that uses one or more of the following techniques:
 - (A) Impulse adjusting or the use of sudden, high velocity, short amplitude thrust of a nature that the patient cannot prevent

- the motion, commencing where the motion encounters the elastic barrier of resistance and ends at the limit of anatomical integrity;
- (B) Instrument adjusting, utilizing instruments specifically designed to deliver sudden, high velocity, short amplitude thrust;
 - (C) Light force adjusting, utilizing sustained joint traction or applied directional pressure, or both, which may be combined with motion to restore joint mobility;
 - (D) Long distance lever adjusting, utilizing forces delivered at some distance from the dysfunctional site and aimed at transmission through connected structures to accomplish joint mobility; and
 - (E) Controlled force, leverage, direction, amplitude, and velocity directed at specific articulations. Adjustive procedures are employed to influence joint and neurophysiologic function;
- (8) Manipulation of the articulations of the body;
 - (9) Palpation of specific anatomical landmarks associated with spinal segments and other articulations; utilization of palpatory and other appropriate methods to identify subluxations of the spine and other articulations;
 - (10) Adjustive, manipulative, and mobilization procedures which utilize appropriate positioning, alignment, contact, and execution that accommodate differences in patient body type and clinical status; and
 - (11) Removal of subluxations of the articulations of the human spine and human frame and the adjacent tissues for the establishment of neural integrity, utilizing the inherent recuperative powers of the body for restoration and maintenance of health. [Eff and comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-1)

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§16-76-28 Repealed. [R 8/3/84]

§16-76-29 Repealed. [R 6/1/89]

§16-76-30 Repealed. [R 6/1/89]

§16-76-31 Repealed. [R 6/1/89]

§16-76-32 Repealed. [R 6/1/89]

§16-76-33 Repealed. [R 6/1/89]

SUBCHAPTER 6

CONTINUING EDUCATION

§16-76-37 Basic concept. The basic objectives and goals of continuing education are the growth of knowledge, cultivation of skills, and greater understanding, with a continual striving for excellence in chiropractic care, and improvement in the health and welfare of the public. [Eff and comp 6/28/85; am and comp 6/1/89; comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §§442-11, 451D-3)

§16-76-38 Basic requirements for renewal. (a) The licensee shall file, together with the biennial renewal application, or before December 31 of each odd-numbered year, a certificate of completion of at least twenty hours in continuing education programs approved by the board, which have been completed within the twenty-four months before the renewal deadline.

(b) A person who is issued an initial license in an odd-numbered year of the biennium shall not be required to submit a certificate of completion of continuing education programs for the renewal of that license for the following biennium.

(c) A person who is issued an initial license in an even-numbered year of the biennium shall be required to file a certificate of completion of a minimum of ten hours of continuing education programs for the renewal of that license for the following biennium.

(d) Placing a chiropractic license on inactive status shall not deprive the board of jurisdiction to proceed with disciplinary proceedings pursuant to chapters 442 or 436B, HRS. [Eff and comp 6/28/85; am and comp 6/1/89; am

and comp 9/22/01] (Auth: HRS §§442-5, 451D-3) (Imp: HRS §§442-11, 451D-3)

§16-76-39 Qualifications for continuing education credit. (a) The primary consideration in determining whether or not a specific program qualifies as acceptable continuing education is that it be a formal program of learning which will contribute directly to the professional competence of a licensee in public practice. It is, therefore, left to the individual licensee to determine the course of study to be pursued within the guidelines established by this chapter. However practice-building seminars shall NOT be approved.

(b) Each seminar approved by the board must present subject material directly related to the concepts of chiropractic principles and practice, including diagnostic procedures, patient care, and patient management. The board recommends special attention be given to the following:

- (1) Principles of practice of chiropractic including, but not limited to:
 - (A) Chiropractic treatment and adjustment technique, including physiotherapy, nutrition, and dietetics; and
 - (B) Physical, laboratory, orthopedic, neurological, and differential examination and diagnosis or analysis; and
- (2) Radiographic technique and interpretation involving all phases of roentgenology as permitted by law.

(c) The board shall consider for approval the application of any continuing education program which conforms to the above criteria.

(d) Postgraduate programs at chiropractic colleges recognized by or actively pursuing recognition by the CCE may also be considered for approval provided the course content meets the above criteria. Continuing education programs not conforming to the above stated criteria, shall be considered on an individual basis.

(e) A continuing education program may not be repeated for credit during the same biennial relicensing period.

