

CHAPTER 460

CHIROPRACTIC

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460.401 Legislative findings; intent.—The sole legislative purpose for enacting this chapter is to ensure that every chiropractic physician practicing in this state meets minimum requirements for safe practice. It is the legislative intent that chiropractic physicians who fall below minimum competency or who otherwise present a danger to the public health be prohibited from practicing in this state.

History.—ss. 1, 7, ch. 79-211; ss. 2, 3, ch. 81-318; ss. 1, 17, 18, ch. 86-285; s. 4, ch. 91-429.

460.402 Exceptions.—The provisions of this chapter shall not apply to:

- (1) Other duly licensed health care practitioners acting within their authorized scope of practice.
- (2) Any person furnishing medical assistance in case of an emergency.
- (3) The domestic administration of recognized family remedies.
- (4) The practice of the religious tenets of any church.
- (5) Any massage therapist acting within his scope of practice authorized in chapter 480.

History.—ss. 1, 7, ch. 79-211; ss. 2, 3, ch. 81-318; ss. 17, 18, ch. 86-285; s. 63, ch. 89-374; s. 5, ch. 90-25; s. 4, ch. 91-429.

460.403 Definitions.—As used in this chapter, the term:

- (1) "Department" means the Department of Business and Professional Regulation.
- (2) "Board" means the Board of Chiropractic.
- (3)(a) "Practice of chiropractic" means a noncombative principle and practice consisting of the science of the adjustment, manipulation, and treatment of the human body in which vertebral subluxations and other malpositioned articulations and structures that are interfering with the normal generation, transmission, and expression of nerve impulse between the brain, organs, and tissue cells of the body, thereby causing disease,

are adjusted, manipulated, or treated, thus restoring the normal flow of nerve impulse which produces normal function and consequent health.

(b) Any chiropractic physician who has complied with the provisions of this chapter may examine, analyze, and diagnose the human living body and its diseases by the use of any physical, chemical, electrical, or thermal method; use the X ray for diagnosing; phlebotomize in compliance with paragraph (f); and use any other general method of examination for diagnosis and analysis taught in any school of chiropractic.

(c) Chiropractic physicians may adjust, manipulate, or treat the human body by manual, mechanical, electrical, or natural methods; by the use of physical means or physiotherapy, including light, heat, water, or exercise; by the use of acupuncture; or by the administration of foods, food concentrates, food extracts, and proprietary drugs and may apply first aid and hygiene, but chiropractic physicians are expressly prohibited from prescribing or administering to any person any legend drug, from performing any surgery except as stated herein, or from practicing obstetrics.

(d) Chiropractic physicians shall have the privileges of services from the Department of Health and Rehabilitative Services laboratories.

(e) The term "chiropractic," "doctor of chiropractic," or "chiropractor" shall be synonymous with "chiropractic physician," and each term shall be construed to mean a practitioner of chiropractic as the same has been defined herein. Chiropractic physicians may analyze and diagnose the physical conditions of the human body to determine the abnormal functions of the human organism and to determine such functions as are abnormally expressed and the cause of such abnormal expression.

(f) Any chiropractic physician who has complied with the provisions of this chapter is authorized to analyze and diagnose abnormal bodily functions and to adjust the physical representative of the primary cause of disease as is herein defined and provided. As an incident to the care of the sick, chiropractic physicians may advise and instruct patients in all matters pertaining to hygiene and sanitary measures as taught and approved by recognized chiropractic schools and colleges. Any chiropractic physician licensed after October 1, 1986, may not phlebotomize, use physiotherapy or acupuncture, or administer proprietary drugs until certified by the board to use any of such procedures. Certification shall be granted to chiropractic physicians licensed after October 1, 1986, who have satisfactorily completed the required coursework in the procedure or procedures for which certification is sought and after successful passage of an appropriate examination as administered by the department. The required coursework shall have been provided by a college or university which is recognized by an accrediting agency approved by the United States Department of Education. Chiropractic physicians licensed after October 1, 1986, seeking certification in one or more of the procedures for which certifica-

tion is required may elect to take the certification examination at the time of taking the initial licensing examination or at any subsequent examination. Nothing herein shall be construed to require chiropractic physicians who have met all requirements for licensure prior to October 1, 1986, to become certified to phlebotomize or use physiotherapy.

(4) "Chiropractic physician" means any person licensed to practice chiropractic pursuant to this chapter.

(5) "Health care provider" means a physician licensed under this chapter.

