WEST VIRGINIA CODE CHAPTER 30 ARTICLE 16

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§30-16-1. Purpose and legislative intent.

It is declared to be a policy of this state that the practice of chiropractic is a privilege granted to qualified persons and that, in order to safeguard the public health, safety and welfare, protect the public from the unprofessional, improper, incompetent and unlawful practice of chiropractic, it is necessary to provide regulatory authority over persons practicing chiropractic. The primary responsibility and obligation of the West Virginia board of chiropractic is to protect the public.

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§30-16-2. License required; exceptions.

(a) No person may practice or offer to practice, in this state, chiropractic without a license issued by the West Virginia board of chiropractic. A certificate or license issued under the laws of this state, authorizing its holder to practice chiropractic, before the effective date of this article is not affected by the enactment of this article, except that the holder of a certificate of license issued prior to the effective date of this article is subject to all the provisions of this article respecting the requirements and obligations prescribed for the continuance in force of the certificate of license.

(b) This article does not prohibit:

(1) Students from engaging in training in a chiropractic school accredited by the counsel on chiropractic education or its successor;

(2) Licensed chiropractors from providing service in cases of emergency where no fee or other consideration is contemplated, charged or received;

(3) Commissioned chiropractic officers of the Armed Forces of the United States and chiropractic officers of the United States Public Health Service or the Veterans' Administration of the United States from discharging their official duties, except:

(A) Those officers who hold chiropractic licenses in the state are subject to the provisions of this article; and

(B) Those officers shall be fully licensed to practice chiropractic in one or more jurisdictions of the United States;

(4) Individuals from practicing the tenets of a religion or administering to the sick or suffering by mental or spiritual means in accord with the tenets. This provision does not exempt these individuals from the public health laws of the state or federal government; or

(5) A person from administering a lawful domestic or family remedy to a member of his or her own family.

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§30-16-3. Definitions.

The following words, unless the context clearly indicates otherwise, have the meaning ascribed to them in this section:

(1) "Board" means the West Virginia board of chiropractic;

(2) "Chiropractor" means a practitioner of chiropractic;

(3) "Chiropractic services" means those health care services provided within the scope of chiropractic practice as defined by this article and by chiropractors licensed by the board;

(4) "Chiropractic" is the science and art which utilizes the inherent recuperative powers of the body and the relationship between the neuromusculoskeletal structures and functions of the body, particularly of the spinal column and the nervous system, in the restoration and maintenance of health. The use of the designation doctor of chiropractic, chiropractor, chiropractic physician or D.C., is the practice of chiropractic.

The practice of chiropractic also includes the examination and assessment of members of the public that are not patients of the examining chiropractor. Further, the practice of chiropractic includes the review of information relating to the duration and necessity of chiropractic care that affects the course of care, the treatment plan or payment and reimbursement concerning chiropractic patients residing within the State of West Virginia.

The practices and procedures which may be employed by doctors of chiropractic are based on the academic and clinical training received in and through chiropractic colleges accredited by the council of chiropractic education or its successors and as determined by the board. These include the use of diagnostic, analytical and therapeutic procedures specifically including the adjustment and manipulation of the articulations and adjacent tissues of the human body, particularly of the spinal column, including the treatment of intersegmental disorders. Patient care and management is conducted with due regard for environmental and nutritional factors, as well as first aid, hygiene, sanitation, rehabilitation and physiological therapeutic procedures designed to assist in the restoration and maintenance of neurological integrity and homeostatic balance;

(5) "Spinal manipulation" and "spinal adjustment" are interchangeable terms that identify a method of skillful and beneficial treatment where a person uses direct thrust or leverage to move a joint of the patient's spine beyond its normal range of motion, but without exceeding the limits of anatomical integrity.

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§30-16-4. West Virginia Board of Chiropractic; establishment and composition.

(a) The "West Virginia Board of Chiropractic" is continued. Effective July 1, 2012, the board is composed of four licensed chiropractors and one person to represent the interest of the public. All are appointed by the Governor, with the advice and consent of the Senate, from a list of three names recommended by the West Virginia Chiropractic Society, Incorporated. Each chiropractic member of the board shall have been a resident of and engaged in the active practice of chiropractic in the state for a period of at least five years preceding his or her appointment.

(b) As existing board members' terms expire, newly appointed board members are appointed by the Governor for a term of office of three years. No member may serve more than two full consecutive three-year terms. When a vacancy in the membership of the board occurs for a cause other than the expiration of a term, the Governor shall appoint a new member from a list of three names recommended by West Virginia Chiropractic Society, Incorporated, to fill the unexpired portion of the term of office.