(f) Continuing education credit shall be given for whole hours only, with a minimum of fifty minutes constituting one class hour. No credit for continuing education shall be allowed for time expended for study outside of the classroom. [Eff and comp 6/28/85; am and comp 6/1/89; am and comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-11)

§16-76-40 Deficiency in continuing education hours. A license shall not be renewed if the continuing education requirements have not been met in

accordance with sections 16-76-37, 16-76-38, and 16-76-39. A license not renewed on or before December 31 shall be considered forfeited on January 31. The forfeited license may be restored on or before January 1 of the following odd-numbered year upon written application, submission of proof of compliance with the continuing education requirements in sections 16-76-37, 16-76-38, and 16-76-39, and payment of all required fees. [Eff and comp 6/28/85; am and comp 6/1/89; comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-11)

§16-76-41 Requirements for approved programs. (a) Sponsors seeking the board's approval for continuing educational seminars for license renewal in this State shall provide the board with a program sponsor agreement for continuing education and all documentary information required by the board, and an application fee as required by chapter 16-53, forty-five days prior to the date of the seminar.

(b) If a program meets the criteria of the board, the sponsor shall be so notified that approval has been granted. An index number of approval shall be provided at that time.

(c) Any board member, or board designee shall have the right to inspect or audit any approved chiropractic course in progress.

(d) Each director or person in charge of an approved program in continuing education shall maintain a record of the persons completing the course for a period of two years thereafter. [Eff and comp 6/28/85; am and comp 6/1/89; comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-11)

§16-76-42 Certification of attendance. (a) Upon completion of an approved program, the sponsor shall issue written evidence of attendance to each attendee. This certificate of attendance shall include the following information:

- (1) Name of attendee;
- (2) Name of sponsor;
- (3) Name of program;
- (4) Index number of board approval;
- (5) Date of program;
- (6) Hours of attendance; and
- (7) Signature of program director or person in charge.

(b) Each director or person in charge of an approved course in continuing education shall be responsible for maintaining full-time monitoring of the seminar

attendance. If absence from the room exceeds ten minutes during any one hour period, credit for that hour shall be forfeited. Failure to maintain proper

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monitoring procedures, as prescribed, may be grounds for withdrawal of program approval or future consideration for program approval. [Eff and comp 6/28/85; am and comp 6/1/89; comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-11)

§16-76-43 Duration of approval. The approval by the board for each program shall expire at the conclusion of each program. The approval may be withdrawn by the board at any time for good cause. [Eff and comp 6/28/85; am and comp 6/1/89; comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-11)

§16-76-44 Exceptions. The board may renew a license to practice to any licensee who has not fully complied with the continuing education requirements in cases where failure by the applicant to fulfill the requirements has been caused by reason of:

- (1) Health, as certified by a licensed doctor;
- (2) Military service on extended active duty with the armed forces of the United States; or
- (3) Other good and valid causes, as determined and approved by the board. [Eff and comp 6/28/85; am and comp 6/1/89; comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-11)

SUBCHAPTER 7

PRACTICE AND PROCEDURE

§16-76-50 Administrative practice and procedure. The rules of practice and procedure for chiropractors shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff and comp 6/28/85; am and comp 6/1/89; comp 9/22/01] (Auth: §§91-2, 442-5) (Imp: HRS §§91-2, 442-5)

SUBCHAPTER 8

PROFESSIONAL MISCONDUCT

§16-76-56 Professional misconduct. (a) The board shall take action against any holder of a license who is guilty of professional misconduct which has been brought to the board's attention, or whose license has been procured by fraud or misrepresentation or issued by mistake.

- (b) Professional misconduct includes, but is not limited to, the following:
 - (1) Gross negligence in the practice of chiropractic;
 - (2) Repeated negligent acts in the practice of chiropractic;
 - (3) Mental or clinical incompetence;
 - (4) Charging fees for the administration of treatment, use of diagnostic procedures, or rendering of instructional procedures which are clearly excessive as determined by the usual and customary practice and standards of the profession;
 - (5) Any conduct which has endangered, or is likely to endanger the health, welfare, or safety of the public;
 - (6) Habitual intemperance in the use of alcohol or drugs;
 - (7) Conviction of a crime which is substantially related to the qualifications, functions, or duties of a chiropractor;
 - (8) The commission or conviction of a felony or of any offense, whether felony or misdemeanor, involving moral turpitude, dishonesty, corruption, whether or not the act is committed in the course of the individual's activities as a license holder. A plea of nolo contendere or verdict of guilty is deemed to be a conviction within the meaning of the board's disciplinary provisions. The board may order a license to be put on probation, suspended, limited, or revoked, or may decline to issue a license when the time for appeal has elapsed, or when the judgment of conviction has been confirmed on appeal;
 - (9) Violation of any law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substances;
 - (10) Using or charging a fee for physiotherapy services without approval by the board;
 - (11) Knowingly making or signing any certificate or other document relating to the practice of chiropractic which is misleading or which falsely represents the existence or nonexistence of a state of facts;

