NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form

Board of Chiropractic Examiners 811
Agency and Division Administrative Rules Chapter Number
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RULE CAPTION
OAR 811-010-0110 Proposed amendments to clarify chiropractic assistant scope of practice (taking vitals).
Not more than 15 words that reasonably identifies the subject matter of the agency’s intended action.

RULEMAKING ACTION
ADOPT:

AMEND:
811-010-0110 Chiropractic Assistants

REPEAL:

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:
ORS 684

Other Authority:

Statutes Implemented:
ORS 684.150; 684.155(1)(b)

RULE SUMMARY
OAR 811-010-0110 Proposed amendments to clarify chiropractic assistant scope of practice (taking vitals).

The Agency requests public comment on whether other options should be considered for achieving the rule’s substantive goals while reducing negative economic impact of the rule on business.
Oregon Board of Chiropractic Examiners (OBCE) OAR 811
Agency and Division Administrative Rules Chapter Number

**Proposed amendments to clarify chiropractic assistant scope of practice.**

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency’s intended action.)

In the Matter of: OAR 811-010-0110

**Proposed amendments to clarify chiropractic assistant scope of practice (taking vitals).**

Statutory Authority: ORS 684

Other Authority:

**Stats. Implemented:** ORS 684.054, 684.155, 684.155 (1) (b) and (c)

Need for the Rule(s): The OBCE has voted to enter into permanent rulemaking for the purpose of addressing concerns with the CA program, including 1) CAs taking vitals (versus recording them), and 2) CAs who lack sufficient training performing massage; and related scope of practice issues. There is also discussion of a “super CA” certification that could perform some additional functions. For the May 2014 OBCE meeting, the discussion will focus on allowing CAs to take Vitals, such as height, weight, blood pressure, temperature, pulse, respiration and/or body fat percentages.

Documents Relied Upon, and where they are available: Minutes of the OBCE public meetings addressing this topic available on the Board’s website. Minutes of the Rules Advisory Committee.

Fiscal and Economic Impact: There is minimal fiscal impact to the OBCE is undetermined and would be related to the specific provisions of proposed amendments. There could a minor impact as staff will have to monitor and audit CA compliance with a related requirement for two hours CE for CAs to learn about taking VITALS.

Statement of Cost of Compliance:
1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): Indefinite. There would be a positive impact to the public by improving the effectiveness of administrative rules governing chiropractic assistants. There would not be an appreciable impact on other state agencies or units of local government.

2. Cost of compliance effect on small business (ORS 183.336): Chiropractic small businesses may benefit from clarification of the chiropractic assistant rule and any additional tasks allowed to be performed.

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: There are an estimated 1,620 Oregon chiropractic physicians with an active license. There are between 1,000 and 1,200 chiropractic business entities in Oregon. There are close to 1,400 licensed Chiropractic Assistants.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: Annual license renewal provides oversight for chiropractic assistants. A percentage of CAs are audited annually for CE compliance. All licensees have a Duty to Report suspected violations of ORS 684 or OAR 811, so reporting of violations can occur by any licensee or person.

c. Equipment, supplies, labor and increased administration required for compliance: The rule is not expected to increase these costs for the agency.

How were small businesses involved in the development of this rule? The rule is being issued for public comment and, the licensees and the public are being informed via the Board’s email publication list and web site.

Administrative Rule Advisory Committee consulted?: Yes.
Chiropractic Assistants

811-010-0110 (1) The license certification period for Chiropractic Assistants begins on August 1 and ends on July 31. A 30 day grace period will follow whereupon the Chiropractic Assistant may continue to practice. Any Chiropractic Assistant who has not renewed by September 1 must cease practice.