(6) "Medically accepted standards" for peer review of a health care provider shall be those standards of care, skill, and treatment which are recognized by a reasonably prudent similar health care provider as being acceptable under similar conditions and circumstances.

(7) "Patient" means an individual who receives treatment from a health care provider, which treatment is within the scope of the provider's authorized practice.

(8) "Peer review" means an evaluation, based on medically accepted standards, by a peer review committee of the appropriateness, quality, utilization, and cost of health care and health services provided to a patient.

(9) "Peer review committee" means a committee of seven individuals who shall be physicians licensed under this chapter; none of the individuals shall be in a direct business relationship with the provider, insurer, or patient whose case is being reviewed. The committee shall be appointed by the secretary of the department or provided for by a contractual arrangement. A committee member shall be compensated \$50 for each day he attends an official meeting of the committee and for each day he participates in any other business involving the committee. A committee member shall also be entitled to reimbursement for expenses pursuant to s. 112.061.

(10) "Approved program" means a program for the education of certified chiropractic physician's assistants, which program has been formally approved by the board.

(11) "Trainee" means a person who is currently enrolled in an approved program.

(12) "Certified chiropractic physician's assistant" means a person who is a graduate of an approved program or its equivalent and is approved by the department to perform chiropractic services under the supervision of a chiropractic physician or group of physicians certified by the board to supervise such assistant.

(13) "Supervision" means responsible supervision and control, with the licensed chiropractic physician assuming legal liability for the services rendered by the certified chiropractic physician's assistant. Except in cases of emergency, supervision shall require the easy availability or physical presence of the licensed chiropractic physician for consultation and direction of the actions of the certified chiropractic physician's assistant. The board shall further establish rules as to what constitutes responsible supervision of the certified chiropractic physician's assistant.

History.—ss. 1, 7, ch. 79-211; ss. 2, 3, ch. 81-318; ss. 2, 17, 18, ch. 86-285; s. 1, ch. 90-25; s. 4, ch. 91-429; s. 113, ch. 94-218.

460.404 Board of Chiropractic; membership; appointment; terms.—

(1) The Board of Chiropractic is created within the department and shall consist of seven members to be appointed by the Governor and confirmed by the Senate.

(2) Five members of the board must be licensed chiropractic physicians who are residents of the state and who have been licensed chiropractic physicians engaged in the practice of chiropractic for at least 4 years. The remaining two members must be residents of the state who are not, and have never been, licensed as chiropractic physicians or members of any closely related profession. At least one member of the board must be 60 years of age or older.

(3) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed.

(4) All provisions of chapter 455 relating to the board shall apply.

History.—ss. 1, 7, ch. 79-211; ss. 2, 3, ch. 81-318; ss. 3, 17, 18, ch. 86-285; s. 12, ch. 87-172; s. 4, ch. 91-429; s. 114, ch. 94-218.

460.405 Authority to make rules.—The Board of Chiropractic is authorized to make such rules not inconsistent with law as are necessary to carry out the duties and authority conferred upon the board by this chapter.

History.—ss. 1, 7, ch. 79-211; ss. 2, 3, ch. 81-318; ss. 4, 17, 18, ch. 86-285; s. 4, ch. 91-429.

460.406 Licensure by examination.—

(1) Any person desiring to be licensed as a chiropractic physician shall apply to the department to take the licensure examination. There shall be an application fee set by the board not to exceed \$100 which shall be nonrefundable. There shall also be an examination fee not to exceed \$500 plus the actual per applicant cost to the department for purchase of portions of the examination from the National Board of Chiropractic Examiners or a similar national organization, which may be refundable if the applicant is found ineligible to take the examination. The department shall examine each applicant who the board certifies has:

(a) Completed the application form and remitted the appropriate fee.

(b) Submitted proof satisfactory to the department that he is not less than 18 years of age.

(c) Submitted proof satisfactory to the department that he is a graduate of a chiropractic college accredited by, or has status with an agency or its successor which is recognized and approved by, the United States Office of Education and the Commission on Recognition of Postsecondary Accreditation. No application for a license to practice chiropractic shall be denied solely because the applicant is a graduate of a chiropractic college that subscribes to one philosophy of chiropractic as distinguished from another.

(d) Completed at least 2 years of residence college work, consisting of a minimum of one-half the work acceptable for a bachelor's degree granted on the basis of a 4-year period of study, in a college or university accredited by an accrediting agency recognized and approved by the United States Department of Educa-

tion. However, each applicant who has matriculated after July 1, 1990, in a chiropractic college shall have been granted, prior to being certified by the board to sit for the examination, a bachelor's degree based upon 4 academic years of study separate from the degree of chiropractic by a college or university accredited by a regional accrediting agency which is a member of the Commission on Recognition of Postsecondary Accreditation.

