

SECTION II

Practice Policies Regarding Chiropractors, Applicants, and Certified Chiropractic Assistants

CHIROPRACTORS

ABANDONMENT

The Board determined that a licensee is not abandoning a patient in the case when the patient's insurance coverage reaches its limit, and the patient does not have private insurance nor can the patient afford to pay for further services. "...this is not abandonment (since) the patient is being given choices per the doctor's office policy. The decision is the patient's to continue care in that office or elsewhere with a policy that might better fit their need." (05/15/02)

ADVERTISING REVIEW POLICY: (UPDATED APRIL 27, 2010)

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

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): "A Chiropractic physician shall not use or participate in the use of improper advertising which: 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.

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 should review their own advertising in light of OAR 811-015-0045 and this policy. 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 or excerpts regarding advertising violations will be provided upon request. (9/22/98)

The Oregon Board of Chiropractic Examiners adopted five additional policy statements regarding advertising by chiropractic physicians at their May 17, 2007 meeting. 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) (k): "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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Advertising

OAR 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.

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.
- (04/27/10)

ANCILLARY SERVICES

A clarification of OAR 811-010-0130 Other Health Professionals.

If the licensed “ancillary” person is offsite (i.e. Radiologist, LMT, PT, etc.), may the chiropractor contract with them to provide services to the patients outside of the chiropractic clinic? The Board determined if an established relationship with the provider as either an independent contractor or employee exists, you may refer the patient out. (11/16/06)

ANIMALS, TREATMENT OF

Chiropractic physicians are permitted to treat animals provided they have a written referral from a licensed veterinarian. The care rendered as a result of the referral must be in writing and in accordance with the

standards of practice outlined in ORS 686; and only as prescribed and diagnosed by the veterinarian. (10/4/97)

ATHLETIC TRAINERS, SUPERVISION

Chiropractors may supervise athletic trainers. (11/16/95)

BIRTH CERTIFICATES

ORS 432.206 (3) states that the attending physicians shall prepare and file the birth certificate within five days of the birth. ORS 432.005 defines “physician” as including DCs so the signing of birth certificates is within a chiropractic physician’s scope of practice.

CHIROPRACTORS AND OTHER HEALTH LICENSES

The Board considered a series of questions concerning Chiropractors hiring and/or working with other health professional licensees. The specific example dealt with the relationship between Chiropractors and Licensed Massage Technicians.

As long as the licensee is working within the scope of the licensee’s practice and is regulated by the licensee’s own licensing Board, the licensee does not need to have a chiropractor present when working on the chiropractor’s patient. The licensee is responsible for implementing and utilizing clinical judgment within the licensee’s own scope of practice.

The Board of Nursing has specific administrative rules allowing Licensed Practical Nurses and Registered Nurses “to accept and implement orders for client care from licensed health care professionals who are authorized to independently diagnose and treat.” Nurses are charged with the authority and responsibility to question any order which is not clear, perceived as unsafe, contraindicated for the client, or not within the health care professional’s scope of practice.

Nurses must have knowledge of the professional’s scope of practice. Please review OAR Chapter 851 Division 45 for more specific information regarding nursing scope of practice.

If the person is acting in the capacity of a Chiropractic Assistant or Ancillary Personnel, OAR 811-010-0110 will apply, and the chiropractor must be present when required.

The OBCE recommends that you thoroughly review the scope of practice for all personnel with whom you are working and/or choose to hire. (3/20/97)

CLINICAL JUSTIFICATION RULE POLICY

The following policy declarations further describe and explain the intent of OAR 811-015-0010(4).

The requirement in OAR 811-015-0010 (4) for evidence based outcomes management for “curative chiropractic treatment” does not include maintenance or wellness care. OCPUG defines maintenance care as inclusive of both preventive care and supportive care. While preventive may be considered similar to wellness care, supportive care “is appropriate for a patient who has reached maximum therapeutic benefit” and/or “is appropriate in patients who display persistent and/or recurrent signs of illness or impairment.”

Nothing in OAR 811-015-0010 should be interpreted as requiring or implementing a “very restrictive cook book approach.”

The term “evidence based” as it relates to outcomes measures is not a specific reference to the Educational Manual (EMEBC) or to “evidence-based medicine,” nor “evidence based best practice.”

There should be clinical literature and evidence supporting the outcome assessments utilized. "Evidence" means the whole body of professional knowledge. This includes the spectrum of evidence from randomized, controlled clinical trials to less rigorous forms of evidence. Examples of less rigorous forms of evidence includes one or more well designed controlled observational clinical studies, clinically relevant basic science studies, descriptive studies, case reports, or expert opinions published in refereed journals. Where such evidence is lacking professional field consensus is considered.

Lastly, the Board understands that some practitioners employ investigational or other varied (or non-traditional) chiropractic approaches addressing certain types of curative chiropractic care. It is not the Board's intent to discourage these approaches with the evidence based outcomes measures language of Section (4). Should an issue or complaint arise concerning treatment of this general type, the Board will first look to Section (1) language which states, "Clinical rationale, within accepted standards and understood by a group of peers, must be shown for all opinions, diagnostic and therapeutic procedures." (5/18/06)

COMPUTERIZED SOAP NOTES

Computerized SOAP notes are acceptable as long as they are used in conjunction with the Oregon Practices & Utilization Guidelines. (4/16/92)

CONTINUING EDUCATION

Additional & Specific CE Requirement

On July 21, 2011 and effective January 1, 2012 the Board determined to create mandatory CE. The requirements were established in consideration of the volume of complaints related to boundary violations and record keeping/charting.

Effective January 1, 2012 and throughout the 2012 year, licensees must complete two (2) hours in boundaries. In 2013, licensees must complete two (2) hours in charting and recordkeeping.

Every year thereafter, licensees must alternate 2 hours boundaries and 2 hours charting/record keeping.

The hours may be a part of the licensee's annual CE requirement - 2 of 20 for regular active status; 2 of 6 for senior active; and first year licensees are exempt.

The board determined that there are an adequate number of boundary courses available which will meet its training expectations. However, they determined that they must establish the specific requirements of the charting and recordkeeping courses.

The proofs of completion of the hours (and only these mandatory hours) must be submitted immediately upon completion to the Board (This is contrary to the normal affidavit reporting; do NOT submit proof of all education at that time.)

The Board did not set an end date for the requirement. (7/21/11)

Approval of Courses or Activities "not specifically listed" in the OAR

Regarding Continuing Education issues that fall under OAR 811-015-0025(9)(L) "and any other course or activity specifically authorized by the OBCE."

Continuing education requests are submitted to the administrative office for possible approval "by the Board" per OAR 811-015-0025(9)(L). If the criteria of the course or activity is, in large part, similar to other described criteria in this rule (sections 8 and 9), but the activity or course is not specifically listed, the Executive Director is delegated authority by the Board to approve the course or activity.

