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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 811
BOARD OF CHIROPRACTIC EXAMINERS

FILED
10/09/2018 3:08 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amends rules regarding employment and proxy ownership of clinics

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/21/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Kelly Beringer
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HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/15/2018

TIME: 9:00 AM - 9:30 AM

OFFICER: Jason Young DC, Board
Chair

ADDRESS: OBCE Administrative
Office

530 Center St NE
Suite 620
Salem, OR 97301

SPECIAL INSTRUCTIONS:

Telephone access will be available.

NEED FOR THE RULE(S):

To clarify type of business ownership or employment allowed, and to clarify ownership or employment by proxy as unprofessional conduct

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

FISCAL AND ECONOMIC IMPACT:

None anticipated

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the

expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None anticipated

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

N/A

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Expediency and lack of subject matter experts to fulfill RAC

RULES PROPOSED:

811-010-0120, 811-035-0015

AMEND: 811-010-0120

RULE SUMMARY: Incorporates language regarding proxy ownership of a chiropractic clinic

CHANGES TO RULE:

811-010-0120

Chiropractic Professional Corporation and Business Entity Majority Ownership ¶¶

(1) Definitions. As used in this rule, unless the context requires otherwise:¶¶

(a) "Business entity" means:¶¶

(A) A professional corporation organized under ORS Chapter 58, predecessor law or comparable law of another jurisdiction;¶¶

(B) A limited liability company organized under ORS Chapter 63 or comparable law of another jurisdiction;¶¶

(C) A partnership organized in Oregon after January 1, 1998, or that is registered as a limited liability partnership, or that has elected to be governed by ORS Chapter 67 or comparable law of another jurisdiction; or¶¶

(D) A limited partnership organized under ORS Chapter 70, predecessor law or comparable law of another jurisdiction.¶¶

(b) "Majority ownership interest" means more than 50 percent of:¶¶

(A) The issued voting stock of a professional corporation;¶¶

(B) The members of a limited liability company; or¶¶

(C) Participation in the profits of a partnership.¶¶

(c) "Organizational document" means:¶¶

(A) The articles of incorporation of a professional corporation, or comparable document of another jurisdiction;¶¶

(B) The articles of organization of a limited liability company, or comparable document of another jurisdiction;¶¶

(C) The partnership agreement and, for a limited liability partnership, its registration, or comparable document(s) of another jurisdiction; or¶¶

(D) A certificate of limited partnership, or comparable document of another jurisdiction.¶¶

(d) "Owner" means a voting shareholder of a professional corporation, member of a limited liability company, or partner of a partnership.¶¶

(e) "Principal" means a person who is a director of a professional corporation, manager of a limited liability company, or general partner of a limited partnership.¶¶

(2) Requirements for business entities organized to practice chiropractic. The purpose of this rule is to protect the public by ensuring that business entities are organized for the purpose of providing chiropractic health care by majority owned and controlled Oregon licensed chiropractic physicians and/or chiropractic health care in a multi-disciplinary setting which are majority owned and controlled by Oregon licensed health care professionals.¶¶