(e) Completed not less than a 3-month training program in this state of not less than 300 hours with a chiropractic physician licensed in this state. The chiropractic physician candidate may perform all services offered by the licensed chiropractic physician, but must be under the supervision of the licensed chiropractic physician until the results of the first licensure examination for which the candidate has qualified have been received, at which time the candidate's training program shall be terminated. However, an applicant who has practiced chiropractic in any other state, territory, or jurisdiction of the United States or any foreign national jurisdiction for at least 5 years as a licensed chiropractic physician need not be required to complete the 3-month training program as a requirement for licensure.

(f) Successfully completed the National Board of Chiropractic Examiners certification examination in parts I and II and clinical competency, with a score approved by the board, within 10 years immediately preceding application to the department for licensure.

(2) For those applicants applying for certification examinations who have matriculated prior to July 1, 1996, in a chiropractic college, the board shall waive the provisions of paragraph (1)(c) if the applicant is a graduate of a chiropractic college which has been denied accreditation or approval on the grounds that its curriculum does not include all of, or is deficient in, the subjects necessary for the completion of the certification examinations or is a graduate of a chiropractic college where such subjects are not taught or offered if the college is accredited by or has status with an accrediting agency which is recognized and approved by the United States Department of Education and the Commission on Recognition of Postsecondary Accreditation.

(3) An applicant for licensure examination may elect not to take certification examinations which address phlebotomizing, physiotherapy, acupuncture, or administration of proprietary drugs. The department shall, in addition to the licensing exam, offer examinations for certification to phlebotomize, use physiotherapy or acupuncture, or administer proprietary drugs. An applicant may elect to take one or more of the certification examinations at the time of taking the licensure examination. Passage of one or more of the certification examinations shall not grant any applicant the right to practice chiropractic absent the passage of the licensing examination.

(4) The department shall submit written notification within 5 working days to applicants who have successfully completed the requirements of paragraphs (1)(a)-(f) and who have successfully passed the state licensure examination. An applicant who is notified in writing by the department of the successful completion of requirements in paragraphs (1)(a)-(f) and who has successfully passed the state licensure examination

may lawfully practice pending receipt of the certificate of licensure, and the written notification shall act as evidence of licensure entitling the chiropractic physician to practice for a maximum period of 45 days or until the licensing fee is received by the department whichever is sooner.

History.—ss. 1, 7, ch. 79-211; ss. 2, 3, ch. 81-318; s. 21, ch. 83-329; ss. 5, 17, 18, ch. 86-285; s. 6, ch. 88-205; s. 1, ch. 88-276; s. 29, ch. 89-162; s. 44, ch. 90-228; s. 1, ch. 91-277; s. 4, ch. 91-429; s. 92, ch. 92-149; s. 1, ch. 94-173; s. 22, ch. 94-310.

Note.—As amended by s. 22, ch. 94-310. Paragraph (1)(c) and subsection (2) were also amended by s. 1, ch. 94-173. The ch. 94-310 version is published here as the last expression of legislative will (see Journal of the Senate 1994, pp. 824 and 888; Journal of the House of Representatives 1994, p. 1468). Paragraph (1)(c) and subsection (2), as amended by s. 1, ch. 94-173, read:

(c) Submitted proof satisfactory to the department that he is a graduate of a chiropractic college which is accredited by or has status with the Council on Chiropractic Education or its predecessor agency. No application for a license to practice chiropractic shall be denied solely because the applicant is a graduate of a chiropractic college that subscribes to one philosophy of chiropractic as distinguished from another.

(2) For those applicants applying for certification examinations who have matriculated prior to July 1, 1996, in a chiropractic college, the board shall waive the provisions of paragraph (1)(c) if the applicant is a graduate of a chiropractic college which has been denied accreditation or approval on the grounds that its curriculum does not include all of, or is deficient in, the subjects necessary for the completion of the certification examinations or is a graduate of a chiropractic college where such subjects are not taught or offered if the college is accredited by or has status with the Council on Chiropractic Education or its predecessor.

460.4061 Restricted license.—

(1) An applicant for licensure as a chiropractic physician may apply to the department for a restricted license without undergoing a state or national written or clinical competency examination for licensure if the applicant initially applies not later than October 31, 1994, for the restricted license and:

(a) Holds a degree from a college of chiropractic accredited by the Council on Chiropractic Education or its predecessor agency and holds a bachelor's degree.