Other courses or activities that do not, "in large part," compare to given criteria of this rule are to be presented to the board for its approval at the next regularly scheduled board meeting.

The term "in large part" may refer to courses or activities which are related to:

- Other institutions not specifically listed, but not excluded intentionally
- Other health-related "studies," but not necessarily "research"
- Teaching "chiropractic" courses at other institutions (hospitals, gyms, nursing homes, etc.), and
- Teaching "chiropractic" courses not necessarily as continuing education

(02/20/03)

Board Member CE Allowance

A CE allowance for board members falls within the requirement of the CE rule. Members are improving and increasing their knowledge and proficiency in chiropractic practice by study and review of cases and policy issues. In addition it is already standard for OBCE subcommittees to receive CE credit for their services, so it would not be out of line for board members to receive credit.

Board members agreed that a maximum of eight hours CE will be allowed annually any of the following - board member participation at regular bi-monthly meetings, subcommittee meetings, national conferences, or other board member represented event. (1/22/09)

Credit Taken 13 Months Prior to Renewal

If CE hours were taken 13 months preceding the current licensing renewal period, and the hours were submitted but NOT used toward last year's renewal, they may be used for the current license renewal period. (8/27/96)

Educational Manual for Evidenced Based Chiropractic Chapters

The OBCE approved 2 hours CE credit for the complete reading of each chapter of the Educational Manual for Evidence-Based Chiropractic. (9/21/06)

National Board of Chiropractic Examiners (NBCE) PACE approved programs

The OBCE accepts all continuing education courses approved by the Federation of Chiropractic Licensing Board's PACE (Providers of Approved Continuing Education) program. The OBCE also accepts all continuing education courses or activities that meet the criteria and requirements of OAR 811-015-0025. (11/18/04)

National Board of Chiropractic Examiners Part IV Exam Assistants

The Board considered the number of hours possible to contribute to the Part IV process and determined that the exam assistants will be allowed up to 19.5 hours continuing education credit. The OBCE will determine the means to establish how many credit hours should be approved per exam. (9/21/00)

Practice Guidelines Committees (including Steering Committee, Nominal Panel and Seed Panels)

Given the amount of time contributed by the various committees involved in the practice guidelines development, the Board approved continuing education credit as follows:

- Steering Committee members may receive a maximum of 10 hours credit
- Nominal Panel and Seed Panel members may receive a maximum of 20 hours credit with a stipulation that no more than three (3) meetings may be missed in one renewal period. If three or more meetings are missed, a Nominal Panel member will NOT receive ANY credit for their service and the member will be replaced.
- Licensees performing literature searches may receive a maximum of 20 hours credit as well. The Steering Committee minutes will reflect who is performing a literature search. (9/21/00)

Teaching at a Health-Care Institution or Teaching Post-Graduate Education

The purpose of this policy is to clarify the continuing education allowance in OAR 811-015-0025 (h) teaching courses at an accredited health care institution; and (i) teaching chiropractic continuing education courses. The Board has determined that a licensee may report a maximum eight (8) credit hours per year for teaching, if he or she is the person who develops the course outline, researches the course material and then teaches the class.

Because of this determination, the administrative rule citation 811-015-0025(9)(h) "teaching courses at an accredited health care institution" does not include teaching aides, clinic or class assistants, etc.

In relation to both 811-015-0025(9)(h) "teaching courses at an accredited health care institution" and (i) "teaching chiropractic continuing education courses"; a licensee may receive credit hours for the actual time teaching the class, not for the research and development of the program.

(5/19/05; Eff. 8/1/05)

COUNSELING PATIENTS

A Chiropractor may only counsel within the area of chiropractic. Example: Counseling regarding sleep habits, eating habits, exercise, stress levels as it affects the musculoskeletal system. (3/17/93)

Chiropractors must stay within the guidelines as taught in chiropractic colleges. Counseling should relate to diagnosis and treatment. (1/21/93)

DEATH CERTIFICATES

According to the Office of Vital Records, a DC can sign a death certificate. ORS 432.307, states, "physicians" sign death certificates. In ORS 432.005, the definition of "physician" includes DCs; so yes they can sign a death certificate.

DIABETIC EDUCATION

An Oregon chiropractic physician may provide diabetic education within chiropractic care. This education may include lifestyle counseling, nutritional support, and diagnostic testing for blood sugar levels. (03/06/02)

DIPLOMATE STATUS

Chiropractors in Oregon may claim a diplomate status if, in fact, they have earned that credential, otherwise they would be in violation of the Board's advertising rule. (10/25/00)

DMV'S MEDICALLY AT-RISK DRIVER PROGRAM

The Oregon Department of Motor Vehicles (DMV) requires medical doctors and other health care providers (such as chiropractic, naturopathic doctors, physical therapists etc.) to report drivers with severe and uncontrollable functional or cognitive impairments that impact their ability to safely operate a motor vehicle. This could result in suspension of driving privileges.

Chiropractic physicians are required to contact DMV to report a severe and uncontrollable impairment only if they are a patient's primary care provider. Otherwise, the chiropractic physician must submit a report to the patient's medical doctor or other primary care provider who then will determine whether to report. A chiropractic physician may still report to DMV on a voluntary basis, if needed.

In the rare case where this may be an issue, a chiropractic physician should review the actual administrative rules, detailed information, and reporting forms found on the DMV's Web page which can be found at www.oregon.gov/ODOT/DMV/ATRISK/

Severe and uncontrollable impairments are defined as:

- Severe means the impairment substantially limits a person’s ability to perform many daily activities, including driving.
- Uncontrollable means that the impairment cannot be corrected or compensated for by surgery, medication, therapy or adaptive devices.

Once someone is reported to DMV, the driver may receive a Notice of Suspension in the mail informing the driver his/her license will be suspended 5 days from the date on the notice. At that point, the driver has several options. The driver can contact DMV and:

- Request the opportunity to demonstrate that he/she can still safely drive. Based on the information contained in the medical referral, the driver may also be required to provide DMV with additional medical information. The person will have to take the vision, knowledge and drive tests. The driver’s license will be reinstated upon passing the required tests.
- Request an administrative hearing to appeal DMV’s decision to suspend their driving privileges.
- Voluntarily give up their driving privileges by turning in their driver’s license.

For additional information, call the DMV Medical Program Coordinator in Salem at (503) 945-5295. (11/18/04)

DOCTORS' TITLE ACT, ORS 676 (2011)

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 Enrolled House Bill 2395 (HB 2395-A)
 - (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.

676.130 Enforcement of ORS 676.110 and 676.120. Each health professional regulatory board as defined in ORS 676.160 shall notify the appropriate district attorney of any violation of ORS 676.110 and 676.120

which may be brought to the attention of such board. The district attorney of the county in which any violation of those sections takes place shall prosecute the violation upon being informed of the violation by any person or by one of such boards.

