

21 NCAC 10 .0211 AGREEMENTS TO PROVIDE FINANCE OR MANAGEMENT SERVICES

(a) Purpose and extent of rule. G.S. 90-157.3 limits the "ownership" of a chiropractic practice to licensed chiropractors. However, in addition to the treatment of patients, operating a chiropractic practice involves the procurement of financing, office space, equipment, supplies and personnel, as well as the creation and implementation of advertising and marketing strategies, billing procedures and other management functions. It is common in many chiropractic offices for one or more of these operating components to be outsourced. The purpose of this Rule is to define the extent to which a chiropractor licensed and practicing in North Carolina may enter into a financing or management services agreement with a vendor who is not a North Carolina-licensed chiropractor while remaining in compliance with the ownership limitations imposed by G.S. 90-157.3. This Rule does not apply to contracts exclusively between or among North Carolina-licensed chiropractors.

(b) Review of agreements. No person shall be required to submit a financing or management services agreement to the Board for advance approval. The Board shall review existing or proposed agreements only upon request of one or more of the parties or as part of a disciplinary investigation. In order to protect pricing information, trade secrets and similar proprietary information, the Board shall maintain the confidentiality of any agreement under review. The review shall be completed within 90 days of submission, and any agreement not disapproved within 90 days shall be deemed approved.

(c) Prohibited provisions. Beginning July 1, 2012, the following contractual provisions, singly or in combination, shall be deemed by the Board to violate G.S. 90-157.3:

- (1) Any provision or series of provisions that creates a partnership between the chiropractor and the vendor to engage in the practice of chiropractic in contravention of G.S. 90-157.3(a). When reviewing contracts for compliance with this section, the Board shall apply the rules for determining the existence of a partnership set forth in G.S. 59-37 and the ordinary legal definition of partnership, as follows: "a partnership is a combination by two or more persons of their property, effects, labor, or skill in a common business or venture, under an agreement to share the profits and losses in equal or specified proportions;"
- (2) Ownership or control of patient records by the vendor or any party other than the chiropractor;
- (3) Control by the vendor over the hiring and firing of any personnel who provide clinical services to patients;
- (4) Any requirements imposed by the vendor that affect the chiropractor's exercise of professional judgment in creating treatment plans and delivering clinical services to patients;
- (5) Control by the vendor over the transfer of ownership interests in the practice, but this prohibition shall not prevent the vendor from terminating the agreement if the chiropractor transfers ownership of the practice without the vendor's consent;
- (6) Any attempt to transfer legal liability from the chiropractor to the vendor for the content of advertising or the implementation of any marketing program undertaken to promote the practice.

History Note: *Authority G.S. 90-142; 90-147; 90-157.3;*
 Eff. September 1, 2011.