

SECTION IV
ADMINISTRATIVE OFFICE POLICIES
and PROCEDURES

CONTESTED CASE PROCEEDINGS

Depositions

The OBCE has discretionary authority and may order the deposition of a material witness. Any party may petition the OBCE for discovery of witnesses in any manner prescribed by law in civil actions. The petition shall state the name and address of the witness, a showing of the materiality of the witness's testimony, an explanation of why a deposition rather than informal or other means of discovery is necessary and a request that the witness's testimony be taken before an individual named in the request for the purpose of recording testimony. Only the OBCE may order testimony be taken by deposition. The OBCE will evaluate the petition for deposition based on the following criteria; does the case present any special circumstances warranting a pre hearing deposition; is a deposition necessary to perpetuate testimony, is the witness unavailable for hearing, or will an appearance at the hearing present an undue hardship on the witness. The OBCE has sole discretion to decide when special circumstances exist. (9/21/2000)

Recusal - in Complaint Review and Contested Case Proceedings

The right to a fair hearing includes a right to an unbiased fact finder. The Board can avoid challenges to actions taken by keeping the investigative function separate from the deciding function. Here are some examples, which would require board members to recuse themselves from a specific case or issue:

1. Board member is a witness or expert who will appear and testify at hearing for the Board.
2. Board member is related to the licensee or applicant at issue.
3. Board member is a personal friend of the licensee or applicant at issue.
4. Board member assisted the board or board investigator in investigating the complaint.
5. Board member filed the complaint with the board.
6. Board member has a professional relationship with the licensee or applicant.
7. Board member is an owner and/or partner in the same business in which the Licensee or applicant is involved.
8. Any conflicts of interest that prevent the Board member from making an objective review of the Licensee or Applicant in the discipline matter.
9. Board member has a close personal or professional involvement with the patient or the patient's insurer.

When Board members determine recusal is appropriate they should physically remove themselves from the board meeting to avoid any accusations of a suspect board vote or deliberation. (2/20/03)

Settlement Conferences

Upon receipt of a request for contested case hearing (following issuance of a Notice of Proposed Disciplinary Action), the OBCE will offer to the respondent licensee and attorney (if represented) a settlement conference to be convened within 60 days.

The purpose of this is to provide an opportunity for the OBCE and respondent licensee to pursue resolution in a face-to-face meeting instead of proceeding to contested case hearing.

The respondent licensee will be invited to attend along with his/her legal counsel. The Executive Director and the Assistant Attorney General will represent the OBCE.

The licensee or applicant will incur no fee for this service and it is voluntary. (04/17/03)

DISCLOSURE POLICY (WHAT IS PUBLIC & WHAT IS NOT)

All proposed and final orders of the Board in disciplinary cases which determine a result adverse to the doctor are public documents. This does not include letters in which the Board does not determine a violation. (SB 235, 1997)

All other information pertaining to a complaint (i.e. investigator's report, Peer Review report, patient files, complaint and answer) is confidential information, except as provided by SB 235 (1997) and SB 236 (1999).

ELECTRONIC INFORMATION ASSETS POLICY

DAS Policy 107-004-110 is in effect with the following agency approved options.

OBCE employees may use email for limited, incidental personal use.

OBCE employees are allowed limited, incidental personal use of internet using agency owned computers as long as there is no or insignificant cost to the state and does not otherwise violate DAS Policy 107-004-110.

OBCE employees may play audio CDs or DVDs using state equipment provided it does not interfere with their or other's work.

The OBCE Executive Director is responsible for monitoring and compliance and will periodically review internet usage reports. www.das.state.or.us/DAS/OP/docs/policy/state/107-004-110.pdf

EXAMINATION

Analysis and Questions

Staff will continue to develop item analyses on all exams after each test date. The Board will continue to review questions with a 50% or more fail rate unless previously reviewed and accepted by the Board.