EMERGENCY FIRST AID

Chiropractic physicians and Certified Chiropractic Assistants may provide emergency first aid. The following language was adopted into 684.025 new subsection (4):

(a) "This chapter does not prevent a person licensed under ORS 684.054 from providing emergency first aid, including administering emergency oxygen.

(b) A person may not administer emergency oxygen unless the person has received training in the administration of oxygen. The State Board of Chiropractic Examiners shall adopt rules that establish training requirements.

(c) As used in this subsection, 'emergency oxygen' means oxygen delivered at a minimum flow rate for a specified period of time as determined and regulated by the United States Food and Drug Administration." (HB 2242, 2007)

FAMILY/RELATIVES, TREATMENT OF

Oregon chiropractors may treat family members and employees. However, chart notes and files must be kept as with any other patient.

OAR 811-010-0005 defines "patient" as "any person who is examined, treated, or otherwise provided chiropractic services whether or not the person has entered into a physician/patient relationship or has agreed to pay a fee for services."

FEE SPLITTING AND COMMISSIONS

ABS Health Center, Inc Marketing Plan

The Oregon Board of Chiropractic Examiners advises that a chiropractic physician who participates in a marketing plan recently offered by ABS Health Center, Inc. based in Cincinnati, Ohio would be in violation of Administrative Rule 811-035-0015, prohibition on fee-splitting in the referral of patients for services.

ABS Health Center, Inc. attempted to enlist an Oregon chiropractic physician whereby they proposed to "...bill back a marketing fee of \$1,000 for every \$3,500 cash patient closed (29% if the amount collected is less than \$3,500)" in return for an agreement whereby ABS leases a spinal decompression device for the doctor's office and conducts direct mail & broadcast media to recruit patients to use this device.

Any Oregon chiropractic physician who agreed to this would be in violation of the Oregon Board of Chiropractic Examiner's Administrative Rule 811-035-0015 which states,

"Unprofessional conduct means 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 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 physician:...

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

In a letter to ABS, Executive Director Dave McTeague also said, "We note that you have attempted to draw a distinction between Insurance/Medicare/Medicaid and cash pay patients, stating that fee splitting is OK if it involves cash pay patients. This letter is to inform you that the Oregon Board of Chiropractic Examiner's administrative rule does not make this distinction and that fee splitting for chiropractic patients of the magnitude proposed is illegal in Oregon." (5/18/06)

Adjustments or Other Minor Gifts for Patient Referrals

The practice of extending a free adjustment or other minor gift to patients referring a new patient for services is not a violation of the Board's administrative rule, unless in the Board's opinion the practice grows to be deceptive, unethical, deleterious or harmful to the public.

OAR 811-035-0015 states: "Unprofessional conduct means 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 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 physician:(24) *splitting fees or giving or receiving a commission* in the referral of patients for services. (emphasis added).

Commissions and Fees

Webster's Ninth New Collegiate Dictionary's definition of "commission," which speaks specifically to money, was considered.

The Board noted that any gratuity between professionals and any business entity for patient referrals is unethical and harmful to the public. Any practitioner offering anything to another practitioner in exchange for a patient referral is subject to possible sanctions for unprofessional conduct.

The Board suggests that chiropractors needing further advice or legal opinion in regard to this policy, should contact their own attorney. (3/20/97)

Donating to a Non-Profit

The Board was asked if a non-profit organization (i.e. private school) could advertise to their members (i.e. parents) that if they utilize the services of a particular chiropractic physician, the physician will donate 10% back to the non-profit organization. The Board determined this is not "fee splitting" and does not violate the spirit of OAR 811-035-0015(24). (11/20/03)

Leasing Agreements and Professional Referrals

In May of 2003, the Board reviewed the following question regarding business practices under a multiple discipline clinic setting. The following response from the OBCE is not in anyway legal opinion but only presents information about choices.

For a chiropractic physician who is leasing/renting office space, office personnel/billing services, that also leases/rents to other types of licensed professionals: Do "walk-in" patients requesting chiropractic services constitute a "referral" by the front desk person to that doctor? **No.**

New OBCE policy: In review of this question the Board explored whether a "referral" by a parent company or other health care provider constitutes fee splitting in percentage of gross lease arrangements (or percentage of pay arrangements). The Board received legal advice that it has broad authority to interpret the meaning of the fee splitting rule (OAR 8110-035-0015 (24)).

Therefore the Board has determined that a chiropractor or health professional who enters into percentage of gross leasing arrangement, and who may refer patients or receive referrals from the other party, does not constitute "fee splitting" if the business agreement is entered into prior to any patient base and there is not a true commission or fee paid per patient back to the chiropractor or other health professional. This same logic also holds true for percentage of patient base rate of pay. (5/28/03)

HIPAA - IMMINENT DANGER EXCEPTION

The OBCE recognizes the **Imminent danger exception** as outlined in HIPAA regulations. This policy communicates to chiropractic physicians that they may take appropriate action when faced with an imminent danger situation. See below an example of a recent situation.

A chiropractic physician may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the chiropractic physician in good faith, believes the use or disclosure:

- (i)(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
 - (B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or

- (ii) Is necessary for law enforcement authorities to identify or apprehend an individual:
 - (A) Because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim; or
 - (B) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in Sec. 164.501.

This policy is based on current HIPAA regulations. Any chiropractic physician, who in good faith discloses protected health information under the above mentioned criteria, will not be found to be in violation of any other patient confidentiality laws or rules. (9/20/05)

INACTIVE LICENSE

(Changing to active after five or more years)

The following policy is an expansion of the current Oregon Administrative Rule 811-010-0086(8) which reads, "Inactive licensees who apply for reinstatement after five or more years after the date of transfer to inactive license, or who cannot demonstrate to the satisfaction of the Board they have been in active practice during the preceding five years, may be required to establish their competency in the practice of chiropractic by

- (a) receiving a passing grade on all or part of an examination required by the Board; **Or**
- (b) submitting a letter showing proof of active practice and any disciplinary actions from the state boards where licensure is maintained.

Any licensee who has maintained an inactive license for five or more years will be required to meet one of the following criteria before they may receive an active license in Oregon:

1. Proof that the licensee was actively practicing at least one year of the past five. Proof should include evidence of malpractice insurance, clinic address, and license verification from the state where practicing. *(A thumbprint will be required in the future once a more clear policy is established regarding that requirement.)*
Or
2. Show proof that one of the following exams was successfully passed in the past five years:
 - a) National Board of Chiropractic Examiners' SPEC (Special Purposes Exam for Competency)
 - b) National Board of Chiropractic Examiners' Part IV (practical) Exam
 - c) Another state's licensing exam**Or**
3. Petition the Oregon Board

(DC should explain why it is not necessary to prove competence, or explain the reason(s) why it is not necessary to meet *these* requirements to prove competence.) (11/99)

INDEPENDENT MEDICAL EXAMINATION (I.M.E.)

There is one standard for all chiropractors, whether they be IME, examining, treating, consulting or rehabilitating chiropractors. A professional relationship exists between the patient and the chiropractor, regardless of whether the chiropractor is the examining or treating doctor.