(c) The Governor may remove any member of the board in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(d) The board shall conduct an annual training program to familiarize new board members with their duties.

(e) Each member of the board is entitled to receive compensation in the amount paid to members of the Legislature for interim duties for each day or substantial portion that he or she is engaged in the work of the board or of its committees. Members are entitled to be reimbursed for actual and necessary expenses incurred in carrying out his or her duties.

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§30-16-5. Powers and duties of the board.

(a) The board shall:

(1) Administer, coordinate and enforce the provisions of this article, evaluate the qualifications of applicants, supervise the examination of applicants, issue or deny original or endorsement licenses;

(2) Investigate allegations of violations of this article and impose penalties if violations of this article have occurred;

(3) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall after adoption govern and control the professional conduct of every person who holds a license to practice chiropractic in this state, and which shall include, but not be limited to, rules that:

(A) Delineate qualifications for licensure, including qualifications for practice in specialties;

(B) Specify requirements for the renewal of licensure;

(C) Set forth procedures for licensure of chiropractors;

(D) Establish a fee schedule for the amount and payment of all fees and charges;

(E) Establish standards of professional conduct;

(F) Establish procedures for disciplinary actions and complaint resolutions; and

(G) Provide for duties of board members;

(4) Evaluate the professional education and training of applicants for licensure and licensure renewal;

(5) Evaluate the previous professional performance of applicants for licensure and licensure renewal;

(6) Accept or deny applications for license renewal;

(7) Establish appropriate fees and charges to support the active and effective pursuit of its legal responsibilities;

(8) Employ personnel as determined by its needs and budget;

(9) Request legal advice and assistance, as needed, from the Attorney General;

(10) Enter into contracts necessary to carry out its responsibilities under this article, including contracts for professional services that may include investigation, financing or

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legal services;

(11) Develop and adopt a budget; and

(12) Communicate disciplinary actions to relevant state and federal authorities and to other state chiropractic licensing authorities.

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§30-16-6. Application for license; requirements for licensure.

(a) Any person wanting to practice chiropractic in this state shall apply to the board for license to practice and shall provide the board and attest to the following information and documentation in a manner required by the board:

(1) His or her full name, and any other name ever used, current address, social security number and date and place of birth;

(2) A recent signed photograph and sample of handwriting;

(3) Originals of all documents and credentials required by the board or notarized photocopies of other verification acceptable to the board;

(4) A list of all jurisdictions, United States or foreign, in which the applicant is licensed or has applied for licensure to practice chiropractic or is authorized or has applied for authorization to practice chiropractic;

(5) A list of all jurisdictions, United States or foreign, in which the applicant has been denied licensure or authorization to practice chiropractic or has voluntarily surrendered a license or an authorization to practice chiropractic;

(6) A list of all sanctions, judgments, awards, settlements or convictions against the applicant in any jurisdiction, United States or foreign, that would constitute grounds for disciplinary action under this article or the board's rules;

(7) A detailed educational history, including places, institutions, dates and program descriptions, of all his or her education beginning with secondary schooling including all college, preprofessional, professional and professional graduate education; and

(8) Any other information or documentation the board may later determine necessary and as adopted by reasonable rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(b) Each applicant shall establish to the board that the applicant:

(1) Is eighteen years of age or older;

(2) Is of good moral character;

(3) Is a graduate of an accredited high school giving a four-year course or has an education equivalent to the same;

(4) Has attended for at least two academic years, consisting of no less than sixty semester hours, an accredited academic college or university and that after July 1, 2005, the applicant has obtained a bachelor's degree consisting of no less than one hundred twenty-eight

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semester hours from an accredited academic college or university, with a minimum of sixty hours in basic sciences mandated by the council on chiropractic education;

(5) Is a holder of the degree of doctor of chiropractic from and a graduate of a chiropractic college or school located in the United States, its territories or possessions which was approved by the council on chiropractic education or its successor at the time the degree was conferred or that the applicant is the holder of a degree of doctor of chiropractic from college of a foreign country that the board determines is acceptable as set forth in section eight;

(6) Has passed the national board of chiropractic licensing examination Parts I, II, III and IV, satisfactory to the board and any other examination, test or procedure determined necessary by the board;

(7) Has demonstrated familiarity with the statutes and rules of the jurisdiction relating to the practice of chiropractic and acknowledges in writing that he or she has read and understands this article and the current rules relating to the practice of chiropractic in West Virginia;

(8) Is physically, mentally and professionally capable of practicing chiropractic in a manner acceptable to the board and submits to a physical, mental or professional competency examination or a drug dependency evaluation considered necessary by the board; and

(9) Has paid all fees and completed and attested to the accuracy of all application and information forms required by the board.