The policy of the Oregon Board of Chiropractic Examiners regarding exam analysis and questions for review is as follows:

Staff will submit a copy of an exam subject's questionable items (Minor surgery, Obstetrics and Gynecology) to an expert in that respective field at least one week prior to the next board meeting. Ethics questions will be referred to a board member at least one week prior to the next board meeting.

- The specific questions and the candidates' responses (i.e. how many selected choice A or B instead of the correct choice C; or how many selected True instead of False) will be sent out. The "analyses" will not be sent.
- The experts and board members will be asked to submit their written opinions of each test item, its answers and/or distracters. The Board will consider the recommendations at the next meeting.

The intent of this policy is to better prepare the Board to address issues that may not be at the forefront of their knowledge, and to expedite the Board's review. (8/15/96)

Item Review

A discussion held in the April 2003 board meeting spoke to "reliability" of test items within the Oregon Specifics Examination. At the suggestion of the Board's test expert, "the acceptable time frame for review of this type exam is probably every five years"...

The Board voted to review the test items of the Oregon Specifics exam every five years implementing a practice analysis and test specifications. (04/17/03)

Approval of Examination Results

The Board delegated to the Executive Director the authority to approve the Oregon Specific examination results, if all questions concerning individual test questions have been resolved in consultation with subject matter experts prior to the next meeting of the Board. (8/20/98)

Review of Individual Test Results

After each examination, the Board reviews a sampling of test questions. (Administrative Office Policies Examination: Analysis & Questions) At that time, if there are any questions that demonstrate a high failure rate, the Board considers whether credit should be given, or whether the question should be removed from the test altogether. According to Board policy, and based on the Board's test experts' recommendations, any further review of an individual's test results is not appropriate. (10/17/97) Reviews will not be offered. (5/18/93)

EXPERIMENTAL LIST OF EQUIPMENT AND PROCEDURES

The Board has on file two outdated lists of equipment/procedures that were compiled several years ago under the old "Experimental Equipment and Procedures" rule.

The Board reviewed a report by staff regarding the old rule and the origins of the old list of equipment/procedures considered experimental.

The OBCE determined that the old list (of experimental equipment/procedures) is invalid. The process for determining experimental/investigational status is different now. Some of the procedures should not be considered *experimental* as that might confer some legitimacy on them if they are presently called *investigational*. (3/19/98)

FINAL ORDER BY DEFAULT

When a Notice of Proposed Disciplinary Action is issued, the licensee has been served, and the 30 day period for a response and hearing request expires, without any response from the licensee, the Executive Director is authorized to issue a Final Notice by Default without having to convene another board meeting for a vote. (2/20/03)

LIENS AGAINST REAL PROPERTY

(regarding the OBCE's collection of liquidated and delinquent accounts)

As a result of licensees who refuse to pay, or stop payment, or pay sporadically (at their will), The board has directed staff to issue a Judgment Lien against licensee's real property asset/s. By State of Oregon collection policies, a lien is an allowable "other means" to collect past due account receivables.

By filing a lien in one or more counties against any known or unknown real property owned by the licensee, the Board of Chiropractic Examiners will be able to recover the dollars due it, and as agreed to by the licensee/s in final orders. The Board's intent to file a lien is not required to be cited in the Final Order (*current language is already inserted which states that the OBCE will take necessary action to recover the amount due, including charging interest, refer to collections, etc.*)

In order to place a lien on any property, the OBCE must provide proof of a valid Final Order (or Stipulated Final Order or similar); each county requires this proof to file a Judgment Lien.

The OBCE will only file a Judgment Lien against a licensee when the past due amount owed is \$1000 or more. The Board set a guideline to issue the lien between 90 days (the State of Oregon's requirement) failure to pay and six months considering extenuating circumstances. The Board agreed that the cost of filing the lien should be added to the amount due the Board.