(b) Has continuously held, since 1979, a license to practice as a chiropractic physician in another state, territory, or national jurisdiction and has actively practiced as a chiropractic physician for the 5 years immediately preceding application.

(c) Has never been disciplined for an offense that would be a violation under this chapter or chapter 455, imposed by another jurisdiction on the applicant's license to practice as a chiropractic physician.

(d) Provides a completed application on forms approved by the department and pays all application and licensure fees applicable to applicants for licensure by examination, except the examination fee itself.

(2) Before granting a restricted license, the board may require an applicant to appear before the board. The board may not require a restricted licensee to practice under the direct supervision of a full licensee. However, the board may impose reasonable restrictions on the applicant's license to practice as a chiropractic physician in this state. These restrictions include, but are not limited to, requiring a restricted licensee to:

(a) Submit to periodic and random departmental audits of the licensee's patients' treatment records and review of those records by the board.

(b) Subsequently appear before the board.

(c) Submit written reports to the department and board.

(3) A restricted licensee shall meet all statutory and regulatory requirements that are not in conflict with this section and that are imposed on a full licensee.

(4) A restricted licensee shall, if a disciplinary action against the licensee is not pending before the department and the licensee is not under discipline by the board, become a full licensee upon expiration of the 2-year restricted license if the licensee pays all applicable fees.

History.—s. 2, ch. 94-173.

1460.407 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and the fee set by the board not to exceed \$500.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

History.—ss. 1, 7, ch. 79-211; ss. 2, 3, ch. 81-318; ss. 7, 17, 18, ch. 86-285; s. 30, ch. 89-162; s. 2, ch. 90-25; s. 4, ch. 91-429; s. 168, ch. 94-119.

Note.—Section 3, ch. 94-173, provides that “[a]ny license that automatically became void pursuant to section 460.407, Florida Statutes (1989), as amended by section 2 of chapter 90-25, Laws of Florida, may be reinstated within 60 days after the effective date of this section and upon payment of a reinstatement fee of \$500 and compliance with continuing education requirements for each year required by section 460.408, Florida Statutes. Any such license shall be renewed effective back to the date the license became void.”

1460.408 Continuing chiropractic education.—

(1) The board shall require licensees to periodically demonstrate their professional competence as a condition of renewal of a license by completing up to 40 hours of continuing education.

(a) Continuing education courses sponsored by chiropractic colleges whose graduates are eligible for examination under any provision of this chapter shall be approved by the board if all other requirements of board rules setting forth criteria for course approval are met.

(b) Except as permitted in paragraph (a), the board shall approve only those courses sponsored by a college or university accredited by, or having status with an accrediting agency approved by, the United States Office of Education or sponsored by the Florida Chiropractic Association, provided that the courses are taught by persons on the graduate or postgraduate faculty of such an accredited college or university and the courses build upon the basic courses required for the practice of chiropractic, and the board may also approve courses in adjunctive modalities.

(2) The board may make exception from the requirements of this section in emergency or hardship cases.

(3) The board may adopt rules within the requirements of this section that are necessary for its implementation.

History.—ss. 1, 7, ch. 79-211; ss. 2, 3, ch. 81-318; ss. 8, 17, 18, ch. 86-285; s. 17, ch. 88-392; s. 17, ch. 91-220; s. 4, ch. 91-429.

Note.—Section 3, ch. 94-173, provides that “[a]ny license that automatically became void pursuant to section 460.407, Florida Statutes (1989), as amended by section 2 of chapter 90-25, Laws of Florida, may be reinstated within 60 days after the effective date of this section and upon payment of a reinstatement fee of \$500 and compliance with continuing education requirements for each year required by section 460.408, Florida Statutes. Any such license shall be renewed effective back to the date the license became void.”

460.41 Itemized patient billing.—Whenever a chiropractic physician licensed under this chapter renders professional services to a patient, the chiropractic physician shall submit to the patient, to the patient's insurer, or to the administrative agency for any federal or state health program under which the patient is entitled to benefits an itemized statement of the specific services rendered and the charge for each, no later than the chiropractic physician's next regular billing cycle which fol-

lows the fifth day after the rendering of professional services. A chiropractic physician may not condition the furnishing of an itemized statement upon prior payment of the bill.

History.—s. 5, ch. 79-198; s. 2, ch. 81-318; ss. 11, 17, 18, ch. 86-285; s. 4, ch. 91-429.