Regardless of the role, the chiropractor is expected to perform an appropriate chiropractic examination based on the patient's current and past complaints, the manner of onset, and the elicited history. From this the chiropractor will make a diagnosis and determine any further procedures or tests necessary to clarify the diagnosis and/or prognosis. These may include, but not be limited to: diagnostic imaging, laboratory testing, or other specialized studies. If indicated, the evaluating chiropractor will propose any of the following: a recommended course of further care, a timeframe for reevaluation, treatment options or referrals; or discharge from care when appropriate.

All examinations should include a "functional chiropractic analysis." The Board has always assumed this was inherent in the P & U Guidelines, even though it was not included as specific language. The Board also stated that diagnosis should be based on pertinent history and examination findings, and reflected in the record.

The issues arising out of an OBCE action in 2002 resulted in the following agreement between the OBCE and the respondent chiropractic physician.

a. The doctor/patient relationship between examiner and the examinee is limited to the examination, the opinion, and the review of the patient history and medical records provided; and does not include ongoing treatment monitoring. The examiner shall make important health information, diagnosis and treatment recommendations available to the patient, treating doctor, and patient's legal counselor or guardian via the independent report. Upon receipt of a signed written request from the patient or patient's legal guardian, a copy of the examination report shall be made available as indicated in the request. This could be to the patient and/or any other party designated by the patient.

b. An independent chiropractic examiner should review the dictated medical opinion of a fellow panel member of an independent or insurer examination for its accuracy and completeness, and when necessary to clarify biomechanical or chiropractic reasoning, the independent chiropractor examiner should supplement the dictated medical opinion with his or her independent chiropractic opinion.

Administrative Rule 811-015-0010 (Clinical Justification) also governs the conduct of independent examinations.

Workers' Compensation IMEs. The Oregon Workers Compensation Department (OWCD) is required to maintain a list of providers authorized to perform independent medical evaluations (IMEs) for workers' compensation claims as a result of SB 311 (2005). The OWCD director may remove a provider from the list after a finding of violation of standards of professional conduct for workers comp IME claims. Health professional licensing boards may adopt such standards or if they don't the default standards are published by the American Board of Independent Medical Examiners (ABIME). The OBCE considered this issue at their May 18, 2006 meeting and decided to accept the ABIME standards (below) and also submit to OWCD the OBCE's policy as additional applicable standards for IMEs performed by chiropractic physicians.

ABIME Guidelines of Conduct: Physicians should:

1. Be honest in all communications
2. Respect the rights of the examinees and other participants, and treat these individuals with dignity and respect;
3. At the medical examination:
 - Introduce himself/herself to the examinee as the examining physician;

- Advise the examinee they are seeing him/her for an independent medical examination, and the information provided will be used in the assessment and presented in a report;
 - Provide the examinee with the name of the party requesting the examination, if requested;
 - Advise the examinee that no treating physician-patient relationship will be established;
 - Explain the examination procedure;
 - Provide adequate draping and privacy if the examinee needs to remove clothing for the examination;
 - Refrain from derogatory comments; and
 - Close the examination by telling the examinee that the examination is over and ask if there is further information the examinee would like to add.
4. Reach conclusions that are based on facts and sound medical knowledge and for which the examiner has adequate qualifications to address;
 5. Be prepared to address conflict in a professional and constructive manner;
 6. Never accept a fee for services which are dependent upon writing a report favorable to the referral service; and
 7. Maintain confidentiality consistent with the applicable legal jurisdiction.
- (7/18/06)

LYME DISEASE

After review of the ETSDP Committee discussion notes, the OBCE adopted this statement at their November 2010 meeting:

In the treatment of patients with Lyme disease, it is standard of care for chiropractic physicians to participate adjunctively in the co-management with other appropriate health care providers having prescription writing privileges.

The November 2010 Board minutes and the ETSDP (Examinations, Tests, Substances, Devices and Procedures) Committee discussion notes can be found on the OBCE's web site www.oregon.gov/obce. (Nov 2010)

MASSAGE THERAPIST, SCOPE OF PRACTICE

The Board of Massage Technicians determined on January 9, 1992, that it is the intent of licensed massage technicians to stretch soft tissues which must include the movement of the bony joints through the normal range of motion.

Adjustments and manipulations are not identified as being within the scope of practice of massage therapists since the Board understands the intent of those two activities to be toward the joint surfaces and beyond the normal range of motion rather than the surrounding soft tissues. Although the Board realizes spontaneous manipulation of the joints may occur while doing massage, the intent is directed towards the soft tissues.

MINOR SURGERY CERTIFICATION

The Board decided to accept procedures performed by WSCC's 12th quarter students in a (new) practical minor surgery elective course as part of their fulfillment of the rotation required for certification in Oregon. The course offered is in addition to the 36-hours (24 lecture and 12 lab) normally offered by WSCC. A maximum of 12 minor surgical cases may be acquired, and no more than two students may obtain credit for any one procedure. (11/99)

MOTOR CARRIER PHYSICALS

Chiropractors may perform physicals for D.O.T. motor carrier certification.

According to Title 49-Transportation Chapter III-FHA Dept. of Transportation Subchapter B-- Federal Motor Carrier Safety Regulations, chiropractors are included in the definition of "medical examiner."

“Medical examiner means a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. The term includes, but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.”

(Federal Motor Carrier Safety Regulations, sec. 390.5, revised 6/18/98)

MULTI-DISCIPLINE CLINICS

(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.

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); (11/7/11)

~~(See Doctors' Title Act) If any person (including a group or combination of individual persons) uses the term “doctor” 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.~~

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~~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. To the contrary, the statute specifically defines person as including any "clinic," "institute," "specialist," or any group or combination of persons. Thus, 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)~~

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

In May of 2003, the Board reviewed the following questions regarding business practices under a multiple discipline clinic setting. The following responses from the OBCE are not in anyway legal opinions but only presents information about choices.

Employee status

Can a DC be an employee of a hospital or clinic that is multi disciplinary with no majority interest?

First, you must determine if the employer is "a business entity organized for the purpose of practicing chiropractic." It would be hard to argue that a hospital is organized for this purpose. The OBCE sees no problem from a business organization standpoint for a chiropractor or be employed by a hospital as long as the chiropractic physician is allowed to meet his/her responsibilities as outlined in ORS 684, OAR 811, and the Oregon Chiropractic Practice and Utilization Guidelines. The same logic may hold true for some other employing entity, however it must not be a subterfuge to skirt the requirements of OAR 811-010-0120. See also OAR 811-010-0120 (8) multidisciplinary provisions. (5/28/03)

Independent Contractor

Could an Oregon DC work as an independent contractor in the above illustration?

The legal requirements for independent contractor status are outlined in state and federal law. The OBCE recommends chiropractors seek specific legal advice to determine their appropriate status as an independent contractor or employee. (5/28/03)

Does the OBCE have specific recommendations for clauses in independent contractor contracts?