(c) The applicant is responsible for verifying to the satisfaction of the board, the validity of all credentials required for his or her chiropractic licensure. The board shall review and verify chiropractic credentials and screen applicant records through recognized national chiropractic physician information services and data banks.

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§30-16-7. Examination; certificates of license.

(a) No person may receive a license to practice chiropractic unless he or she successfully completes the national board of chiropractic examination Parts I, II, III and IV and an oral examination administered by the board covering jurisprudence. Examinations shall be conducted at least two times throughout the calendar year and the board shall issue certificates of license to all applicants who successfully pass the examinations. No license may be issued under this section until the person applying has paid to the board the prescribed fee.

(b) All applicants are required to attain a minimum passing score in each national board Parts I, II, III and IV examinations. All applicants are required to secure an average grade of seventy percent on the oral examination. If an applicant does not successfully complete the oral examination, he or she may retake the oral examination. If a satisfactory score is not achieved on the second attempt, the applicant shall take and successfully complete a national special purposes examination for chiropractic examination before sitting for another oral examination.

(c) Any individual found by the board to have engaged in conduct that subverts or attempts to subvert the chiropractic licensing examination process is, at the discretion of the board, subject to having the scores on the licensing examination withheld or declared invalid, being disqualified from the practice of chiropractic or subjected to other appropriate sanctions. The federation of chiropractic licensing boards shall be informed of all such actions. The board shall provide notification to all applicants of the prohibitions on conduct that subverts or attempts to subvert the licensing examination process and of the sanctions imposed for the conduct. A copy of the notification attesting that he or she has read and understood the notification shall be signed by the applicant and filed with his or her application.

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§30-16-7a. Special volunteer chiropractor license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer license for chiropractors retired or retiring from active practice who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer license provided by this section shall be issued by the West Virginia Board of Chiropractic to chiropractors licensed or otherwise eligible for licensure pursuant to this article and the rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special volunteer license provided in this section which shall contain the applicant's acknowledgment that:

(1) The applicant's practice pursuant to the special volunteer license will be exclusively devoted to providing chiropractic care to needy and indigent persons in West Virginia;

(2) The applicant may not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement for any chiropractic services rendered pursuant to the special volunteer license;

(3) The applicant shall supply any supporting documentation that the board may reasonably require; and

(4) The applicant shall continue to participate in continuing education as required by the board for special volunteer chiropractor's licenses.

(b) Any person engaged in the active practice of chiropractic in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the chiropractor's office or the clinical setting.

(c) Any chiropractor who renders any chiropractic service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge pursuant to a special volunteer license authorized pursuant to subsection (a) of this section or an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the chiropractic service at the clinic unless the act or omission was the result of gross negligence or willful misconduct on the part of the chiropractor. For the immunity pursuant to this subsection to apply, there must be a written agreement between the chiropractor and the clinic stating that the chiropractor will provide

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voluntary uncompensated chiropractic services under the control of the clinic to patients of the clinic before the rendering of any services by the chiropractor at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than $1 million per occurrence.

(d) Notwithstanding the provisions of subsection (c) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a chiropractor rendering voluntary chiropractic services at or for the clinic pursuant to a special volunteer license authorized pursuant to this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

(e) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure for a chiropractor except the fee requirements.

(f) Nothing in this section may be construed as requiring the board to issue a special volunteer license to any chiropractor whose license is or has been subject to any disciplinary action or to any chiropractor who has surrendered a license or caused a license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a license in inactive status in lieu of having a complaint initiated or other action taken against his or her license or who has been denied a license.

(g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any chiropractor covered pursuant to the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policy holder or any beneficiary there of the policy, to any claim covered by the terms of the policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a chiropractor who holds a special volunteer license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

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§30-16-8. Licensing of foreign graduates.

(a) Any person wanting to practice chiropractic in this state who is a graduate of a chiropractic school located outside the United States, its territories or possessions, shall establish to the board that the applicant:

(1) Possesses a degree of doctor of chiropractic or a board approved equivalent based upon satisfactory completion of educational programs acceptable to the board;

(2) Is eligible by virtue of his or her chiropractic education and training for unrestricted licensure or authorization to practice chiropractic in the country in which he or she received that education and training;

(3) Has successfully completed all required parts of the examination conducted by the national board of chiropractic;

(4) Has a demonstrated command of the English language; and

(5) Has satisfied all applicable requirements of the United States immigration and naturalization service.