- (12) Violating or attempting to violate, directly or indirectly, or assisting in, or abetting in, the violation of, or conspiring to violate any provision or term of chapter 442, the rules adopted by the board thereunder, or any lawful order of the board;
- (13) Making or giving any false statement of information in connection with an application for issuance of a license;
- (14) Impersonating an applicant or acting as a proxy for an applicant in any examination required by the board for the issuance of a license or registration;
- (15) Obtaining of a fee by fraud or deceit from patients, third party payers, or others, relating to the practice of chiropractic, which shall include the charging of unconscionable fees, charging a third party payer unreasonably higher fees over and above the usual and customary fees charged private patients for the same service, or charging for services not rendered;
- (16) Except as may be required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment;
- (17) Offering, delivering, receiving, or accepting of any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration as compensation or inducement for referring patients to any person;
- (18) Sexual misconduct in the office which includes intercourse, masturbation, prostitution, making suggestive, lewd, lascivious, or improper advances to a patient;
- (19) Falsely maligning, accusing, or slandering another chiropractor or the chiropractor's method of practice;
- (20) Failing to notify the board, when applying for licensure, of any past or present disciplinary action by another state;
- (21) Falsifying records pertaining to license renewal requirements;
- (22) Aiding or abetting an unlicensed person to practice chiropractic as defined in chapter 442-1, HRS;
- (23) Allowing, aiding, or abetting any person not licensed to practice chiropractic, or licensed as an x-ray technician, to x-ray a patient;
- (24) Charging for examinations, including but not limited to, x-ray, orthopedic, neurological, physical, or muscle strength, on any routine basis or more often than once every thirty days unless the patient's

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condition necessitates more frequent examination that can be clearly justified;

- (25) Refusing to send x-rays or copies to another chiropractor when presented with a properly executed records release signed by the patient;
- (26) Releasing a patient's health care records or x-rays to any other person or institution without receiving prior written permission from the patient or any doctor who made and owns the health care record or x-rays;
- (27) Conduct of a character likely to deceive or defraud the public;
- (28) Advertising by means of false and deceptive statement, or by statements which tend to deceive or defraud;
- (29) Receiving three formal written reprimands by the board; and
- (30) Failing to return a patient's health care records or x-rays upon written request to the doctor who made and owns the records and x-rays. [Eff and comp 6/1/89; comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §442-9)

§16-76-57 Advertising practice. (a) This section pertains to all forms of advertising, including but not limited to radio, television, newspaper, magazines, telephone directories, window displays, outdoor signs, circulars, cards, or any other media which are used to communicate information to the general public.

(b) Advertising material shall not contain false, fraudulent, misleading, or deceptive statements or claims. A false, fraudulent, misleading, or deceptive statement or claim includes, but shall not be limited to, a statement or claim which:

- (1) Contains a misrepresentation of fact;
- (2) Is likely to mislead or deceive because in context it constitutes only a partial disclosure of relevant facts;
- (3) Is intended or is likely to create false or unjustified expectations of favorable results;
- (4) Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived;
- (5) Contains the terms "cure" or "guarantee" for any service, procedure, or device provided;
- (6) Contains advertisements that the licensee specializes, or is a specialist in, any particular field, aspect, or area of practice unless the licensee possesses special certification in that field, aspect, or area of practice from an accredited college, university, or from a

national professional association, and provided the licensee retains qualifications necessary to that specialty;

- (7) Contains advertisements comparing the quality of chiropractic care;
- (8) Contains advertisements pertaining to referral services for chiropractic care unless the advertisement names the licensee to who the referrals are made; and
- (9) Contains advertisements regarding the length of time of a chiropractic practice unless specific reference is made to the individual licensee's length of licensure.