The OBCE holds all chiropractors to the same standards of practice as outlined in ORS 684, OAR 811, and the Oregon Chiropractic Practice and Utilization Guidelines. The OBCE also recommends review of the OBCE Guide to Policy and Practice Questions. (5/28/03)

NETWORK CHIROPRACTIC

The Oregon Board of Chiropractic Examiners (OBCE) reviewed the conclusions of the advisory committee on E.T.S.D.P.s (examinations, tests, substances, devices and procedures).

The Board determined that Network Chiropractic is standard under Board's present rule. This is solely due to the fact that this technique is taught in a post-graduate continuing education course at Sherman College of Straight Chiropractic. (Oregon Administrative Rule 811-015-0070)

In making this determination, the OBCE offers no opinion as to the clinical efficacy of Network Chiropractic.

However, the OBCE has serious concerns with the utilization recommended for this technique.

The OBCE recommends any Oregon chiropractic physician desiring to utilize Network Chiropractic protocols review OCPUG standards and administrative rules on clinical justification and excessive treatment. (10/15/98, updated May 22, 2003))

PARENTAL CONSENT

When a patient is a child or "minor," the chiropractic physician must have the permission of the parent, custodian or legal guardian before treating the patient. There is no law which specifically defines the type of permission that must be given. Written contracts are enforceable and may be preferred to oral contracts. OAR 811-015-0006 states that the doctor shall preserve a patient's medical records, unless given written permission from the patient. However, a custodial parent or guardian of a minor patient may authorize disclosure to self or others. Disclosure must be made in situations involving court orders. OAR 811-015-0006 implies that only the custodial parent is entitled to information concerning the minor. However, laws governing domestic relations provide that the noncustodial parent shall not be deprived of the authority to consult with any person who provides treatment and that records shall be available to inspect and receive. (Attorney General opinion, July 1995 BackTalk Newsletter)

PATIENT-CHIROPRACTOR RELATIONSHIP

See Independent Medical Exams

PATIENT, DEFINITION

The definition of patient in the Oregon Administrative Rules for Chiropractors will mandate documentation of diagnosis and treatment using standard chiropractic methods.

OAR 811-010-0005(4): "Patient" means any person who is examined, treated, or otherwise provided chiropractic services whether or not the person has entered into a physician/patient relationship or has agreed to pay a fee for services. (Eff. 9/29/92)

PATIENT RECORDS

Disclosure of Deceased Patient Records

The question was asked of the Board, "May the parent of a patient who is deceased gain access to the patient's chiropractic patient record?"

Depending on the estate or probate of the deceased patient, the personal representative should be able to obtain the records. In probate and estate law, the personal representative steps into the shoes of the deceased and carries on with business on behalf of the deceased.

If the chiropractor were to obtain from the personal representative (whether it is a parent or someone else) the probate documents showing they were in fact acting for the deceased and that they requested the records, those records should be releasable to the personal representative.

The parent of a majority-aged patient would not be able to get those records unless they had an authorization, as the confidentiality of those records does not cease with the death of the patient. (04/17/03)

Faxed Records Requests

It is acceptable and legal for a chiropractic physician to accept a faxed copy of a request for patient records; an original signature is not mandatory. (02/20/03)

Ownership of patient records

The Board determined that until the OBCE could rewrite OAR 811-015-0005(1) regarding ownership of the patient records, its interpretation of that rule will be that "including but not limited to" means if the records are present, they must be included in the record. The statement is NOT interpreted to mean that ALL parts listed in section (1) must be (created, and thereby) included. (03/01)

Release of patient records

It is recommended the chiropractic physicians review the provisions of OAR 811-015-0005, OAR 811-015-0006 and ORS 192.518 to ORS 192.524

The OBCE reviewed the intent of OAR 811-015-0005 Records which states:

"(1) It will be considered unprofessional conduct not to keep complete and accurate records on all patients, including but not limited to case histories, examinations, diagnostic and therapeutic services, treatment plan, instructions in home treatment and supplements, work status information and referral recommendations."

The OBCE interprets this to mean that IF those parts exist, then they must be considered part of the record. For a more comprehensive understanding of the Board's expectations for patient record keeping, please refer to the entirety of OAR 811-015-0005 and the Oregon Chiropractic Practice and Utilization Guidelines.

Regarding the actual release of records,

OAR 811-015-0006, Disclosure Of Records (1) A Chiropractic physician shall make available within a reasonable time to a patient or a third party upon the patient's written request, copies or summaries of medical records and originals or copies of the patient's X-rays.

(a) The medical records do not necessarily include the personal office notes of the Chiropractic physician or personal communications between a referring and consulting physician relating to the patient

(Updated 11/18/04)

On September 18, 2008, the OBCE clarified that, *Independent Medical examiners are not required to keep records from other providers.*

On May 19, 2005, the OBCE further reviewed the records release administrative rule and policies. The following is an update to the previous policy.

A prompt response to a valid request for release of patient records from a patient or authorized representative is in the patient's and the public's interest. What is a "reasonable time" may vary depending upon the circumstances of the chiropractic physician and the request. The Board requests the records be released as soon as possible with the expectation that in most cases release would occur within 7 days. Without a valid reason, failure to release records within 30 days of a documented request may be considered to be a violation of OAR 811-015-0006(1) and ORS 684.100 (t).

OAR 811-015-0006 (2) states: "The Chiropractic physician may establish a reasonable charge to the patient for the costs incurred in providing the patient with copies of any portion of the medical records. A patient shall not be denied summaries or copies of his/her medical records or X-rays because of inability to pay or financial indebtedness to the Chiropractic physician."

However, charges for patient records must also comply with ORS 192.521 (below) passed as part of HB 2305 in 2003 and was updated in 2007.

192.521 Health care provider and state health plan charges. A health care provider or state health plan that receives an authorization to disclose protected health information may charge:

(1)(a) No more than \$30 for copying 10 or fewer pages of written material, no more than 50 cents per page for pages 11 through 50 and no more than 25 cents for each additional page; and

(b) A bonus charge of \$5 if the request for records is processed and the records are mailed by first class mail to the requester within seven business days after the date of the request;

(2) Postage costs to mail copies of protected health information or an explanation or summary of protected health information, if requested by an individual or a personal representative of the individual; and

(3) Actual costs of preparing an explanation or summary of protected health information, if requested by an individual or a personal representative of the individual. [2003 c.86 §4; 2007 c.812 §1]

(5/19/05, 10/23/08)

POST-DOCTORAL DIPLOMATES, USE OF INITIALS

If a chiropractor has completed a legitimate diplomate course, he/she may use the post-doctoral initials as long as they comply with the OBCE rules on advertising and the Doctor's Title Act.