(b) All credentials, diplomas and other required documentation in a foreign language submitted to the board by or on behalf of an applicant, shall be accompanied by notarized English translations acceptable to the board.

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§30-16-9. Licensure by endorsement; temporary licensure; restricted licensure.

(a) The board is authorized, in its discretion, to issue a license by endorsement to an applicant who:

(1) Has complied with all current chiropractic licensing requirements except for the oral examination;

(2) Has passed a chiropractic licensing examination given in English in another state, the District of Columbia or a territory or possession of the United States, that the board determines is equivalent to its own current examination requirements;

(3) Has a valid current chiropractic license in another state, the District of Columbia or a territory or possession of the United States without any past or current disciplinary action taken upon that license; and

(4) Successfully completes an oral examination administered by the board covering jurisprudence and clinical competency.

(b) No license may be issued under the provisions of this section until the person applying has paid to the board the prescribed fee.

(c) The board is authorized, in its discretion, to issue a temporary license to visiting chiropractic physicians and visiting professors for the treatment of individuals involved with special events to applicants demonstrably qualified for a full and unrestricted chiropractic license under the requirements of this article and that hold a current valid license in another state, territory or possession of the United States or the District of Columbia without any past or current disciplinary actions against that license. A temporary license may not be issued under the provisions of this section until the person applying has paid to the board the prescribed fee.

(d) The board is authorized to issue conditional, restricted or otherwise circumscribed licenses for a limited and specific period of time as it determines necessary.

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§30-16-10. Licensing chiropractors from other states; fee.

Persons licensed to practice chiropractic under the laws of any other state, territory or the District of Columbia having requirements equivalent to those of this article, and extending like privileges to practitioners of this state, may in the discretion of the board be licensed to practice in this state without examination. No license may be issued under the provisions of this section until the person applying has completed satisfactorily an oral examination and has paid the fee required by the board.

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§30-16-11. Disciplinary actions.

(a) The board may take disciplinary action against any licensee or certificate holder holding a license or certificate issued under this article after giving reasonable notice and an opportunity to be heard pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, when it finds that any person has engaged in conduct in violation of the rules adopted by the board, including, but not limited to, the following:

(1) Fraud or misrepresentation in applying for or procuring a chiropractic license or in connection with applying for or procuring periodic renewal of a chiropractic license;

(2) Cheating on or attempting to subvert the chiropractic licensing examination or examinations;

(3) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude or directly relates to the practice of chiropractic. Any plea of nolo contendere is a conviction for the purposes of this subdivision;

(4) Conduct likely to deceive, defraud or harm the public;

(5) Making a false or misleading statement regarding his or her skill or the efficiency or value of the chiropractic treatment;

(6) Representing to a patient that an incurable condition, sickness, disease or injury can be cured;

(7) Willfully or negligently violating the confidentiality between chiropractic physician and patient except as required by law;

(8) Negligence in the practice of chiropractic as determined by the board;

(9) Being found mentally incompetent or insane by any court of competent jurisdiction;

(10) Being physically or mentally unable to engage safely in the practice of chiropractic;

(11) Practice or other behavior that demonstrates an incapacity or incompetence to practice chiropractic;

(12) Use of any false, fraudulent or deceptive statement in any document connected with the practice of chiropractic;

(13) Practicing chiropractic under a false or assumed name;

(14) Aiding or abetting the practice of chiropractic by an unlicensed, incompetent or impaired person;

(15) Allowing another person or organization to use his or her license to practice

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chiropractic;

(16) Commission of any act of sexual abuse, sexual misconduct or sexual exploitation related to the licensee's practice of chiropractic;

(17) Being addicted or habituated to a drug or intoxicant;

(18) Obtaining any fee by fraud, deceit or misrepresentation;

(19) Employing abusive billing practices;

(20) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually rendered: Provided, That this prohibition does not preclude the legal functioning of lawful professional partnerships, corporations or associations;

(21) Disciplinary action of another state or jurisdiction against a license or other authorization to practice chiropractic based upon acts or conduct by the licensee similar to acts or conduct that constitute grounds for action as defined in this section, a certified copy of the record of the action taken by the other state or jurisdiction being conclusive evidence thereof;

(22) Failure to report to the board within thirty days of any adverse action, disciplinary action, sanctions or punishment taken against him or her by another state licensing board or licensing jurisdiction, United States or foreign, by a peer review body, health care institution, professional or chiropractic society or association, governmental agency, law-enforcement agency or court for acts or conduct similar to acts or conduct that constitute grounds for action as defined in this section;

(23) Failure to report to the board within thirty days of the surrender of a license or other authorization to practice chiropractic in another state or jurisdiction or surrender of membership on any chiropractic staff or in any chiropractic or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that constitute grounds for action as defined in this section;