Lastly, the OBCE may file a Judgment Lien in every county in which the debtor may own any real property for residence or business purposes. Once the agency recovers the full amount due, the lien will be released. (7/21/05)

MEETING MINUTES

Staff produces the Board's draft public meeting minutes within 10 days of the most recent board meeting. The draft minutes are shared by fax or email with OBCE members and comments collected within five days. If needed, clarifications/changes are made by staff and shared again the OBCE President and OBCE Secretary, and other OBCE members if they request. The Board delegates final approval to the OBCE President and Secretary, and then the minutes can be placed on the OBCE's Web page and are available for distribution in the next public notice. (02/20/03)

PEER REVIEW

If the Peer Review Committee encounters indications of questionable practices by complaining doctors, it is the Board's intent for such corollary factors to be considered and commented upon. This is a statutory requirement. ORS 684.200 (1) says any licensee shall report to the Board any suspected violations of this chapter.

It is not acceptable to the Board that the Peer Review committee develop interpretations and recommendations which may become "standards" during their investigation and deliberations. (6/20/96)

When a case is referred to Peer Review and a letter is sent to the doctor requesting that he/she appear before Peer Review, the letter will include: 1) A statement that this case may result in disciplinary action and impact the chiropractor's license, 2) Notification that the chiropractor has the right to have an attorney present at Peer Review interviews, and 3) A copy of the relevant statutory and administrative rules and the relevant statutory and administrative citations.

The Board and the Peer Review Committee reserve the right to ask for any additional pertinent information from either the doctor or any other party. (2/96)

PRESS RELEASES

Press releases may be issued by the OBCE when the Board or the Board President, acting for the Board, determines that an effort to make public certain actions meets the goals of the Board's Strategic Plan, specifically the Disciplinary and Liaison/ Communication goals. Professional association will be given advance notice of any press releases regarding proposed or final disciplinary orders. (11/99)

RENEWAL

"Grace Period" Post-Renewal

The penalty for late renewal will be assessed as of the first day after the license expiration date and each week thereafter. The fees remain at \$100/week; max. \$500.

By adopting this policy the grace period for Chiropractic Assistants is eliminated. If a CCA's certificate is not renewed by July 31, it is expired and the CA must reapply. (9/21/00)

Renewals Received during the Grace Period

The Board determined that the "post-mark" policy would no longer be in effect during the grace period. Any licensee submitting documentation during the 30-day grace period will be assessed a penalty as of the date received, NOT by the postmark. *(For example, a renewal fee mailed August 6th, and received August 10th will be assessed the two-week penalty of \$200, because it was received the second week of the month.)* (9/21/00)

SEXUAL MISCONDUCT

The Oregon Board of Chiropractic Examiners is vigilant in addressing issues concerning doctor-patient boundary violations. Any conduct of a sexual nature in the confines of the doctor-patient relationship, including those of a consensual nature, is inherently inappropriate because of the power relationship involved.

In this kind of a complaint, the Board investigator may immediately interview the complainant and doctor to get a statement. Unlike other complaints, the doctor may not be notified by mail. The Board's complaint process may involve an interview with either the Board or the Board's Peer Review Investigatory Committee. Both the proposed and final orders of the Board are public documents, and publicly noticed in the Board's newsletter to interested parties and the press.

Sanctions by the Board do not absolve a doctor of any civil liability. In cases where the conduct is not consensual, the Board's sanctions will likely be more severe, up to and including emergency suspension and revocation.

SOCIAL SECURITY NUMBERS

As part of the application for an initial or renewed occupational, or professional license, certification, or registration issued by the Oregon Board of Chiropractic Examiners, an applicant is required to provide their Social Security Number to this Agency. This is mandatory. The authority for this requirement is ORS 25.785, ORS 305.385, 42 USC 405(c)(2)(C)(I), and 42 USC, 666(a)(13). Failure to provide a Social Security Number will be a basis to refuse to issue or renew the license, certification, or registration sought. This record of the Social Security Number will be used for child support enforcement and tax administration purposes (including identification) only, unless the applicant authorizes other uses of the number. Although a number other than the Social Security Number appears on the face of the licenses, certificates, or registrations issued by the Board of Chiropractic Examiners, the Social Security Number will remain on file with this Agency. (5/31/00)