

# OBCE ADVERTISING REVIEW POLICIES

Updated November 7, 2011

(Sources: OBCE Guide to Practice and Policy Questions, Oregon Revised Statutes, Administrative Rules and legal advice)

Chiropractic physicians or any other person under the jurisdiction of the OBCE must be able to support statements, whatever the statements are, with credible evidence. This is necessary to be in compliance with:

OAR 811-015-0045 (1): “A Chiropractic physician shall not use or participate in the use of improper advertising which: (a) States any fact which would result in the communication being untruthful, misleading or deceptive. (b) Contains statistical or other assertions of predicted rates of success of treatment...” (also provisions 2 through 4)

ORS 684.100 Grounds for discipline. Section (1)(i): “The use of any advertising making untruthful, improper, misleading or deceptive statements.

(j) The advertising of techniques or modalities to infer or imply superiority of treatment or diagnosis by the use thereof that cannot be conclusively proven to the satisfaction of the board.

(L) Advertising either in the name of the person or under the name of another person, clinic or concern, actual or pretended, in any newspaper, pamphlet, circular or other written or printed paper or document, professing superiority to or a greater skill than that possessed by other chiropractic physicians that cannot be conclusively proven to the satisfaction of the board.

(o) The advertising or holding oneself out to treat diseases or other abnormal conditions of the human body by any secret formula, method, treatment or procedure.

The OBCE may not impinge upon legitimate commercial free speech rights. However, advertising statements must be supported by credible evidence. The OBCE recommends that this evidence be available for review upon request.

Doctors are responsible to review their own advertising in light of the laws, rules and policies cited in this review. The Board will make a final determination of the credibility of evidence supporting advertising statements on a case by case basis when presented with a complaint concerning advertising.

To assist in understanding what the OBCE considers to be violations of the advertising rule, final orders regarding advertising violations will be provided upon request.

The OBCE does not offer to review or pre-approve advertising by chiropractic physicians. Instead the Board is issuing this advisory.

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At their May 17, 2007 meeting the Oregon Board of Chiropractic Examiners adopted five additional policy statements regarding advertising by chiropractic physicians. These policies are an update to the existing OBCE policy advisory on advertising issues.

- 1) Any advertising claims that spinal decompression/traction devices or any other medical device are a “medical breakthrough” must be supported by credible evidence.

- 2) Claims of superiority for medical devices such as “Non-surgical spinal decompression is the most promising disc pain treatment today” must meet the standard articulated in ORS 684.100 Section (1) (j): “The advertising of techniques or modalities to infer or imply superiority of treatment or diagnosis by the use thereof that cannot be conclusively proven to the satisfaction of the board.
  - 3) Statements contrasting spinal decompression favorably with drugs or surgery without mentioning other kinds of chiropractic treatment are misleading to the public.
  - 4) Use of the term “FDA approved” in reference to the FDA 510 (k) clearance process is misbranding and misleading advertising. The FDA’s regulations make clear that *“Submission of a premarket notification in accordance with this subpart, and a subsequent determination by the Commissioner that the device intended for introduction into commercial distribution is substantially equivalent to a device in commercial distribution before May 28, 1976, or is substantially equivalent to a device introduced into commercial distribution after May 28, 1976, that has subsequently been reclassified into class I or II, does not in any way denote official approval of the device. Any representation that creates an impression of official approval of a device because of complying with the premarket notification regulations is misleading and constitutes misbranding.”*
  - 5) When a statement is literally false, the (OBCE) presumes that it will cause injury to a competitor. (Cf. Energy Four, Inc. v. Dornier Medical Sys., Inc., 765 F. Supp. 724, 734 (N.D. Ga. 1991))
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## **OBCE Administrative Rules Chapter 811**

### **Advertising**

811-015-0045 (1) A Chiropractic physician shall not use or participate in the use of improper advertising. Improper advertising is any advertising which:

(a) States any fact which would result in the communication being untruthful, misleading or deceptive;

(b) Contains statistical or other assertions of predicted rates of success of treatment; or

(c) Claims a specialty, degree or diplomate not possessed or that does not exist;

(2) A chiropractor shall not practice under a name that is misleading as to the identity of the chiropractor or chiropractors practicing under such name or under a firm name which is misleading.

(3) A Chiropractic physician shall adhere to the Doctors' Title Act, ORS 676.110(2).

(4) A Chiropractic physician may use a professional card and/or letterhead identifying the Chiropractic physician's name, profession, address, telephone number, name of the chiropractic office and educational degrees. It may also include names of licensed associates.

## **Oregon Revised Statutes 684**

**ORS 684.100 Grounds for discipline of licensee or refusal to license; restoration; suspension; competency examinations; confidential information.** (1) The State Board of Chiropractic Examiners may refuse to grant a license to any applicant or may discipline a person upon any of the following grounds:

(a) Fraud or misrepresentation.

(b) The practice of chiropractic under a false or assumed name.

