

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 4 CHIROPRACTIC PRACTITIONERS
PART 20 ADVERTISING

16.4.20.1 ISSUING AGENCY: New Mexico Board of Chiropractic Examiners, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.20.1 NMAC - N, 8/20/12]

16.4.20.2 SCOPE: All licensed chiropractic physicians.

[16.4.20.2 NMAC - N, 8/20/12]

16.4.20.3 STATUTORY AUTHORITY: These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Sections 61-4-2, 61-4-4, 61-4-6, 61-4-12 and 61-4-13 NMSA 1978.

[16.4.20.3 NMAC - N, 8/20/12]

16.4.20.4 DURATION: Permanent.

[16.4.20.4 NMAC - N, 8/20/12]

16.4.20.5 EFFECTIVE DATE: August 20, 2012, unless a later date is cited at the end of a section.

[16.4.20.5 NMAC - N, 8/20/12]

16.4.20.6 OBJECTIVE: To establish guidelines for advertising which must be followed by all licensed chiropractic physicians and non-licensed chiropractic practice owners.

[16.4.20.6 NMAC - N, 8/20/12]

16.4.20.7 DEFINITIONS: Refer to 16.4.1.7 NMAC.

[16.4.20.7 NMAC - N, 8/20/12]

16.4.20.8 STATEMENT OF POLICY: It is the policy of the board that advertising by licensed practitioners of chiropractic should be regulated in order to fulfill the duty of the state of New Mexico to protect the health, safety and welfare of its residents, while not abridging any rights guaranteed to the practitioners or to the public by the Constitution of the United States and the Constitution of the state of New Mexico as construed by the United States supreme court and the New Mexico supreme court. To that end, the board permits the dissemination of legitimate information to the public concerning the science of chiropractic and individual practitioners thereof. Such dissemination of information must be done in accordance with this rule which is designed to reasonably facilitate the flow of accurate information and prevent fraudulent, false, deceptive, misleading or confusing advertising. Advertising not contrary to the prohibitions in this rule shall be deemed an appropriate means of informing the public of the availability of professional services.

[16.4.20.8 NMAC - Rn & A, 16.4.1.12 NMAC, 8/20/12]

16.4.20.9 CERTAIN ADVERTISING PROHIBITED:

A. Any chiropractor who disseminates or causes to be disseminated or allows to be disseminated any advertising which is in any way fraudulent, false, deceptive, misleading or confusing, shall be deemed to be in violation of the Chiropractic Physician Practice Act.

B. Fraudulent, false, deceptive, misleading or confusing advertising includes, but is not limited, to:

- (1) advertising which contains a misrepresentation of any fact or facts;
- (2) advertising which, because of its contents or the context in which it is presented, fails to disclose relevant or material facts or makes only partial disclosure of relevant or material facts;
- (3) advertising which makes claims of, or conveys the impression of superior professional qualifications which cannot be substantiated by the chiropractor;
- (4) advertising which contains distorted claims or statements about any individual chiropractor, chiropractic group or chiropractic office, clinic or center;
- (5) advertising which creates unjustified expectations of beneficial treatment or successful cures;
- (6) advertising which guarantees the results of any service, painless treatment, or which promises to perform any procedure painlessly;

(7) advertising which in any way appeals to fears, ignorance or anxieties regarding a persons state of health or physical or mental well-being;

(8) advertising which in any way intimidates or exerts undue pressure on the recipient;

(9) advertising which fails to conspicuously identify the chiropractor or chiropractors referred to in the advertising as practitioners of chiropractic by use of the term “chiropractor”, “chiropractors”, “chiropractic”, “chiropractic physician”, “chiropractic physicians”, “doctor of chiropractic”, or “doctors of chiropractic”;

(10) advertising which fails to be conspicuously identified as “chiropractic” advertising;

(11) advertising which fails to conspicuously identify the chiropractic practice, office, clinic or center being advertised by a name which includes the term “chiropractor”, “chiropractors”, “chiropractic”, “chiropractic physician”, “chiropractic physicians”, “doctor of chiropractic” or “doctors of chiropractic”;

(12) advertising which invades the field of practice of other licensed healthcare practitioners when the chiropractor is not allowed by rule or license to practice such profession;

(13) advertising which appears in a classified directory or listing, or otherwise under a heading which, when considered alone or together with the advertisement, does not accurately convey the professional status of the chiropractor or the professional services being advertised;

(14) advertising which concerns a transaction that is in itself illegal;

(15) advertising which employs testimonials which, by themselves or when taken together with the remainder of the advertisement intimidate, exert undue pressure on, or otherwise improperly influence the recipient.