460.4104 Peer review of services and fees of licensees under this chapter.—

(1) It is the intent of the Legislature that the department review directly or by contract the fees of certain health care providers licensed by this state. A major purpose of this section is to provide for the regulation of the cost of health care and its impact upon the business of insurance through peer review activities as defined by the state.

(2) If the board directs, peer review shall be performed by peer review committees which are constituted by the department or by the department's contractual arrangements. Each peer review committee shall advise the department and the board as to the appropriateness of services and fees rendered by the health care providers whose activities the committee reviews. The board shall establish criteria for screening requests for peer review. Such screening shall occur upon submission by a patient or his representative, insurer, or health care provider of an inquiry about a bill for treatment rendered to a patient by a health care provider.

(3) For each peer review request, the reviewing agency under contract shall have the authority to establish and charge a fee, not to exceed \$500, to be paid by the person submitting the request, to assist in defraying the administrative costs of performing the review.

(4) The peer review committee shall file with the department a complaint against a health care provider if it determines that reasonable cause exists to believe the health care provider has violated any provision of this chapter or chapter 455, or rules adopted pursuant thereto, for which a licensed chiropractor may be disciplined.

(5) Peer review shall occur upon submission by a patient or his representative, insurer, or health care provider, in accordance with the procedures approved by the department, of an inquiry about a bill for treatment rendered to a patient by a health care provider. Each peer review committee shall examine each inquiry submitted to it and shall report its findings to the secretary of the department and furnish copies of such findings to the patient, health care provider, and third-party payor. The findings of a peer review committee on each inquiry submitted to it shall include a determination of whether or not the health care provider properly utilized services and rendered or ordered appropriate medical treatment or services and whether or not the cost of such treatment was appropriate.

(6) An annual summary of the findings of each peer review committee shall be prepared by the reviewing entity and submitted to the department. The report may be made available to interested persons upon request and upon payment of necessary administrative costs to defray the expenses of reproduction. Any information contained in such a report or summary maintained by

the department which may identify a patient is confidential and exempt from s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with 's. 119.14.

(7) The department may, pursuant to s. 455.241(2), obtain patient records to be used solely for the purpose of the board and department in peer review or where peer review finds a violation of s. 460.413(1)²(m) or ³(n) and files a complaint. Unless written authorization has been obtained from the patient, the patient records maintained by the department shall be confidential and exempt from s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with 's. 119.14.

(8) The acceptance of, or the request for, payment for treatment rendered to a patient by a health care provider constitutes the consent of the provider to the submission of all necessary records and other information concerning such treatment to the appropriate peer review committee.

(9)(a) The criteria or standards established for the peer review shall be adopted by the board as rules pursuant to chapter 120. Such criteria shall be developed to conform with medically accepted standards.

(b) The decision by the department to refer the matter to a peer review committee, the establishment by the department of the procedures by which a peer review committee reviews the rendering of health care services, and the proceedings and findings of a peer review committee are not subject to the provisions of chapter 120.

(10) The provisions of s. 766.101 apply to any officer, employee, or agent of the department or the board and to any officer, employee, or agent of any entity with which the department has contracted pursuant to this section.

History.—s. 11, ch. 83-329; s. 4, ch. 84-94; ss. 12, 17, 18, ch. 86-285; s. 2, ch. 87-241; s. 2, ch. 87-393; s. 3, ch. 88-276; s. 31, ch. 89-162; s. 16, ch. 91-140; s. 18, ch. 91-220; s. 4, ch. 91-429; s. 115, ch. 94-218.

Note.

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

Note.—Substituted by the editors for a reference to paragraph (1)(n) to conform to the repeal of former paragraph (1)(k) by s. 3, ch. 92-178.

Note.—Substituted by the editors for a reference to paragraph (1)(o) to conform to the repeal of former paragraph (1)(k) by s. 3, ch. 92-178.

460.411 Violations and penalties.—

(1) Each of the following acts constitutes a violation of this chapter and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing or attempting to practice chiropractic without an active license or with a license fraudulently obtained.

(b) Using or attempting to use a license to practice chiropractic which has been suspended or revoked.

(2) Each of the following acts constitutes a violation of this chapter and is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Selling or fraudulently obtaining or furnishing any chiropractic diploma, license, or record of registration or aiding or abetting in the same.

(b) Making any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.

(c) Using the name or title "chiropractic physician," "doctor of chiropractic," or any other name or title which would lead the public to believe that such person is engaging in the practice of chiropractic, unless such person is licensed as a chiropractic physician in this state.

(d) Knowingly concealing any information relative to violations of this chapter.