(2) Chiropractic Assistants may be certified upon compliance with the following standards and procedures:
   (a) The Chiropractic Assistant applicant shall successfully complete a Board approved training course offered by an association, college or otherwise approved person. The initial training course shall be at least twelve hours in length, of which eight hours shall be didactic training and four hours shall be practical training.
      (A) The practical training must be in physiotherapy, electrotherapy and hydrotherapy administered by a health care provider licensed to independently provide those therapies.
      (B) A chiropractic physician may perform the initial practical training provided this is direct contact time.
   (C) The initial training must have been completed within 60 days preceding the application submission date;
   (b) The applicant shall complete an application form and an open book examination supplied by the Board;
   (c) If an applicant has a certificate or license from another state and adequate documentation of training, the Board may waive the requirement for the initial training course; and
   (d) A person initially certified between March 1st and May 31st is exempt from the continuing education requirement for renewal.

(3) The training course verification form, completed application form, completed examination, and fees in the following amounts shall be submitted to the Board:
   (a) A non-refundable application fee - $50;
   (b) A non-refundable examination fee - $35; and
   (c) An initial certification fee - $50. A refund of the certification fee will only be allowed when requested within 60 days of the initial application.
   (d) In circumstances beyond the applicant’s control (e.g. board review of criminal history) the Board may determine to refund the fees or portion thereof.
   (e) In the event the Board requires the NBCE chiropractic assistant examination in lieu of the Board’s examination, the fee in subsection (b) will be waived.

(4) The Board shall maintain an incomplete application file for six months from the date the application was received; afterward, applicants will need to re-apply.

(5) The applicant shall be at least 18 years of age.

(6) The Chiropractic Assistant shall not perform electrotherapy, hydrotherapy, or physiotherapy until he or she receives a certificate from the Board.

(7) A Chiropractic Assistant shall be directly supervised by the Chiropractor at all times. The supervising Chiropractor must be on the premises.

(8) The Chiropractic Assistant scope of practice includes physiotherapy, electrotherapy and hydrotherapy and other duties as described by the Board, and,
   (a) includes taking vitals, such as height, weight, blood pressure, temperature, pulse, respiration and/or body fat percentages, and
   (b) does not include performing physical examinations, taking initial histories, taking X-rays, interpretation of postural screening, doing manual muscle testing, (myofascial release ?) or performing osseous adjustments or manipulations and other items as proscribed by the Board.

(9) Chiropractic Assistants shall report to the Board, in writing, his/her mailing address and place of employment. Notification of a change of mailing address or place of employment must be made within 10 days of the change.

(10) On or before each June 1, the Board of Examiners shall send the renewal notice to the Chiropractic Assistant at the last known mailing address.

(11) On or before each July 31 the Chiropractic Assistant shall mail to the Board of Examiners the
renewal form with a renewal fee of $75. A certificate that is not renewed on time may not be renewed except:

(a) Upon written application and payment to the board of the renewal fee plus a delinquent fee of $25 for renewals submitted between August 1 and August 31 of each year; or

(b) Upon written application and payment to the board of the renewal fee plus a delinquent fee of $50 for renewals submitted on September 1 or later; and

(c) Upon submission of proof of compliance with or exemption from the requirements of ORS 684.092.

(12) A Chiropractic Assistant has up to one year following their July 31 renewal date to renew and reinstate their certificate upon meeting the provisions of (11)(a) through (c) above. After 12 months a person must restart the application process.

(13) Continuing education programs may be comprised of subjects that are pertinent to clinical practices of chiropractic. Continuing education must meet the criteria outlined in OAR 811-015-0025 sections (8), (9) and (10). No continuing education hours may be carried over into the next renewal year. Evidence of successful completion of six hours of continuing education during the 12 months preceding the renewal must be submitted upon request by the board.

(14) The Chiropractic Assistant's certificate shall be displayed at all times in the Chiropractic Physician's office during the Chiropractic Assistant's employment.