PRIMARY CARE PHYSICIANS

Chiropractors in Oregon are primary care physicians. (1/19/95,9/18/97)

PYRAMID SELLING

Pyramid schemes are illegal. (ORS Ch. 646.608(1)(r)) Pyramids are illegal because they are inherently fraudulent. In order to achieve the profits that are promised, a never-ending chain of participants must be recruited. At some point a saturation level will be reached and no more recruits will be available. When that occurs, the most recent recruits cannot receive what has been held out to them to cause them to join, and they lose all or a part of what they paid to join the scheme.

Some multi-level sales plans have the potential to run afoul of Oregon's law against pyramid schemes. A paper prepared by the Oregon Attorney General's office "Multi-level Sales Plans in Oregon" which addresses these issues is available by calling the Board office. However, a private attorney should be consulted for specific legal advice.

REFLEXOLOGY (also listed under Chiropractic Assistants)

The board was asked whether an UN-licensed person (either CA or DC) may provide reflexology treatment on chiropractic patients within the Oregon chiropractor's clinic. The OBCE responded that this is unlicensed treatment of the chiropractic patients in the chiropractic clinic.

The inquiring physician is also a naturopath and this may be allowed under his naturopathic license for his *naturopathic* patients. Given this difference in scope, the Board reminded the chiropractor to always remember to chart under *which* license these services are being provided.

In conclusion, *ONLY* a person actively licensed in Oregon as a DC, or Chiropractic Assistant (under the direct onsite supervision of an Oregon licensed chiropractor), may perform reflexology on the chiropractic patients.

(11/20/08)

REVOKED CHIROPRACTORS (WHAT THEY MAY AND MAY NOT DO)

(1) A revoked chiropractor shall not practice chiropractic. They shall not practice or attempt to practice through employees, agents, associates, corporations, partnerships or any other entity.

(2) A revoked chiropractor may not own and/or operate a chiropractic clinic. They must close the clinic and refrain from advertising or distributing any information that would likely cause the public to believe they

are still licensed.

- (3) A revoked chiropractor may sell the clinic business to another licensed chiropractor and/or may become a landlord for the business real estate, leasing or renting the property to another person. A revoked chiropractor must not retain any management authority and may not share in the proceeds of the business other than bonafide contract or rental payments.
- (4) If a revoked chiropractor utilizes any portion of the clinic property for purposes other than practicing chiropractic, they must clearly segregate that portion from any chiropractic activity being conducted by lessors or purchasers. (6/21/91, 9/18/97)

SATELLITE OFFICES

If a chiropractor has two or more offices, they are to hang their original license (wall hanging) in the main office and hang their renewal certificate in a satellite office. A chiropractor may request a duplicate certificate (\$5.00) from the OBCE. (11/29/91)

SCHOOL PHYSICALS

The Oregon Board of Chiropractic Examiners reaffirms that chiropractic physicians are qualified by “clinical training and experience to detect cardiopulmonary diseases and defects.” SB 160, enacted by the 2001 Oregon Legislature, specified that chiropractic physicians may perform school physicals provided they have this training.

Chiropractic physicians have extensive training in diagnosis. This includes the ability to detect cardiopulmonary diseases and defects, as well as a range of other conditions.

Chiropractic professional education covers this subject in physiology, physical diagnosis and cardiorespiratory diagnosis classroom hours as well as internships in student clinic and outpatient clinic experience.

Further, cardiovascular diseases and defects and related diagnosis are tested on four qualifying examinations performed by the National Board of Chiropractic Examiners (NBCE). NBCE Parts I, II, and III are given to chiropractic students as they proceed through college. The NBCE Part IV practical examination is required for licensure in Oregon.

State law requires doctors to use the School Sports Pre-Participation Examination form approved by the Oregon Department of Education. This form also includes suggested exam protocols. It can be obtained from the OR School Athletics Association web page www.osaa.org/publications

Chiropractic physicians are further reminded that performing a school physical examination creates a doctor-patient relationship. The resulting records must be retained by the chiropractic physician for seven years or until the student (patient) is eighteen. These records may be stored off site (such as at the school), as long as the DC has access and confidentiality is maintained. (However HIPAA requirements should be reviewed if this is done.) (07/18/02)

STUDENT LOANS, DELINQUENT

~~Oregon Student Assistance Commission~~

~~The OBCE has an existing interagency agreement with the Oregon Student Assistance Commission (OSAC) as required by ORS 348.393 and 348.395. This agreement provides that, upon notice of a default in a student loan from the OSAC, the OBCE shall issue a final order taking one of the following proposed actions— not issue/renew a license, suspension or probation. The action can be lifted once the OSAC informs the OBCE that the licensee is no longer in default status. Prior to any notice of default, the OSAC is required to notify the borrower, in writing, on a regular basis for up to 180 days of the consequences of failing to repay a student loan.~~

~~The OBCE determined in May 2001 that a six-month probation shall be ordered when a notice of default is received from the OSAC. After six months the OBCE will review to see if the default issues have been resolved. (05/01) The policy is outdated. (12/30/11)~~

Federal Health Education Assistance Loan (Heal)

~~When the Board receives a letter from a federal agency concerning a licensee's failure to make payments on a federal Health Education Assistance Loan (HEAL), the Board determined a letter should be sent to the Doctor. The letter shall notice the doctor that the Board knows he/she is on the default list. HEAL loans are not covered by the Oregon State Scholarship Commission provisions of Oregon law. (9/22/98) New HEAL loans were discontinued in 1998. This policy is outdated. (12/30/11)~~

TELEMARKETING

Chiropractors may engage in telemarketing to gain patients. Neither the Board nor anyone else may restrict chiropractors from using telemarketing to advertise. However, the Board does have the ability to proscribe any advertisement that is false, or that could be misleading or deceptive. See OAR 811-015-0045.

As far as telemarketing is concerned, OAR 811-035-0015(24) does not prohibit giving or receiving a commission in the referral of patients for chiropractic services. Due to Article I, section 8 of the Oregon Constitution, administrative rule 811-035-0015(24) does not apply to this situation. (7/22/96)

TRAVEL-TO-TREAT

(See ORS 684.020 And 684.107)

The Board does not have a set limit on the number of times an out of state chiropractor may come into Oregon as long as it is "a single temporary assignment for a specific sporting, performing arts or educational event not to exceed 15 days" and, the doctor "is actively engaged in the practice of chiropractic in the state in which the person is licensed." The Board does not require notification that this provision of law is being utilized. (2/27/97, 9/18/97)

X-RAY SERVICES BY CHIROPRACTIC PHYSICIAN

A chiropractic clinic may take X-rays for another chiropractic physician or doctor. While this does not create a patient relationship with the doctor or other appropriately licensed person taking the films, the chiropractic clinic still has the obligation to abide by the x-ray rules found in OAR 811-030-0020 and OAR 811-030-0030. (addressing shielding, contraindications such as pregnancy, diagnostic quality etc.)