(c) It shall not be false, deceptive, or misleading for a licensee to truthfully advertise prices of chiropractic services, provided that:

- (1) The advertisements fully disclose what is being offered for free or at a discount;
- (2) The advertisements clearly identify the period that free or discounted services remain in effect:
 - (A) If an advertisement appears in a medium which is published monthly or at more frequent intervals, the advertisement shall not be considered false, deceptive, or misleading if the advertised price remains in effect for at least thirty days or until publication of the next issue;
 - (B) If an advertisement appears in a telephone directory, it shall not be considered false, deceptive, or misleading if the advertised price remains in effect until publication and distribution of the next year's telephone directory; or
 - (C) Except as noted in subparagraphs (A) and (B), if an advertisement fails to identify the period for which it is effective, it shall not be considered false, deceptive, or misleading if the advertised prices remain in effect at least ninety days from the date of publication or mailing.
- (3) Advertisements of fees for services shall be limited to routine chiropractic services and shall not be in a manner tending to deceive or mislead the public. A routine service is a service that a chiropractor performs frequently in the licensee's practice, is usually provided at a set fee with little or no variance in technique, and includes all professionally recognized components within generally accepted standards;
- (4) Vague references to cost, such as "discounted", "reasonable", "economy", "low-cost", and "affordable" shall be professionally accountable, factual, and accurate;

- (5) Free or discounted chiropractic services shall be provided to all patients during the period of time specified in the advertisements, whether or not the consumer is aware of the free services or discounted fee, and whether or not payment is to be made by the individual or a third party payer such as an insurance company;
- (6) Free or discounted examinations shall be performed at standards equivalent to the standards for performance of those services provided at a full charge. Any free or discounted examination shall include taking a case history of the patient, a neurological, orthopedic, and physical examination, and when necessary, the taking, developing, and interpretation of x-rays or other specialized tests to establish a diagnosis and prognosis before the commencement of any chargeable services;
- (7) Free or discounted chiropractic treatment shall be performed at standards equivalent to the standards for performance of these services provided at a full charge;
- (8) When using the word "free", or any other term with essentially the same meaning, in reference to any service, examination, or treatment, the following disclaimer shall appear in capital letters clearly distinguishable from the rest of the text of the advertisement:

"The patient or any other person or entity responsible for payment has a right to refuse to pay, cancel payment, or be reimbursed for payment for any other service, examination, or treatment which is performed as a result of and within twenty-four hours of responding to the advertisement for the free service, examination, or treatment."
- (9) Advertisements which describe any waiver of co-payments by an insured, commonly known as "No-Out-Of-Pocket-Expense" are prohibited. This does not preclude a practitioner from rendering a courtesy to a patient on an individual basis; and
- (10) Advertisements of services covered by insurance shall state that the coverage is limited if full coverage is not provided. [Eff 3/16/73; am and ren §16-76-22, 7/30/81; am and comp 8/3/84; comp 6/28/85; am and comp 6/1/89; am and comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §§442-9, 442-19)

SUBCHAPTER 9

ORAL TESTIMONY

§16-76-62 Oral testimony. (a) The board shall accept oral testimony on any item which is on the board's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall so notify the board not later than forty-eight hours before the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period, but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant, or immaterial to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another pending proceeding subject to hearings relief, declaratory relief, or rule relief of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 6/1/89; comp 9/22/01] (Auth: HRS §442-5) (Imp: HRS §92-3)

Amendments to and compilation of chapter 16-76, Hawaii Administrative Rules, on the Summary page dated July 19, 2001, were adopted on July 19, 2001, following a public hearing held on the same date, after hearing notices were given in the Hawaii State and County Public Notices for the City and County of Honolulu, County of Kauai, County of Maui, and the County of Hawaii on June 18, 2001.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Nicholas G. Opie, D.C.
Nicholas G. Opie, Chairperson
Board of Chiropractic Examiners

APPROVED AS TO FORM: Date: 8/8/01

/s/ David A. Webber
Deputy Attorney General

APPROVED: Date: 9/6/01

/s/ Kathryn S. Matayoshi
KATHRYN S. MATAYOSHI, Director
Commerce and Consumer Affairs

APPROVED: Date: 9/11/01

/s/ Benjamin J. Cayetano
BENJAMIN J. CAYETANO
Governor
State of Hawaii

September 12, 2001
Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-76
Hawaii Administrative Rules

July 19, 2001

SUMMARY

1. §16-76-4 is added.
2. §§16-76-7 through 16-76-9 are amended.
3. §16-76-13 is amended.
4. §§16-76-14 through 16-76-17 are repealed.
5. §§16-76-20 and 16-76-21 are amended.
6. §16-76-21.01 is added.
7. §16-76-21.02 is added.
8. §§16-76-25 and 16-76-26 are added.
9. §§16-76-38 and 16-76-39 are amended.
10. §16-76-57 is amended.
11. Chapter 76 is compiled.

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Effective 9/22/01