(15) The Board may refuse to grant a certificate to any applicant, may suspend or revoke a certificate, or may impose upon an applicant for certification or Chiropractic Assistant a civil penalty not to exceed $1,000 upon finding of any of the following:

(a) Cause, which is defined as, but not limited to, failure to follow directions, unprofessional or dishonorable conduct, injuring a patient, or unlawful disclosure of patient information. The supervising Chiropractic Physician is required to notify the Board, in writing, of any dismissal of a Chiropractic Assistant for cause within ten days. The Board shall determine if there is cause for action and shall be governed by the rules of the Board adopted pursuant to ORS Chapter 183;

(b) Conviction of a misdemeanor involving moral turpitude or a felony; or

(c) Failure to notify the Board of a change of location of employment as required by these rules.

(16) Unprofessional or dishonorable conduct is defined as: any unethical, deceptive, or deleterious conduct or practice harmful to the public; any departure from, or failure to conform to, the minimal standards of acceptable Chiropractic Assistant practice; or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a Chiropractic Assistant:

(a) Engaging in any conduct or verbal behavior with or towards a current patient that may reasonably be interpreted as sexual, seductive, sexually demeaning or romantic (also see ORS 684.100).

(b) A certificate holder shall not engage in sexual relations or have a romantic relationship with a current patient unless a consensual sexual relationship or a romantic relationship existed between them before the commencement of the Chiropractic Assistant-patient relationship.

(A) "Sexual relations" means:

(i) Sexual intercourse; or

(ii) Any touching of sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the Chiropractic Assistant for the purpose of arousing or gratifying the sexual desire of either Chiropractic Assistant or patient.

(B) A patient's consent to, initiation of or participation in sexual behavior or involvement with a Chiropractic Assistant does not change the nature of the conduct nor lift the prohibition.

(C) In determining whether a patient is a current patient, the Board may consider the length of time of the Chiropractic Assistant-patient contact, evidence of termination of the Chiropractic Assistant-patient relationship, the nature of the Chiropractic Assistant-patient relationship, and any other relevant information.

(c) Use of protected or privileged information obtained from the patient to the detriment of the patient.

(d) Practicing outside the scope of the practice of a Chiropractic Assistant in Oregon;

(e) Charging a patient for services not rendered;

(f) Intentionally causing physical or emotional injury to a patient;

(g) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;

(h) Soliciting or borrowing money from patients;
(i) Possessing, obtaining, attempting to obtain, furnishing, or prescribing controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; illegally using or dispensing controlled drugs;

(j) Aiding, abetting, or assisting an individual to violate any law, rule or regulation intended to guide the conduct of Chiropractic Assistants or other health care providers; or

(k) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information;

(l) Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic;

(m) Using any controlled or illegal substance or intoxicating liquor to the extent that such use impacts the ability to safely conduct the practice of a Chiropractic Assistant;

(n) Practicing as a Chiropractic Assistant without a current Oregon certificate;

(o) Allowing another person to use one's Chiropractic Assistant certification for any purpose;

(p) Resorting to fraud, misrepresentation, or deceit in applying for or taking the certificate examination or obtaining a certificate or renewal thereof;

(q) Impersonating any applicant or acting as a proxy for the applicant in any—Chiropractic Assistant certificate examination;

(r) Disclosing the contents of the certificate examination or soliciting, accepting, or compiling information regarding the contents of the examination before, during, or after its administration;

(s) Failing to provide the Board with any documents requested by the Board;

(t) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to, waiver of confidentiality privileges, except attorney-client privilege;

(u) Claiming any academic degree not actually conferred or awarded;

(v) Disobeying a final order of the Board; and

(w) Splitting fees or giving or receiving a commission in the referral of patients for services.

(x) Receiving a suspension or revocation of a certificate or license for a Chiropractic Assistant, or other license or certificate, by another state based upon acts by the Chiropractic Assistant or applicant that describes acts similar to this section. A certified copy of the record of suspension or revocation of the state making that is conclusive evidence thereof.

