

State of Washington

CHIROPRACTIC DISCIPLINARY BOARD

(name of governing body)

(agency name, if applicable)

Resolution No. _____

Administrative Order No. PL 350

(1) Be it resolved by the Chiropractic Disciplinary Board
acting at Seattle, Washington (place)

that it does promulgate and adopted the annexed rules relating to:

Amending:

WAC 113-12-150 ETHICAL STANDARDS -- PROHIBITED PUBLICITY AND ADVERTISING.

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. _____ filed with the code reviser on _____. Such rules shall take effect:

pursuant to RCW 34.04.040(2).

at a later date, such date being _____

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

We, Washington State Chiropractic Disciplinary Board, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is:

the board has been advised by legal counsel that the current version of WAC 113-12-150 may be subject to an interpretation which would render it unconstitutional. The constitutionality of WAC 113-12-150 is currently under challenge in a superior court proceeding. Unless action is taken by the board on an emergency basis, the possibility

Such rules are therefore adopted as emergency rules to take effect upon filing with the code reviser. (over)

(3) Pursuant to the requirements of RCW 34.04.____ (1977 c 19 § 2)¹ that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" (fill in statement (a), (b), or (c) as appropriate):

(a) This rule is promulgated pursuant to RCW _____ and is intended to administratively implement that statute.

(b) This rule is promulgated pursuant to RCW _____ which directs that the

(agency)

has authority to implement the provisions of

(name of act or RCW citation)

X(c) This rule is promulgated under the general rule making authority of the Chiropractic Disciplinary Board

(agency)

as authorized in RCW 18.26.110

(4) The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

(5) This order after being first recorded in the order register of this governing body is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 112 WAC.

STATE OF WASHINGTON
FILED

APPROVED AND ADOPTED June 21, 19 80

JUN 23 1980

By James F. Dawson, D.C.
JAMES F. DAWSON, D.C., Secretary

Title

CODE REVISER'S OFFICE

WSR 80-08-011

STATE OF WASHINGTON
CHIROPRACTIC DISCIPLINARY BOARD

Administrative No. PL 350

STATEMENT OF PURPOSE AND IMPLEMENTATION

I. NAME OF AGENCY: WASHINGTON STATE CHIROPRACTIC DISCIPLINARY BOARD

II. PURPOSE AND STATUTORY AUTHORITY OF RULE:

This rule amendment clarifies the board's earlier intent in adopting WAC 113-12-150 making it clear that prohibited advertising is that which is false, fraudulent, deceptive or misleading. The statutory authority for this rule is RCW 18.26.110(2).

III. SUMMARY OF RULE AND STATEMENT OF REASONS SUPPORTING ITS ADOPTION:

WAC 113-12-150 specifies restrictions on advertising and publicity which may be engaged in by a chiropractor. Essentially it prohibits false, fraudulent, deceptive or misleading advertising in whatever form it may take. Several specific examples are listed in the rule of advertising which has a high potential for being violative of the rule's prohibition against false, fraudulent, deceptive or misleading advertising. The rule also provides that a chiropractor who advertises must be able to substantiate the truth and accuracy of any and all claims made in his or her advertisements.

This rule amendment was made necessary by advice from legal counsel to the effect that WAC 113-12-150 as previously worded was susceptible of the interpretation that it would prohibit advertising other than which is false, fraudulent, deceptive or misleading. Subsection 2 of the rule is necessary because, without it, claims which are, in essence, unverifiable and are hence inherently misleading could be made without regard to their truth or accuracy.

IV. AGENCY PERSONNEL FOR DRAFTING, IMPLEMENTING AND ENFORCING THE RULE:

<u>NAME/TITLE</u>	<u>ADDRESS</u>	<u>TELEPHONE</u>
Maxine Nelson Administrative Assistant	Third Floor Highways-Licenses Bldg. Olympia, WA 98504	234-3779 (SCAN) 753-3779 (COMM)

V. NAME OF PERSON OR ORGANIZATION PROPOSING THE RULE:

This rule amendment was proposed by the Washington State Chiropractic Disciplinary Board.

VI. AGENCY COMMENTS:

WAC 113-12-150 was originally promulgated to provide regulation of advertising and publicity by chiropractors within the constitutional bounds described by the U.S. Supreme Court in cases such as Virginia State Board of Pharmacy, et al. v. Virginia Citizens Consumer Council, Inc., et al. and Bates and Osteen v. State Bar of Arizona. This amendment will more precisely define impermissible areas of advertising and publicity.

VII. This rule amendment was not made necessary as the result of federal law or federal or state court action. It is believed, however, that this rule amendment will render moot a currently pending state court action which has not been determined as of the date of this amendment.

SUBMITTED in accordance with chapter 186, Laws of 1980 and RCW 34.04.045 this 21st day of June, 1980.


JAMES F. DANSON, D.C., Secretary
CHIROPRACTIC DISCIPLINARY BOARD

AMENDATORY SECTION (Order PL 315, filed 9/25/79.)

WAC 113-12-150 ETHICAL STANDARDS -- PROHIBITED PUBLICITY AND ADVERTISING. (1) A chiropractor shall not, on behalf of himself, his partner, associate or any other chiropractor affiliated with his office or clinic, use or allow to be used, any form of public communications or advertising which ~~((+1))~~ is false, fraudulent, deceptive ~~((7))~~ or misleading, ~~((or-sensational))~~ including, but not limited to, such advertising which takes any of the following forms:

- ~~((2--uses))~~ (a) sensational advertising;
- ~~((3))~~ (b) testimonials;
- ~~((4))~~ (c) advertising which guarantees any result of care;
- ~~((4))~~ (d) advertising which offers gratuitous goods or services or discounts in connection with chiropractic services, but this clause shall not be construed to relate to the negotiation of fees between chiropractors and patients or to prohibit the rendering of chiropractic services for which no fee is charged;
- ~~((5))~~ (e) advertising which makes claims of professional superiority;
- ~~((6))~~ (f) advertising which states or includes prices for chiropractic services except as provided for in WAC 113-12-160;
- ~~((7))~~ (g) advertising which fails to differentiate chiropractic care from all other methods of healing;
- ~~((8--advertises))~~ (h) advertising for a service outside the practice of chiropractic as permitted in Washington;
- ~~((9))~~ (i) advertising which otherwise exceeds the limits of WAC 113-12-160.

(2) A chiropractor who advertises in any form, including, but not limited to, those forms listed in (1) above shall, upon request made by the board, provide the board with substantiation of the truth and accuracy of any and all claims made in his or her advertisements.