History.—ss. 1, 7, ch. 79-211; ss. 2, 3, ch. 81-318; ss. 17, 18, ch. 86-285; s. 87, ch. 91-224; s. 4, ch. 91-429.

460.412 Sexual misconduct in the practice of chiropractic.—The chiropractic physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of chiropractic means violation of the chiropractic physician-patient relationship through which the chiropractic physician uses said relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of chiropractic is prohibited.

History.—ss. 1, 7, ch. 79-211; s. 311, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 17, 18, ch. 86-285; s. 4, ch. 91-429.

460.413 Grounds for disciplinary action; action by the board.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Attempting to obtain, obtaining, or renewing a license to practice chiropractic by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(b) Having a license to practice chiropractic revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of chiropractic or to the ability to practice chiropractic. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

(d) False, deceptive, or misleading advertising.

(e) Causing to be advertised, by any means whatsoever, any advertisement which does not contain an assertion or statement which would identify himself as a chiropractic physician or identify such chiropractic clinic or related institution in which he practices or in which he is owner, in whole or in part, as a chiropractic institution.

(f) Advertising, practicing, or attempting to practice under a name other than one's own.

(g) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board.

(h) Aiding, assisting, procuring, or advising any unlicensed person to practice chiropractic contrary to this chapter or to a rule of the department or the board.

(i) Failing to perform any statutory or legal obligation placed upon a licensed chiropractic physician.

(j) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity of a licensed chiropractic physician.

(k) Making misleading, deceptive, untrue, or fraudulent representations in the practice of chiropractic or employing a trick or scheme in the practice of chiropractic when such trick or scheme fails to conform to the generally prevailing standards of treatment in the chiropractic community.

(l) Soliciting patients either personally or through an agent, unless such solicitation falls into a category of solicitations approved by rule of the board.

(m) Failing to keep written chiropractic records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results, test results, X rays, and diagnosis of a disease, condition, or injury. X rays need not be retained for more than 4 years.

(n) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party which shall include, but not be limited to, the promotion or sale of services, goods or appliances, or drugs.

(o) Performing professional services which have not been duly authorized by the patient or client or his legal representative except as provided in ss. 743.064, 766.103, and 768.13.

(p) Prescribing, dispensing, or administering any medicinal drug, performing any surgery, or practicing obstetrics.

(q) Being unable to practice chiropractic with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. A chiropractic physician affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of chiropractic with reasonable skill and safety to patients.

(r) Gross or repeated malpractice or the failure to practice chiropractic at a level of care, skill, and treatment which is recognized by a reasonably prudent chiropractic physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the standards for malpractice in s. 766.102 in interpreting this provision. A recommended order by a hearing officer, or a final order of the board finding a violation under this section shall specify whether the licensee was found to have committed "gross malpractice," "repeated malpractice," or "failure to practice chiropractic medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances" or any combination thereof, and any publication by the board shall so specify.

(s) Performing any procedure or prescribing any therapy which, by the prevailing standards of chiropractic practice in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(t) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform.

(u) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

(v) Violating any provision of this chapter, any rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

(w) Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another licensee from lawfully advertising his services.

(x) Submitting to any third-party payor a claim for a service or treatment which was not actually provided to a patient.

(y) Failing to preserve identity of funds and property of a patient. As provided by rule of the board, money or other property entrusted to a chiropractic physician for a specific purpose, including advances for costs and expenses of examination or treatment, is to be held in trust and must be applied only to that purpose. Money and other property of patients coming into the hands of a chiropractic physician are not subject to counterclaim or setoff for chiropractic physician's fees, and a refusal to account for and deliver over such money and property upon demand shall be deemed a conversion. This is not to preclude the retention of money or other property upon which the chiropractic physician has a valid lien for services or to preclude the payment of agreed fees from the proceeds of transactions for examinations or treatments. Controversies as to the amount of the fees are not grounds for disciplinary proceedings unless the amount demanded is clearly excessive or extortionate, or the demand is fraudulent. All funds of patients paid to a chiropractic physician, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the chiropractic physician's office is situated, and no funds belonging to the chiropractic physician shall be deposited therein except as follows:

1. Funds reasonably sufficient to pay bank charges may be deposited therein.

2. Funds belonging in part to a patient and in part presently or potentially to the physician must be deposited therein, but the portion belonging to the physician may be withdrawn when due unless the right of the physician to receive it is disputed by the patient, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

Every chiropractic physician shall maintain complete records of all funds, securities, and other properties of a patient coming into the possession of the physician and render appropriate accounts to the patient regarding them. In addition, every chiropractic physician shall promptly pay or deliver to the patient, as requested by

the patient, the funds, securities, or other properties in the possession of the physician which the patient is entitled to receive.