(24) Any adverse judgment, award or settlement against the licensee resulting from a chiropractic liability claim related to acts or conduct similar to acts or conduct that constitute grounds for action as defined in this section;

(25) Failure to report to the board within thirty days any adverse judgment, settlement or award arising from a chiropractic liability claim related to acts or conduct similar to acts or conduct that constitute grounds for action as defined in this section;

(26) Failure to transfer or release pertinent and necessary chiropractic records to another physician in a timely fashion when legally requested to do so by the subject patient or by a

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legally designated representative of the subject patient;

(27) Improper management of chiropractic patient records;

(28) Failure to furnish the board, its investigators or representatives, information legally requested by the board;

(29) Failure to cooperate with a lawful investigation conducted by the board; or

(30) Violation of any provision of this article or the rules of the board or of an action, stipulation or agreement with the board.

(b) Upon a finding of a violation by a chiropractor of one or more of the grounds for discipline contained in subsection (a) of this section, the board may impose one or more of the following penalties:

(1) Revocation of the chiropractic license;

(2) Suspension of the chiropractic license;

(3) Probation;

(4) Stipulations, limitations, restrictions and conditions relating to practice;

(5) Reprimand;

(6) Monetary redress to another party;

(7) A period of free public or charity service;

(8) Satisfactory completion of an educational, training or treatment program, or a combination of programs;

(9) Imposition of an administrative penalty, not to exceed $1,000 per day per violation; or

(10) Payment of administrative costs for the disciplinary action, including, but not limited to, attorney fees, investigation expenses, hearing examiner fees, witness fees and cost of monitoring compliance with the board's orders.

(c) The board may issue a confidential letter of concern to a licensee when, though evidence does not warrant formal proceedings, the board has noted indications of possible misconduct of a licensee that could lead to serious consequences and formal action. In the letter of concern, the board is also authorized at its discretion to request clarifying information from the licensee.

(d) The board may require professional competency, physical, mental or chemical dependency examinations of any applicant or licensee including withdrawal and laboratory

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examination of bodily fluids.

(e) In every disciplinary case considered by the board pursuant to this article, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination whether probable cause exists to substantiate charges due to any reasons set forth in this section. If probable cause is not found in the complaint, all proceedings relating to the complaint and the response of the licensee or his or her representative shall be held confidential and may not be made available to the public or to any other state or federal agency or court. If probable cause is found to exist, all proceedings on the charges shall be open to the public, who are entitled to all reports, records and nondeliberative materials introduced at the hearing, including the record of any final action taken: Provided, That any medical records pertaining to the person who has not waived his or her right to the confidentiality of the records are not open to the public. For purposes of the hearing, the board has the power to subpoena witnesses, documents or any other tangible evidence. The board may, in its discretion, meet in an informal conference with the accused licensee who seeks or agrees to the conference. Disciplinary action taken against a licensee as a result of the informal conference and agreed to in writing by the board and the accused licensee is binding and a matter of public record. The holding of an informal conference does not preclude an open formal hearing if the board determines it is necessary.

(f) If the board determines that the evidence in its possession indicates that a chiropractor's continuation in practice or unrestricted practice constitutes an immediate threat to the public health and safety or when a licensee is convicted of a felony, whether or not related to the practice of chiropractic, the board may seek an injunction in the circuit court of proper jurisdiction for immediate relief implementing any of the board's authority provided in this article.

(g) All disciplinary actions taken by the board shall be reported to the federation of licensing boards, appropriate federal agencies and any other state boards with which the disciplined licensee may also be registered or licensed and all the actions, including related findings of fact and conclusions of law, are matters of public record. Voluntary surrender of and voluntary limitations on a chiropractic license of any person are also matters of public record and shall also be reported to the appropriate agencies.

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§30-16-12. Impaired chiropractors.

(a) As contained in this section the term impairment is defined as the inability of a licensee to practice chiropractic with reasonable skill and safety by reason of:

(1) Mental illness;

(2) Physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor or perceptive skills; or

(3) Habitual or excessive use or abuse of drugs defined in law as controlled substances, of alcohol or other substances that impair ability.

(b) The board may after a probable cause determination and hearing require a licensee or applicant to submit to a mental or physical examination or a chemical dependency evaluation by physicians designated by the board. The results of the examination or evaluation are admissible at any hearing before the board despite any claim of privilege under contrary rule or statute. Every person who receives a license to practice chiropractic or files an application for a license to practice chiropractic thereby consents to submit to a mental or physical examination or a chemical dependency evaluation and has waived all objections to the admissibility of the results in any hearing before the board. If a licensee or applicant fails to submit to an examination or evaluation when properly directed to do so by the board, the board may enter a final order upon proper notice, hearing and proof of their refusal.