C. Advertising which offers gratuitous services or discounts in connection with professional services; provided, however, that advertising may offer gratuitous services or discounts if:

(1) such advertising clearly and conspicuously states whether or not additional charges may be incurred for related services which may be needed or appropriate in individual cases, and the possible range of such additional charges if such charges may be incurred;

(2) such advertising is not otherwise false, fraudulent, deceptive, misleading or confusing;

(3) such advertising offering a “spinal examination”, “examination” or “scoliosis examination” or using any other similar phrase includes, at a minimum, the following tests or procedures: blood pressure, weight, height, reflexes, pulse, range of motion and orthopedic tests appropriate to the history; and

(4) such advertising offering “an examination” or using any other similar phrase includes the taking of a detailed problem focused history of the patient as it relates to the presenting complaints, and an appropriate neurological, orthopedic, and chiropractic physical examination including, where professionally indicated, the taking, developing and interpretation of x-rays and the performance and interpretation of laboratory or other specialized tests when necessary to establish a diagnosis; such x-rays and laboratory and other specialized tests must constitute a diagnostically complete study.

D. Advertisements may quote fixed prices for specific routine services if such advertising clearly and conspicuously states whether or not additional charges may be incurred for related services and the possible range of such additional charges if such charges may be incurred. A routine service is one which is not so unique that a fixed rate cannot meaningfully be established.

E. Chiropractors, their agents or any representatives who engage in telemarketing are required to inform the parties they call at the beginning of the call:

(1) who they are (caller’s name);

(2) who they represent (clinic/doctor); and

(3) chiropractors, their agents or representatives engaging in telemarketing, either directly or through others, shall keep a voice recorded log of all phone call conversations and a written log to include date, telephone number, and the name of every person called; all such chiropractors, their agents or representatives shall keep such logs for a period of three years from the date of the telemarketing.

F. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall misrepresent to the person called any association with an insurance company, other licensed health care provider or another chiropractor or group of chiropractors, nor shall such solicitor promise successful chiropractic treatment of injuries, or make any other misrepresentation of whatever kind for the purpose of selling chiropractic services.

G. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall engage in such practices during hours prohibited by applicable municipal ordinance or state law, or in the absence of either, then other than between the hours 9 a.m. and 8 p.m. local time.

H. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall make more than one telephone call to any telephone number unless requested by the recipient to call again.

I. No chiropractor shall advertise directly or indirectly, through any device or artifice, that the advertising chiropractor will not collect from any prospective patient, that patient's insurance deductible or co-payment obligations arising by virtue of any medical insurance policy provided for the payment, in whole or in part, of any chiropractor's charge. The words free initial consultation must be explicitly explained what a consultation consist of and at exactly what point charges begin to accrue with clear delineation between a free consultation and an exam with treatment for which services will be charged. At no time can any representation in regards to payment for services be misleading to the consumer or patient and it must be stated up front that if the patient decides to accept the care that they will be charged for all services and that payment will be expected whether it be from the patient, third-party payor, insurance, or medpay.

J. No applicant for licensure to practice chiropractic, and no unlicensed practitioner, shall advertise chiropractic services in this state in any way.

K. All advertisements by a chiropractor must include the full name of the chiropractor as it appears on his or her chiropractic license followed by the letters D.C. or the designation "chiropractor", "chiropractic physician" or "doctor of chiropractic".

L. Any form of solicitation offered to individuals whose identities are known through the use of any form of public record, including but not limited to police reports, shall be reviewed and approved by the board and re-approved annually. Unless specifically disapproved by the committee designated by the board the copy submitted may be used for patient solicitation. If approved or disapproved, that information shall be communicated to the submitting doctor within 30 days of submission. The submitting physician has the right to request a determination be made by the full board at its next scheduled meeting. The board holds the right during each renewal cycle to complete a random audit of all written materials, and mandatory voice recordings of all phone conversations for a period up to three years following any telemarketing procedures from public record.

M. Any direct, individual contact by a licensee or the agent of a licensee with prospective patients through the use of public records, including but not limited to police or accident reports is prohibited.

N. The script for any telemarketing advertising shall be submitted to the board for approval and must be resubmitted yearly for ongoing use by any licensee or their agent.

[16.4.20.9 NMAC - Rn & A, 16.4.1.12 NMAC, 8/20/12]

HISTORY OF 16.4.20 NMAC: [RESERVED]