(2) Offering to accept or accepting payment for services rendered by assignment from any third-party payor after offering to accept or accepting whatever the third-party payor covers as payment in full, if the effect of the offering or acceptance is to eliminate or give the impression of eliminating the need for payment by an insured of any required deductions applicable in the policy of the insured.

(aa) Failing to provide, upon request of the insured, a copy of a claim submitted to any third-party payor for service or treatment of the insured.

(bb) Reducing or offering to reduce, rebating or offering to rebate, or discounting or offering to discount to an insured any payment to the licensee by the third-party payor of the insured for services or treatments rendered under the insured's policy.

(cc) Submitting to any third-party payor a claim for a service or treatment at a greater or an inflated fee or charge than the usual fee the licensee charges for that service or treatment when rendered without third-party reimbursement.

(dd) Advertising a fee or charge for a service or treatment which is different from the fee or charge the licensee submits to third-party payors for that service or treatment.

(ee) Advertising any reduced or discounted fees for services or treatments, or advertising any free services or treatments, without prominently stating in the advertisement the usual fee of the licensee for the service or treatment which is the subject of the discount, rebate, or free offering.

(ff) Phlebotomizing or using physiotherapy or acupuncture or administering proprietary drugs without being certified or exempted from certification pursuant to s. 460.403(3)(f).

(gg) Failing to report to the Division of Medical Quality Assurance any physician licensed under chapter 458 or osteopathic physician licensed under chapter 459 who the chiropractic physician knows has violated the grounds for disciplinary action set out in the law under which that physician or osteopathic physician is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part I of chapter 641, in which the chiropractic physician also provides services.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the chiropractic physician on probation for a period of time and subject to such conditions as the board may specify, including requiring the chiropractic physician to submit to treatment, to attend continuing education courses, to submit to reexamina-

tion, or to work under the supervision of another chiropractic physician.

(3) The department shall not reinstate the license of a chiropractic physician, or cause a license to be issued to a person the board has deemed unqualified, until such time as the board is satisfied that he has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of chiropractic.

(4) The board shall by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or reissuance of a license. "Gross malpractice," "repeated malpractice," and "failure to practice chiropractic medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar circumstances" under paragraph (1)(r) shall each be considered distinct types of violations requiring specific individual guidelines.

(5) When an investigation of a chiropractic physician is undertaken, the department shall promptly furnish to the chiropractic physician or his attorney a copy of the complaint or document which resulted in the initiation of the investigation. The chiropractic physician may submit a written response to the information contained in such complaint or document within 45 days after service to the chiropractic physician of the complaint or document. The chiropractic physician's written response shall be considered by the probable cause panel.

History.—ss. 1, 7, ch. 79-211; s. 312, ch. 81-259; ss. 2, 3, ch. 81-318; s. 1, ch. 83-107; s. 22, ch. 83-329; ss. 13, 17, 18, ch. 86-285; s. 38, ch. 88-1; s. 17, ch. 88-277; s. 4, ch. 90-44; s. 1, ch. 90-79; ss. 45, 46, ch. 90-228; s. 64, ch. 91-220; s. 4, ch. 91-429; ss. 41, 93, ch. 92-149; s. 3, ch. 92-178; s. 30, ch. 95-144.

460.414 Chiropractic physicians subject to state and municipal regulations.

—All licensed chiropractic physicians shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death certificates, and comply with all laws pertaining to public health, reporting to the proper authority as other practitioners are required to do.

History.—ss. 1, 7, ch. 79-211; ss. 2, 3, ch. 81-318; ss. 17, 18, ch. 86-285; s. 4, ch. 91-429.

460.4165 Chiropractic physician's assistants.

(1) **LEGISLATIVE INTENT.**—The purpose of this section is to encourage the more effective utilization of the skills of chiropractic physicians by enabling them to delegate health care tasks to qualified assistants when such delegation is consistent with the patient's health and welfare and to allow for innovative development of programs for the education of physician's assistants.

(2) **PERFORMANCE BY CERTIFIED CHIROPRACTIC PHYSICIAN'S ASSISTANT.**—Notwithstanding any other provision of law, a certified chiropractic physician's assistant may perform chiropractic services in the specialty area or areas for which the certified chiropractic physician's assistant is trained or experienced when such services are rendered under the supervision of a licensed chiropractic physician or group of chiropractic physicians certified by the board. Any certified chiropractic physician's assistant certified under this section to perform services may perform those services only:

(a) In the office of the chiropractic physician to whom the certified chiropractic physician's assistant has been assigned, in which office such physician maintains his primary practice;

(b) When the chiropractic physician to whom he is assigned is present;

(c) In a hospital in which the chiropractic physician to whom he is assigned is a member of the staff; or

(d) On calls outside said office, on the direct order of the chiropractic physician to whom he is assigned.