In order to request films, the ordering doctor should include the relevant diagnoses, area of clinical interest, birth date, etc. so that the clinic taking the films has a "double check" that ensures the proper films are taken. It is not necessary for the clinic taking the films to review the entire patient file to determine whether the views ordered are in fact clinically necessary.

It is highly recommended all chiropractic physicians with x-ray equipment review OAR 811-030-0020 and OAR 811-030-0030, which also includes these record keeping requirements:

- The operator shall maintain a record on each exposure of each patient containing the patient's name, the date, the operator's name or initials, the type of exposure and the radiation factors of time, mA, kVp and target film distance, including those exposures resulting in the necessity of repeat exposure for better diagnostic information such as patient motion or poor technical factors. For computerized and automated systems the recording of technique factors is not necessary as long as the equipment is calibrated and maintained. OAR 333-106-045 requires the facility to determine the typical patient exposure for their most common radiographic examinations, i.e. technique chart.
- Each film shall be properly identified by date of exposure, location of X-ray department, patient's name or number, patient's age, right or left marker and postural position marker and indication of the position of the patient.

X-RAY (Which Views Are Necessary?)

Concerning views necessary for proper evaluation of the spine, the Board determined that it is up to the doctor's professional discretion.

However, the standard recognized by the Board is OAR Chapter 333, Division 106(15) which states, "The number of radiographs taken for any radiographic examination should be the minimum number needed to adequately diagnose the problem." Chapter 811 administrative rules and P & U Guidelines should be followed. (12/19/96)

APPLICANTS (for Chiropractic)

DISCLOSURE OF SCHOOL RECORDS

This policy is regarding disclosure of school records without permission of the student.

The Board staff may disclose:

1. name of school,
2. graduation date, and
3. transcript without grades or pass/fail information. (1991)

EXAMINATION

Appeals

Oregon law chapter 684 does not contemplate appeals. The Board does NOT allow any appeal process and it may deny a license based on failure to pass the test. (5/18/93)

Exam Schedules

The OBCE will offer at least four Oregon specific examination opportunities each year. Retakes will be given each examination. (10/16/97)

National Board of Chiropractic Examiners (NBCE) Part IV

Effective February 1, 1998, The Oregon Board of Chiropractic requires the National Board of Chiropractic Examiners' (NBCE) Part IV exam for licensure in Oregon.

All candidates taking the state boards, must show proof of a passing grade in Part IV (in addition to all other application requirements). Candidates will be required to take three (Oregon specific) exams. The three exams include Ethics/Jurisprudence/Public Health, Obstetrics/Gynecology, and Minor Surgery/Proctology.

Reciprocity candidates are not affected by the Board's decision to accept Part IV. Generally, reciprocity candidates are not required to test in any practical exams. (7/18/96; 7/9/98)

Physiotherapy Minimum Educational Requirement

The Board determined that for a chiropractic college to meet our 120-hour requirement, all their hours must be documented classroom hours. The Board said it was too hard to document clinical hours toward this requirement. (8/20/98)

Special Purposes Examination for Competency (SPEC)

Reciprocity applicants who lack the required NBCE examinations may request the OBCE's authorization to take the NBCE Special Purpose Examination for Competency (SPEC) under the provisions of ORS 684.052. The Executive Director may authorize this unless there are other reasons for OBCE review. (7/31/2003)

Waivers (from application/examination deadlines)

The Executive Director will determine a finding of fact in each request for waiver of deadlines for applicants wanting to take the Oregon specific examinations and will send the information to each Board member for them to approve or deny. (9/18/97)

FELONY RECORD

The Board may deny a chiropractic applicant licensure with a felony conviction in areas that could be harmful to patients. ORS 684.100(1) states, "The board may refuse to grant a license...upon the following grounds: ... (d) A conviction of a felony or misdemeanor involving moral turpitude."

Any applicant denied a license for this reason has a right to appeal and make his/her case in a contested case hearing. Upon review of the hearing officer's recommendations, the Board will then consider whether to approve the application, with or without conditions, or continue to deny.

PRE-PROFESSIONAL LIBERAL ARTS AND SCIENCES POLICY

At its November 2001 meeting, the OBCE reconsidered its policy on pre-professional education for license application in Oregon. The Board determined that it will accept the Council on Chiropractic Education's (CCE's) standards defined for two-year's education. (11/29/01)

WORKING UNDER A LICENSED CHIROPRACTOR

Chiropractic college interns (12th quarter students) engaged in clinical studies during the period of the students' enrollment in an institution authorized to confer a doctoral degree in chiropractic may work in a chiropractic clinic when the doctor, who must have faculty status with a chiropractic college, is teaching them adjustive technique in an actual 'hands on' situation. The student may perform chiropractic in an instruction mode under the doctor.

(cont.)

The doctor is to refer to the student as an intern or chiropractic student. The student is not to be called a doctor. The doctor and student must get permission from the patient before the student works on the patient. (8/15/91, 7/17/97, 7/9/98)

CERTIFIED CHIROPRACTIC ASSISTANTS

The Certified Chiropractic Assistant (CCA) may perform physiotherapy, electrotherapy, or hydrotherapy once he or she has received the certificate from the Board. The CCA scope of practice does not include performing physical examinations, taking initial histories, taking X-rays, interpretation of postural screening, doing manual muscle testing or performing osseous adjustments or manipulations. (See OAR 811-010-0110)

ANY TRAINED PERSON (INCLUDING CERTIFIED CAS) MAY PERFORM THE FOLLOWING

- 1) Clarify initial patient intake history, which includes recording or performing height, weight, blood pressure, temperature, and pulse rate.
- 2) Record hand dynamometer readings.
- 3) Demonstrate, teach, check and review with patients the doctor's prescribed exercises
- 4) Facilitate provision of vitamins and/or supplements to patients as ordered by the doctor.
- 5) Relay doctor's instructions to the patient on recommendations of nutritional needs.
- 6) Facilitate provision of cervical pillow or support as recommended by the doctor.
- 7) Make follow-up phone calls to patients on their progress as instructed by the doctor.
- 8) Schedule return office visits for patients as instructed by the doctor.
- 9) Schedule referrals as instructed by the doctor.
- 10) Check patient's body fat percentage.
- 11) Perform postural screenings under the on-site supervision of a chiropractor, but only a Chiropractor may interpret the information.

12) May apply electrodes and conduct surface EMG testing, but the doctor has to interpret the results.

13) This list is not intended to be all-inclusive.