(c) The impersonation of another practitioner of like or different name

- ... (i)The use of any advertising making untruthful, improper, misleading or deceptive statements.
- (j)The advertising of techniques or modalities to infer or imply superiority of treatment or diagnosis by the use thereof that cannot be conclusively proven to the satisfaction of the board.
- ... (L)Advertising either in the name of the person or under the name of another person, clinic, or concern, actual or pretended, in any newspaper, pamphlet, circular or other written or printed paper or document, professing superiority to or a greater skill than that possessed by other chiropractic physicians that cannot be conclusively proven to the satisfaction of the board.
- ... (o)The advertising or holding oneself out to treat diseases or other abnormal conditions of the human body by any secret formula, method, treatment or procedure.

## **Oregon Revised Statute 676 Doctor’s Title Act**

**[The Oregon Doctor’s Title Act was amended in 2009 and clarifying amendments were passed by the Legislature in 2011 (HB 2395).]**

**ORS 676.110 Use of title “doctor.”** (1) An individual practicing a health care profession may not use the title "doctor" in connection with the profession, unless the individual:

- (a) Has earned a doctoral degree in the individual's field of practice; and
- (b)(A) Is licensed by a health professional regulatory board as defined in ORS 676.160 to practice the particular health care profession in which the individual's doctoral degree was earned; or
- (B) Is working under a board-approved residency contract and is practicing under the license of a supervisor who is licensed by a health professional regulatory board as defined in ORS 676.160 to practice the particular health care profession in which the individual's doctoral degree was earned.

(2) If an individual uses the title "doctor" in connection with a health care profession at any time, the individual must designate the health care profession in which the individual's doctoral degree was earned on all written or printed matter, advertising, billboards, signs or professional notices used in connection with the health care profession regardless of whether the individual's name or the title "doctor" appears on the written or printed matter, advertising, billboard, sign or professional notice. The designation must be in letters or print at least one-fourth the size of the largest letters used on the written or printed matter, advertising, billboard, sign or professional notice, and in material, color, type or illumination to give display and legibility of at least one-fourth that of the largest letters used on the written or printed matter, advertising, billboard, sign or professional notice.

(3) Subsection (1) of this section does not prohibit:

- (a) A chiropractic physician licensed under ORS chapter 684 from using the title "chiropractic physician";
- (b) A naturopathic physician licensed under ORS chapter 685 from using the title "naturopathic physician";
- (c) A person licensed to practice optometry under ORS chapter 683 from using the title "doctor of optometry" or "optometric physician"; or
- (d) A podiatric physician licensed under ORS 677.805 to 677.840 from using the title "podiatric physician."

**676.120 Use of deceased licensee’s name.** Notwithstanding ORS 676.110, upon the death of any person duly licensed by a health professional regulatory board as defined in ORS 676.160, the executors of the estate or the heirs, assigns, associates or partners may retain the use of the decedent’s name, where it appears other than as a part of an assumed name, for no more than one year after the death of such person or until the estate is settled, whichever is sooner. [Amended by 1953 c.137 §2; 1983 c.769 §2; 1991 c.314 §5; 2009 c.142 §2]

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## OBCE GUIDE TO POLICY & PRACTICE QUESTIONS (excerpt)

### **MULTI-DISCIPLINE CLINICS, ADVERTISING REQUIREMENTS:**

**(See Doctors' Title Act)** If any person (including a group or combination of individual persons) uses certain terms listed in the statute in any printed or written matter, or in any advertising, signs, or professional notices, then the particular health care profession under which the person is licensed also must be identified in print at least one-fourth as large as the title or name of the professional “person” or entity. The designation of the person’s health care profession also must be displayed in such a way as to be at least one-fourth as “legible” as the title or name. The concept is to provide consumers with sufficient information to identify under which license a health care professional in Oregon is practicing.

To further explain, the following examples are given:

If a multidiscipline clinic has a sign out front that says XYZ Rehab Clinic, then each profession involved in the clinic must be identified, such as:

XYZ Rehab Clinic  
Medical Doctor, Chiropractor etc. (in one-fourth size print)

If a person’s name is used, then one must be identified as a chiropractor, i.e. John Doe, Chiropractor, or John Doe, Chiropractic Physician.

The provisions of the “Doctor’s Title Act”, ORS 676.100 - 676.130 apply in the case of multidisciplinary organizations such as rehabilitation facilities in which various health-care professionals practice.

The Doctors' Title Act is essentially a consumer protection statute. If any person (including a group or combination of individual persons) uses certain terms listed in the statute in any printed or written matter, or in any advertising, signs, or professional notices, then the particular health care profession under which the person is licensed also must be identified in print at least one-fourth as large as the title or name of the professional “person” or business entity. The designation of the person’s health care profession also must be displayed in such a name. The concept is to provide consumers with sufficient information to identify under which license a health care professional in Oregon is practicing.

The purpose and effect of the statute do not differ if the “person” is an individual physician or a multidisciplinary organization. A plain reading of the statutory terms demands that each health care professional working in a multidisciplinary clinic, institute, or group must identify his or her profession according to the “one-fourth” rule. (11/3/92)