(c) Upon the determination by the board after examination and hearing that a licensee is impaired the board shall take one or more of the following actions:

(1) Direct the licensee to submit to care, counseling or treatment acceptable to the board;

(2) Suspend, limit or restrict the chiropractic license for the duration of the impairment; or

(3) Revoke the chiropractic license.

(d) Any licensee or applicant prohibited from practicing chiropractic under this section, shall at reasonable intervals be afforded an opportunity to demonstrate to the satisfaction of the board that he or she can assume or begin the practice of chiropractic with reasonable skill and safety.

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§30-16-13. Protected action, immunity and communication.

(a) There is no monetary liability on the part of, and no cause of action for damages arising against, any current or former member, officer, administrator, peer review committee member, staff member, committee member, examiner, representative, agent, employee, consultant, witness or any other person serving or having served the board, either as a part of the board's operation or as an individual, as a result of any act, omission, proceeding, conduct or decision related to his or her duties undertaken or performed in good faith and within the scope of the function of the board.

(b) A current or former member, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant or any other person serving or having served the board may request the state to defend him or her against any claim or action arising out of any act, omission, proceeding, conduct or decision related to his or her duties undertaken or performed in good faith and within the scope of the function of the board.

(c) Every communication made by or on behalf of any person, institution, agency or organization to the board or to any person designated by the board relating to an investigation or the initiation of an investigation, whether by way of report, complaint or statement, is privileged. No action or proceeding, civil or criminal, is permitted against the person, institution, agency or organization by whom or on whose behalf the communication was made in good faith.

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§30-16-14. Enforcement.

(a) The board shall enforce the provisions of this article and the rules adopted under this article. If any person refuses to obey any decision or order of the board, the board or, upon the request of the board, the Attorney General or the appropriate prosecuting attorney, may file an action for the enforcement of the decision or order, including injunctive relief, in the circuit court of the county of residence of the person. After due hearing, the court shall order the enforcement of the decision or order, or any part thereof, if legally and properly made by the board and where appropriate, injunctive relief. The board is authorized to issue a cease and desist order to restrain any person or any corporation or association and its officers and directors from violating the provisions of this article.

(b) Each of the following acts is a misdemeanor, punishable upon conviction by a fine of not less than $500 nor more than maximum allowed by state law, or by confinement in a county or regional jail for not less than thirty days nor more than one year, or both, in the discretion of the court:

(1) The obtaining of or attempt to obtain a license by the use of fraud, deceit or willful misrepresentation;

(2) The practice or attempting to practice as a chiropractor without a license granted under the provisions of this article, or practicing or attempting to practice while the license is suspended or after the license has been revoked;

(3) The use of any title to induce belief that the use of the title is engaged in the practice of chiropractic, if the use of the title has not fully complied with the provisions of this article;

(4) The buying, selling or fraudulent procurement of any diploma of, or license to practice chiropractic; and

(5) The violation of any provision of this article regulating the practice of chiropractors.

(c) Each day any person violates a provision of this article is a separate and distinct offense.

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§30-16-15. Annual renewal; failure to renew; reinstatement.

(a) All holders of certificates of license to practice chiropractic in this state shall renew them annually on or before July 1, of each year by:

(1) Paying the board an annual renewal fee in an amount determined by the board;

(2) Returning the renewal application form with all required information complete and accurate; and

(3) Presenting to the board evidence of completion of at least eighteen hours of continuing education each year of which up to six hours may be mandated in special subjects by the board.

(b) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, establishing all additional continuing education requirements and all criteria for fulfillment of the continuing education requirements.

(c) The board shall notify each certificate holder by mail, at least thirty days prior to July 1, of each year, of the necessity of renewing his or her certificate. Failure to renew a certificate of license to practice chiropractic operates as an automatic suspension of the rights and privileges granted by its issuance.

(d) A certificate or license suspended by a failure to make the required annual renewal may be reinstated by the board, except as provided in subsection (e) of this section, upon:

(1) Presentation of evidence of completion of the required hours of continuing education for each year the license has been suspended; and

(2) Payment of all fees that would have been paid if the certificate holder had maintained the certificate in good standing and the payment to the board of a reinstatement fee in an amount to be determined by the board.

(e) No certificate may be reinstated after a lapse of two years. After a lapse of two years, a license may be issued only after the former certificate holder, subsequent to the lapse, has fulfilled all other requirements of licensure as set forth in section six of this article and has passed the national special purposes examination for chiropractic examination.

