

How to “Rule!”

By

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What the heck is a rule?

- A statement that tells somebody to either do or not do something.

This is a BAD rule!

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Texas Administrative Code

[TITLE 22](#)

EXAMINING BOARDS

[PART 3](#)

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

[CHAPTER 78](#)

SCOPE OF PRACTICE AND DELEGATION

RULE §78.1

Scope of Practice

(a) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Board--The Texas Board of Chiropractic Examiners.
- (2) CPT Codebook--The American Medical Association's annual Current Procedural Terminology Codebook (2004). The CPT Codebook has been adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as Level I of the common procedure coding system.
- (3) Cosmetic treatment--A treatment that is primarily intended by the licensee to address the outward appearance of a patient.
- (4) Incision--A cut or a surgical wound; also, a division of the soft parts made with a knife or hot laser.
- (5) Musculoskeletal system--The system of muscles and tendons and ligaments and bones and joints and associated tissues and nerves that move the body and maintain its form.
- (6) On-site--The presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.
- (7) Practice of chiropractic--The description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.
- (8) Subluxation--A lesion or dysfunction in a joint or motion segment in which alignment, movement integrity and/or physiological function are altered, although contact between joint surfaces remains intact. It is essentially a functional entity, which may influence biomechanical and neural integrity.
- (9) Subluxation complex--A neuromusculoskeletal condition that involves an aberrant relationship between two adjacent articular structures that may have functional or pathological sequelae, causing an alteration in the biomechanical and/or neuro-physiological reflections of these articular structures, their proximal structures, and/or other body systems that may be directly or indirectly affected by them.

(b) Aspects of Practice.

- (1) A person practices chiropractic if they:
 - (A) use objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or
 - (B) perform nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.
- (2) Needles may be used in the practice of chiropractic under standards set forth by the Board but may not be used for procedures that are incisive or surgical.
- (3) This section does not apply to:
 - (A) a health care professional licensed under another statute of this state and acting within the scope of their license; or
 - (B) any other activity not regulated by state or federal law.

(c) Examination and Evaluation.

- (1) In the practice of Chiropractic, licensees of this board provide necessary examination and evaluation services to:

This is not a rule!

- Rule 78.14 Acupuncture

...

(j) Approved programs in clinical acupuncture or meridian therapy offered by accredited chiropractic colleges or universities are designed for doctors of chiropractic and other disciplines. These courses are not intended as a substitute for a full curriculum teaching traditional Chinese medicine; rather they focus on the principle, theory, scientific findings, and practical modern application of acupuncture as currently practiced by doctors of chiropractic. . . .

Why do you need a rule?

- You have to!
- You want to!

Know your audience!

- The public
- The regulated community
- Other stakeholders
- Legislators
- Attorneys
- Judges
- Your agency staff

Statutory authority

- General authority
- Specific authority

General authority

Sec. 201.152. RULES. (a) The board may adopt rules and bylaws:

(1) necessary to:

(A) perform the board's duties; and

(B) regulate the practice of chiropractic; and

(2) relating to the board's proceedings and the board's examination of an applicant for a license to practice chiropractic.

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

Specific authority

Sec. 201.156. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

- (1) adopt a form to standardize information concerning complaints made to the board; and
 - (2) prescribe information to be provided to a person when the person files a complaint with the board.
- (b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.
- (c) The board by rule shall adopt procedures concerning:
- (1) the retention of information files on license holders; and
 - (2) the expunction of files on license holders, including complaints, adverse reports, and other investigative information on license holders.

Drafting

- Stakeholders = substance
 - Attorneys = format and text
 - This is essential!
-
- Avoid drafting by committee!

Keep it Simple!!!

- Avoid jargon
- Don't restate the statute (. . . There are exceptions!)
- One subject per rule
- "Shall" and "may not" (and that pesky "should")
- Subject – verb - object
- Precise title
- Keep subsections and clauses to a minimum
- Definitions – few and far between

Avoid jargon!