(17) The service of the Chiropractic Assistant is the direct responsibility of the licensed Chiropractic Physician. Violations may be grounds for disciplinary action against the Chiropractic Physician under ORS 684.100(9).

Statutory Auth.: ORS 684.155
Stats. Implemented: ORS 684.054 & 684.155(c)(A)
Eff. 11-1-2013
Chiropractic Assistants

811-010-0110 (1) The license period for Chiropractic Assistants begins on August 1 and ends on July 31. A 30 day grace period will follow whereupon the Chiropractic Assistant may continue to practice. Any Chiropractic Assistant who has not renewed by September 1 must cease practice.

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(A) The practical training must be in physiotherapy, electrotherapy and hydrotherapy administered by a health care provider licensed to independently provide those therapies.

(B) A chiropractic physician may perform the initial practical training provided this is direct contact time.

(C) The initial training must have been completed within 60 days preceding the application submission date;

(b) The applicant shall complete an application form and an open book examination supplied by the Board;

(c) If an applicant has a certificate or license from another state and adequate documentation of training, the Board may waive the requirement for the initial training course; and

(d) A person initially certified between March 1st and May 31st is exempt from the continuing education requirement for renewal.

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(d) In circumstances beyond the applicant’s control (e.g. board review of criminal history) the Board may determine to refund the fees or portion thereof.

(e) In the event the Board requires the NBCE chiropractic assistant examination in lieu of the Board’s examination, the fee in subsection (b) will be waived.

(4) The Board shall maintain an incomplete application file for six months from the date the application was received; afterward, applicants will need to re-apply.

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(6) The Chiropractic Assistant shall not perform electrotherapy, hydrotherapy, or physiotherapy until he or she receives a certificate from the Board.

(7) A Chiropractic Assistant shall be directly supervised by the Chiropractor at all times. The supervising Chiropractor must be on the premises.

(8) The scope of practice does not include performing physical examinations except taking of height, weight, blood pressure, temperature, pulse, respiration and/or body fat percentages, taking initial histories, taking X-rays, interpretation of postural screening, doing manual muscle testing or performing osseous adjustments or manipulations.

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(h) Soliciting or borrowing money from patients;
(i) Possessing, obtaining, attempting to obtain, furnishing, or prescribing controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; illegally using or dispensing controlled drugs;
(j) Aiding, abetting, or assisting an individual to violate any law, rule or regulation intended to guide the conduct of Chiropractic Assistants or other health care providers; or
(k) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information;
(l) Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic;
(m) Using any controlled or illegal substance or intoxicating liquor to the extent that such use impacts the ability to safely conduct the practice of a Chiropractic Assistant;
(n) Practicing as a Chiropractic Assistant without a current Oregon certificate;
(o) Allowing another person to use one's Chiropractic Assistant certification for any purpose;
(p) Resorting to fraud, misrepresentation, or deceit in applying for or taking the certificate examination or obtaining a certificate or renewal thereof;
(q) Impersonating any applicant or acting as a proxy for the applicant in any Chiropractic Assistant certificate examination;
(r) Disclosing the contents of the certificate examination or soliciting, accepting, or compiling information regarding the contents of the examination before, during, or after its administration;
(s) Failing to provide the Board with any documents requested by the Board;
(t) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to, waiver of confidentiality privileges, except attorney-client privilege;
(u) Claiming any academic degree not actually conferred or awarded;
(v) Disobeying a final order of the Board; and
(w) Splitting fees or giving or receiving a commission in the referral of patients for services.
(x) Receiving a suspension or revocation of a certificate or license for a Chiropractic Assistant, or other license or certificate, by another state based upon acts by the Chiropractic Assistant or applicant that describes acts similar to this section. A certified copy of the record of suspension or revocation of the state making that is conclusive evidence thereof.
(17) The service of the Chiropractic Assistant is the direct responsibility of the licensed Chiropractic Physician. Violations may be grounds for disciplinary action against the Chiropractic Physician under ORS 684.100(9).

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