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§30-16-16. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties.

(a) The board may independently initiate suspension or revocation proceedings as well as initiate suspension or revocation proceedings based on information received from any person. The board shall initiate investigations as to professional incompetence or other reasons for which a licensed chiropractor may be adjudged unqualified if the board receives notice that five or more judgments or settlements arising from professional liability have been rendered or made against the chiropractor.

(b) Upon request of the board, any peer review committee in this state shall report any information that may relate to the practice or performance of any chiropractor known to that peer review committee. Copies of the requests for information from a peer review committee may be provided to the subject chiropractor if, in the discretion of the board, the provision of the copies does not jeopardize the board's investigation. In the event that copies are provided, the subject chiropractor is allowed fifteen days to comment on the requested information and the comments shall be considered by the board.

(c) After the completion of a hospital's formal disciplinary procedure and after any resulting legal action, the chief executive officer of the hospital shall report in writing to the board within sixty days the name of any chiropractor who is a member of the staff or any other chiropractor practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, together with all pertinent information relating to the action. The chief executive officer shall also report any other formal disciplinary action taken against any chiropractor by the hospital upon the recommendation of its professional staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

(d) Any professional society in this state comprised primarily of chiropractors which takes any form of disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse, shall report in writing to the board within sixty days of a final decision the name of the member, together with all pertinent information relating to the action.

(e) Every person, partnership, corporation, association, insurance company, professional society or other organization providing professional liability insurance to a chiropractor in this state shall submit to the board the following information within thirty days from any judgment, dismissal or settlement of a civil action or of any claim involving the insured:

(1) The date of any judgment, dismissal or settlement;

(2) Whether any appeal has been taken on the judgment, and if so, by which party;

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(3) The amount of any settlement or judgment against the insured; and

(4) Other information the board requires.

(f) Within thirty days after a person known to be a chiropractor licensed or otherwise lawfully practicing chiropractic in this state or applying to be so licensed is convicted of a felony under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of the record of the convicting court. The abstract shall include the name and address of the chiropractor or applicant, the nature of the offense committed and the final judgment and sentence of the court.

(g) Upon a determination of the board that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society or other organization has failed or refused to make a report required by this subsection, the board shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. After reviewing the record of the hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than $1,000 nor more than $10,000 against the violator. Anyone so assessed shall be notified of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within thirty days, the Attorney General may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. In any such civil action, the court's review of the board's action shall be conducted in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

(h) Any person may report to the board relevant facts about the conduct of any chiropractor in this state which in the opinion of the person amounts to professional malpractice or professional incompetence.

(i) The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms including verbal report shall be accepted by the board.

(j) The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or professional society comprised primarily of chiropractors to suspend, restrict or revoke the privileges or membership of the chiropractor.

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§30-16-17. Who may practice chiropractic; title of chiropractor; minimum education required for spinal manipulation.

(a) No person licensed under chapter thirty of this code may perform or authorize a spinal manipulation or spinal adjustment without having first received a minimum of four hundred hours of classroom instruction in spinal manipulation or spinal adjustment and a minimum of eight hundred hours of supervised clinical training at a facility where spinal manipulation or spinal adjustment is a primary method of treatment. Violation of this section is an unlawful practice of chiropractic and is grounds for the offending health care provider's licensing board to suspend, revoke or refuse to renew provider's license or take any other disciplinary action allowed by law.

(b) Every chiropractor who has complied with the provisions of this article is entitled to practice chiropractic in this state. The title of chiropractor shall be doctor of chiropractic and is designated by the letters "D.C." The titles "D.C.," doctor of chiropractic, chiropractor, chiropractic physician are interpreted as the same.

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§30-16-18. Scope of practice; chiropractic assistants; expert testimony.

(a) Any chiropractor who has complied with the provisions of this article may use any instrument or procedure, for the purpose of diagnosis and analysis of disease or abnormalities: Provided, That the person is trained to perform the procedures and use the instruments through a chiropractic college approved by the counsel on chiropractic education or its successor. Any chiropractor properly qualified under this article may engage in the use of physiotherapeutic devices, physiotherapeutic modalities, physical therapy and physical therapy techniques. Licensed chiropractors may also employ properly trained chiropractic assistants to perform duties under supervision that are generally conducted by chiropractic assistants which are not otherwise prohibited by the board. The board shall propose and promulgate rules in accordance with the provisions governing legislative rules, contained in article three, chapter twenty-nine-a of this code governing chiropractic assistants, including, but not limited to, minimum qualifications, scope of practice, and supervision requirements. A licensed chiropractor may not engage in conduct outside this scope and beyond his or her training and knowledge.