(3) **PERFORMANCE BY TRAINEES.**—Notwithstanding any other provision of law, a trainee may perform chiropractic services when such services are rendered within the scope of an approved program.

(4) **PROGRAM APPROVAL.**—The department shall issue certificates of approval for programs for the education and training of certified chiropractic physician's assistants which meet board standards. Any basic program curriculum certified by the board shall cover a period of 24 months.

(a) In developing criteria for program approval, the board shall give consideration to, and encourage, the utilization of equivalency and proficiency testing and other mechanisms whereby full credit is given to trainees for past education and experience in health fields.

(b) The board shall create groups of specialty classifications of training for certified chiropractic physician's assistants. These classifications shall reflect the training and experience of the certified chiropractic physician's assistant. The certified chiropractic physician's assistant may receive training in one or more such classifications, which shall be shown on the certificate issued.

(c) The board shall adopt and publish standards to ensure that such programs operate in a manner which does not endanger the health and welfare of the patients who receive services within the scope of the program. The board shall review the quality of the curricula, faculties, and facilities of such programs; issue certificates of approval; and take whatever other action is necessary to determine that the purposes of this section are being met.

(5) **APPLICATION APPROVAL.**—

(a) The board shall adopt rules for the consideration of applications by a licensed chiropractic physician or a group of licensed chiropractic physicians to supervise certified chiropractic physician's assistants. Each application made by a chiropractic physician or group of chiropractic physicians shall include all of the following:

1. The qualifications, including related experience, of the certified chiropractic physician's assistant intended to be employed.

2. The professional background and specialty of the chiropractic physician or the group of chiropractic physicians.

3. A description by the chiropractic physician of his practice, or by the chiropractic physicians of their practice, and of the way in which the assistant or assistants are to be utilized.

The board shall certify an application by a licensed chiropractic physician to supervise a certified chiropractic physician's assistant when the proposed assistant is a graduate of an approved program or its equivalent and is fully qualified by reason of experience and education to perform chiropractic services under the responsible supervision of a licensed chiropractic physician and when the board is satisfied that the public will be adequately protected by the arrangement proposed in the application.

(b) The board shall certify no more than two certified chiropractic physician's assistants for any chiropractic physician practicing alone; no more than four chiropractic physician's assistants for two chiropractic physicians practicing together formally or informally; or no more than a ratio of two certified chiropractic physician's assistants to three chiropractic physicians in any group of chiropractic physicians practicing together formally or informally.

(6) **PENALTY.**—Any person who has not been certified by the board and approved by the department and who represents himself as a certified chiropractic physician's assistant or who uses any other term in indicating or implying that he is a certified chiropractic physician's assistant is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine not exceeding \$5,000.

(7) **REVOCAION OF APPROVAL.**—The certificate of approval to supervise a certified chiropractic physician's assistant held by any chiropractic physician or group of chiropractic physicians may be revoked when the board determines that the intent of this section is not being carried out.

(8) **FEES.**—

(a) A fee not to exceed \$100 set by the board shall accompany the annual application by a chiropractic physician or group of chiropractic physicians for authorization to supervise a certified chiropractic physician's assistant.

(b) Upon approval of an application for certification of a certified chiropractic physician's assistant in a specialty area, the applicant shall be charged an initial certification fee for the first biennium not to exceed \$250; and a biennial renewal fee not to exceed \$250 shall accompany each application for renewal of the certified chiropractic physician's assistant certificate.

(9) **EXISTING PROGRAMS.**—Nothing in this section shall be construed to eliminate or supersede existing laws relating to other paramedical professions or services. It is the intent of this section to supplement all such existing programs relating to the certification and the practice of paramedical professions as may be authorized by law.

(10) **LIABILITY.**—Each chiropractic physician or group of chiropractic physicians utilizing certified chiropractic physician's assistants shall be liable for any act or omission of any physician's assistant acting under his or its supervision and control.

History.—ss. 1, 2, ch. 80-393; s. 2, ch. 81-318; s. 86, ch. 83-218; ss. 14, 17, 18, ch. 86-285; s. 32, ch. 89-162; s. 4, ch. 91-429.