(Updated 11/16/95, 7/18/96; 11/20/08; 4/3/09)

COLONICS OR COLONIC THERAPY

The board determined that colonic therapy does not fall under hydrotherapy, and therefore is not an allowable procedure for CCAs to perform. The Board felt there were inherent risks, such as causing septic shock by rupturing the bowels. (9/28/07)

COMPUTERIZED MUSCLE AND INCLINOMETER TESTING

Certified Chiropractic Assistants may not do computerized muscle or inclinometer testing. The Board considers this to be part of the physical examination. (9/21/00)

(DIRECT) SUPERVISION OF CLINIC STAFF

The OBCE was asked if ~~clinic staff~~ licensed chiropractic assistants could provide therapies in a business space next door to the clinic. The OBCE responded that the chiropractic assistant ~~or staff person~~ who is supervised needs to be in the same office space (defined as the same building or space contiguous) as the supervising doctor. OAR 811-035-0001 states, "Direct supervision' means that the licensed Chiropractic Physician is physically present in the clinic, is monitoring the activities of the supervisee in the clinic and is available to intervene, if necessary."

If an employee and/or independent contractor is independently licensed to perform prescribed services within their scope of practice they may do so without direct supervision of the chiropractic physician. (7/31/03) (12/1/11)

ENGLISH PROFICIENCY REQUIREMENT FOR CA APPLICANTS

The Board reviewed this matter in light of a question from a licensee - May he interpret or provide an interpreter for non-English speaking CA applicants (to successfully complete the application and exam)? The OBCE surveyed other state health regulatory boards and determined that most other boards require that licensees be English-speaking proficient. Many of the other health-related licensing boards already have a policy, rule, or statute requiring applicant's to be English-speaking.

The Board determined that ALL (CA) applicants must be proficient in English in order to complete the chiropractic assistant licensing process in Oregon. (May 2008)

FELONY RECORD

The Board may deny a certified chiropractic assistant applicant certification with a felony conviction in areas that could be harmful to patients. ORS 684.100(1) states, "The board may refuse to grant a license...upon the following grounds: ... (d) A conviction of a felony or misdemeanor involving moral turpitude."

Any applicant denied certification for this reason has a right to appeal and make his/her case in a contested case hearing. Upon review of the hearing officer's recommendations, the Board will then consider whether to approve the application, with or without conditions, or continue to deny.

INITIAL TRAINING FOR CA APPLICANTS

Chiropractic Students Training To Be Chiropractic Assistants

Seventh (7th) quarter students and above may use the completed course in Physiological Therapeutics in lieu of the OBCE's Initial Training Program to be a certified chiropractic assistant. A copy of their transcript or a letter from the course instructor on college letterhead will be accepted as proof of completion of the course. See OAR 811-010-0045 (3) for other specifics. (4/15/93)

Massage Therapists

The Board determined that a massage therapist must acquire the ~~six-hour~~12 initial training because they are not trained in the hydrotherapy or electrotherapy. (11/99) (01/11)

Physical Therapist Assistants

May PTAs submit their **physical therapist assistant** education in lieu of the OBCE's required ~~six~~12-hour initial training course to be licensed as a certified chiropractic assistant (CCA)?

The Board determined that PTA's will be waived from the ~~six~~12-hour initial training requirement if the PTA education was completed within the past five years, *or if they have been continuously employed in the past five years.* (11/99) (01/11)

Supervising DC, Training by the

Due to a need for more initial training courses for chiropractic assistants, the Board determined that a supervising DC may train his applying CA. The DC must be in attendance, and directly supervising the CA during the training.

The Board determined that the DC must keep adequate documentation and submit evidence to the Board that the CA was appropriately trained according to OAR 811-010-0110. The OBCE developed a form which will meet all the points of this policy and the administrative rule. The form is available by request at the administrative office.

The Supervising DC and chiropractic assistant should understand that this does NOT preclude certification by the OBCE. This process addresses the ~~six~~12-hour initial training only. Each assistant must still apply with the OBCE, take the open book exam and submit the required fees. OAR 811-010-0110 is still in effect and included in the chiropractic assistant application packet. (11/99) (01/11)

IONTOPHORESIS

Chiropractic assistants may perform iontophoresis or phonophoresis under the doctor's supervision as a form of physiotherapy. (11/20/2008)

KINESIOTAPING METHOD

May a certified Chiropractic Assistant perform "Kinesio Taping"? The Kinesio Taping Method involves taping over and around muscles in order to assist and give support to, or prevent, over-contraction. The Board determined if the supervising DC is trained in the taping method, that he or she may also train the certified CA also to perform the method in the clinic, and only while the DC is on premise. The Board considers this a physiotherapy. (3/15/07)

LASER LIGHT THERAPY (Excerpt of Laser Light Therapy in Section I-Procedures)

Following recommendations from the OBCE ETSDP committee (a.k.a. Examinations, Tests, Substances, Devices, And Procedures), the OBCE approved and reaffirmed as standard use of Class I-IIIa lasers/phototherapy for use by chiropractors (as well as certified chiropractic assistants!) as a physiotherapy modality. Chiropractic Assistants are NOT allowed to use the Class IIIb and IV "hot" lasers. (12/20/06)

PHONOPHORESIS (See Iontophoresis)

RANGE OF MOTION

A chiropractor submitted a letter inquiring whether chiropractic assistants or any "trained personnel" may perform range of motion tests. The Board determined that chiropractic assistants or other persons may not perform range of motion tests. According to the administrative rule 811-010-0110(7) for CAs, it is clear that

"the scope of practice does not include performing physical examinations..." The performance of range of motion tests is definitely a physical examination. (12/99)

REFLEXOLOGY

The board was asked whether an UN-licensed person (either CA or DC) may provide reflexology treatment on chiropractic patients within the Oregon chiropractor's clinic. The OBCE responded that this is unlicensed treatment of the chiropractic patients in the chiropractic clinic.

The inquiring physician is also a naturopath and this may be allowed under his naturopathic license for his *naturopathic* patients. Given this difference in scope, the Board reminded the chiropractor to always remember to chart under *which* license these services are being provided.

In conclusion, *ONLY* a person actively licensed in Oregon as a DC or Chiropractic Assistant (under the direct onsite supervision of an Oregon licensed chiropractor), may perform reflexology on the chiropractic patients. (11/20/08)

REIKI

A Doctor of Chiropractic asked if his certified Chiropractic Assistant may practice Reike, a form of massage therapy, in his office without his supervision. The Board determined that the certified CA may perform this type of massage *ONLY* if the supervising DC is also Reike trained, and on premise to supervise. If the certified CA, trained in Reiki, is also an Oregon licensed massage therapist, then that is already allowed with the LMT scope of practice. (3/15/07)

TERMINOLOGY

The use of the terms for chiropractic assistants, "massage therapist" and "therapist" are misleading and should not be used, as per the Oregon Administrative Rule 811-015-0045. The Board also determined that the designation "CCA" or "CA" (see below) should be spelled out, since many people would not recognize the acronym.

The rule was changed so that "Certified" has now been dropped and we are now referring to them simply as "Chiropractic Assistants." (9/16/2008)

WORKING FOR OTHER HEALTH-CARE PROVIDERS

A certified chiropractic assistant (CCA) is only certified to work in a chiropractic office under the direction of a licensed chiropractic physician. Other health care providers may not have their personnel take the Board's CCA exam for certification in their office. (8/15/91)