- (c) Examination and Evaluation.
- (1) In the practice of Chiropractic, licensees of this board provide necessary examination and evaluation services to:
 - (A) Determine the bio-mechanical condition of the spine and musculoskeletal system of the human body including, but not limited to, the following:
 - (i) the health and integrity of the structures of the system;
 - (ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;
 - (iii) the existence of the structural pathology, functional pathology or other abnormality of the system;
 - (iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology or other abnormality of the system;
 - (v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and
 - (vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

Don't restate the statute!

- (b) Aspects of Practice.
- (1) A person practices chiropractic if they:
 - (A) use objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or
 - (B) perform nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.
- (2) Needles may be used in the practice of chiropractic under standards set forth by the Board but may not be used for procedures that are incisive or surgical.
- (3) This section does not apply to:
 - (A) a health care professional licensed under another statute of this state and acting within the scope of their license; or
 - (B) any other activity not regulated by state or federal law.

One subject per rule!

<u>TITLE 22</u>	EXAMINING BOARDS
<u>PART 3</u>	TEXAS BOARD OF CHIROPRACTIC EXAMINERS
<u>CHAPTER 75</u>	BUSINESS PRACTICES
	Rules
<u>§75.1</u>	Code of Ethics
<u>§75.2</u>	Place of Business
<u>§75.3</u>	Fraud Prevention
<u>§75.4</u>	Patient's Rights to Disclosure of Charges
<u>§75.5</u>	Prepaid Treatment Plans
<u>§75.6</u>	Mandatory Notice to Public
<u>§75.7</u>	Mandatory Display of License
<u>§75.8</u>	Unsafe and Unsanitary Conditions
<u>§75.9</u>	Closing a Practice
<u>§75.10</u>	Chiropractic Telehealth Requirements
<u>§75.11</u>	Appointment Cancellation or No-Show Fees

“Shall”, “May Not”, and “Should”

- (a) A licensee shall use good faith to provide information to patients to allow them to make an informed choice about proposed chiropractic treatment.
- (b) A licensee shall consult with other health care professionals when appropriate.
- (c) A licensee may not discriminate against patients based on race, religion, ethnicity, nationality, creed, gender, handicap, or sexual preference.
- (d) A licensee shall promote public health, illness prevention, and the alleviation of suffering.
- (e) A licensee shall respect a patient's privacy at all times.
- (f) A licensee should help others in the practice of the profession.
- (g) A licensee should maintain the highest standards of education and training.

Subject-verb-object

- (b) A licensee shall consult with other health care professionals when appropriate.

Precise titles

- [§76.1](#) Required Contents of Patient Records
- [§76.2](#) Requests for Patient Records
- [§76.3](#) Fees for Providing Patient Records
- [§76.4](#) Duty to Maintain and Store Patient Records

Death to clauses!!!

- (c) A military member may obtain a Texas license from the Board by other than the process required by §72.2 of this title (relating to License Application) or have a license from another jurisdiction recognized by the Board in one of four ways.
- (1) A military member or veteran may be issued a license to practice chiropractic in Texas if the military member or veteran is currently licensed in good standing in a jurisdiction with licensing requirements substantially similar to Texas Occupations Code Chapter 201.
- (A) Before practicing chiropractic under paragraph (1) of this subsection, a military member or veteran shall provide to the Board:
 - (i) written notification of the intent to practice chiropractic in Texas; and
 - (ii) proof of residency in Texas, including the member's permanent change of duty station orders.

Definitions – do them right!

- (a) "Unsanitary" means a condition that could reasonably pose a risk of harm to the health of a patient, employee, or contractor of a licensee, or the public.
- (b) "Unsafe" means a condition that could reasonably pose a risk of injury to a patient, employee, or contractor of a licensee, or the public.
- (c) Reasonable and normal wear and tear or aging of chiropractic equipment does not constitute an unsafe or unsanitary condition.
- (d) Any location where a licensee practices chiropractic shall be free of unsafe and unsanitary conditions.

Keep it Simple, part II

- Read it out loud!
- Have others read it
- Avoid checklists
- Keep agency discretion (“reasonable”)

Questions?