(b) A doctor of chiropractic duly licensed under this article is presumed to be competent to testify before the circuit courts of this state or in any other state administrative proceeding as an expert witness.

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§30-16-19. Duty of chiropractor to observe health rules; reports of health officer and local registrar of vital statistics.

Doctors of chiropractic shall observe and are subject to all state and municipal rules in regard to the control of infectious diseases, and to any and all other matters pertaining to public health. They shall report to the public health officer in the manner required by law. It is the duty of each doctor of chiropractic in this state to report to the registrar of vital statistics of his or her magisterial district, within ten days of its occurrence, any death which may come under his or her supervision, with a certificate of the cause of death and correlative facts as may be at that time required by the division of health.

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§30-16-20. Use of physiotherapeutic devices; electrodiagnostic devices; specialty practice.

(a) No chiropractor may use any physiotherapeutic devices or electrodiagnostic devices in practice until he or she has certified to the board that he or she has completed at least the minimum classroom hours required for certification in the use of these procedures in classes sponsored by or conducted by a chiropractic college approved by the council of chiropractic education or its successor.

(b) Electrodiagnostic devices include, but are not limited to, the following: Videofluoroscopy and diagnostic ultrasound, including needle and surface electromyography, nerve conduction velocity studies, somatosensory testing and neuromuscular junction testing. The board may designate other devices as electrodiagnostic devices covered by this section by rule.

(c) As contained in this section, the term "specialty" includes, but is not limited to, orthopedics, neurology, chiropractic sports physician, radiology, pediatrics, nutrition, rehabilitation, acupuncture, chiropractic internist, behavioral health, diagnostic imagining and physiotherapeutics. No chiropractor is permitted to practice in a specialty in the chiropractic field or hold himself or herself out as being a specialist in the chiropractic field until the licensee has successfully completed a certified program in that specialty at a chiropractic college approved by the council on chiropractic education or its successor and approved by the board. The program shall consist of a minimum number of hours to be determined by the board. Successful completion of the final certification exam is required.

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§30-16-21. Chiropractic corporations.

(a) One or more individuals, each of whom is licensed to practice chiropractic within this state may organize and become a shareholder or shareholders of a chiropractic corporation. Individuals who may be practicing chiropractic as an organization created otherwise than pursuant to the provisions of this section may incorporate under and pursuant to this section. This section is not intended to amend the statutory or common law as it relates to associations or partnerships, except to allow partnerships of chiropractors to organize as a chiropractic corporation.

(b) A chiropractic corporation may render professional service only through officers, employees and agents who are themselves duly licensed to render chiropractic service within this state. The term "employee" or "agent" as used in this section, does not include secretaries, clerks, typists, paraprofessional personnel or other individuals who are not usually and ordinarily considered by custom and practice to be rendering chiropractic services for which a license is required.

(c) This section does not modify the law as it relates to the relationship between a person furnishing chiropractic services and his or her client, nor does it modify the law as it relates to liability arising out of the professional service relationship. Except for permitting chiropractic corporations this section is not intended to modify any legal requirement or court rule relating to ethical standards of conduct required of persons providing chiropractic services.

(d) A chiropractic corporation may issue its capital stock only to persons who are duly licensed by the board.

(e) When not inconsistent with this section, the organization and procedures of chiropractic corporations shall conform to the requirements of article one, chapter thirty-one of this code.

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§30-16-22. Offenses; penalties.

(a) Each of the following acts shall constitute a misdemeanor, punishable upon conviction by a fine of not less than $100 nor more than $500, or by imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court, and each day any person shall so violate any provisions of this article shall constitute a separate and distinct offense:

(1) The obtaining of or attempt to obtain a license by the use of fraud, deceit or willful misrepresentation;

(2) The practice, or attempting to practice, as a chiropractor without a license granted under the provisions of this article, or practicing or attempting to practice while said license is suspended, or after said license has been revoked;

(3) The use of any title to induce belief that the user of said title is engaged in the practice of chiropractic, if the user of said title has not fully complied with the provisions of this article;

(4) The buying, selling or fraudulent procurement of any diploma of, or license to practice, chiropractic;

(5) The violation of any provision of this article regulating the practice of chiropractors.

(b) A person shall not engage in the practice of chiropractic or hold himself or herself out as qualified to practice chiropractic or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to chiropractic in this state unless he or she is actually licensed under the provisions of this article. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned in the county jail not more than three months, or both fined and imprisoned.

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