(a) In a business entity organized for the purpose of practicing chiropractic:¶¶

- (A) The majority ownership interest shall be held by chiropractic physicians licensed in this state to practice chiropractic.¶
- (B) A majority of the principals shall be chiropractic physicians who are licensed in this state to practice chiropractic.¶
- (C) All officers except the secretary and treasurer, if any, must be chiropractic physicians who are licensed in this state to practice chiropractic. Any two or more offices may be held by the same person.¶
- (b) A professional corporation may be a shareholder of a professional corporation organized for the purpose of practicing chiropractic solely for the purpose of effecting a reorganization as defined in the Internal Revenue Code.¶
- (c) Business entities organized before August 15, 2001 that are not in compliance with the provisions of this rule have until August 15, 2002 to come into compliance.¶
- (d) The Board of Chiropractic Examiners has the discretion to allow business entities to apply for a waiver of the majority ownership requirement provided full disclosure of clinic ownership is provided to the Board of Chiropractic Examiners, a plan and timetable is presented for a transition to meet the requirements of this rule, and the Board finds that the health and welfare of the patient is the first priority of the Chiropractic physicians and business entity.¶
- (e) Upon a finding that a holder or owner of a chiropractic practice has failed to comply with the provisions of this rule or the regulations prescribed by the Board pursuant to the practice of chiropractic, the Board of Chiropractic Examiners may consider the failure to comply with this rule as a violation of this rule which may subject a holder or owner to discipline pursuant to ORS 684.100.¶
- (3) It shall be considered unprofessional conduct for a licensee to engage in ownership as a proxy for, or be employed by, an individual or entity who could otherwise not own and/or operate a chiropractic clinic under this rule.¶
- (4) Powers of professional corporations organized to practice chiropractic.¶
- (a) A professional corporation organized for the purpose of practicing chiropractic has the powers enumerated in ORS 60.077 and 60.081, except as provided otherwise by the Board of Chiropractic Examiners.¶
- (b) A general corporation under the provisions of ORS Chapter 60 may not be organized to practice chiropractic.¶
- (45) Proxies.¶
- (a) A proxy to exercise voting rights in a business entity organized for the purpose of practicing chiropractic may be given under the following conditions:¶
- (A) If the voting rights belong to a chiropractic physician licensed in this state to practice chiropractic, the proxy may be given only to an owner of the same business entity who is also a chiropractic physician licensed in this state to practice chiropractic, or to an attorney licensed in this state to practice law.¶
- (B) If the voting rights do not belong to a chiropractic physician licensed in this state to practice chiropractic, the proxy may be given only to another owner of the same business entity whether or not the other owner is a chiropractic physician licensed in this state to practice chiropractic, or to an attorney licensed in this state to practice law.¶
- (b) No voting trust may be created to exercise the voting rights of one or more owners of a business entity organized for the purpose of practicing chiropractic.¶
- (c) Two or more persons with voting rights in a business entity organized for the purpose of practicing chiropractic may enter into a voting agreement provided that the voting agreement does not transfer voting rights from an individual who is a chiropractic physician licensed in this state to practice chiropractic to an individual who is not so licensed. Notwithstanding any provision of this subsection, voting rights may be transferred to an attorney licensed in this state to practice law.¶
- (56) Acquisition and disposition of ownership interest.¶
- (a) Persons with an ownership interest in a business entity organized for the purpose of practicing chiropractic may acquire, transfer, assign or dispose of such ownership interest only in a manner that leaves the business entity in compliance with the provisions of this rule.¶
- (b) If the majority ownership interest of a business entity organized for the purpose of practicing chiropractic is no

longer held by chiropractic physician(s) licensed in this state to practice chiropractic due to such ownership interest being held by an administrator, executor, personal representative, guardian, conservator or receiver of the estate of a former owner, or by a transferee who receives such ownership interest by operation of law or court decree, such administrator, executor, personal representative, guardian, conservator, receiver or transferee may act in the same ownership capacity as the former owner, including acting in the former owner's capacity as principal or officer, until the ownership requirements are in compliance with the provisions of this rule, but not to exceed six months following receipt or transfer of such ownership interest.¶

(c) Subject to subsection (a) of this section, the organizational document, bylaws or agreements among owners of a business entity organized for the purpose of practicing chiropractic may provide limitations on the ability to acquire, transfer, assign or dispose of an ownership interest in the business entity.¶

(d) Subject to subsection (a) of this section, the articles of incorporation, bylaws or agreements among shareholders of a professional corporation may provide for the purchase or redemption of shares by the corporation.¶

~~(67)~~ Disqualification of chiropractic physician; disposition of ownership interest.¶

(a) If a chiropractic physician practicing chiropractic on behalf of a business entity is disqualified from practicing chiropractic for more than six months or assumes a public office, the duties of which prohibit practicing chiropractic for more than six months under the rules of the Board of Chiropractic Examiners or other law, within 60 days after the disqualification or prohibition, the chiropractic physician's ownership interest shall be disposed of in accordance with section (5); or¶

(A) In the case of a professional corporation, the corporation shall have the right to redeem the shares of the chiropractic physician.¶

(B) In the case of a limited liability company, the chiropractic physician shall cease to be a member by withdrawal or expulsion.¶

(C) In the case of a partnership, the chiropractic physician shall cease to be a partner by withdrawal, dissociation or expulsion.¶

(b) If the disposition of ownership interest under subsection (a) of this section results in less than majority ownership of the business entity by chiropractic physicians licensed in this state to practice chiropractic, the business entity shall have six months from the date of disqualification or prohibition to come into compliance with the majority ownership provisions of this rule.¶

(c) If a chiropractic physician practicing chiropractic on behalf of a business entity is disqualified from practicing chiropractic for six months or less or assumes a public office, the duties of which prohibit practicing chiropractic for six months or less under the rules of the Board of Chiropractic Examiners or other law, the chiropractic physician may retain interest in the business entity and may remain a principal of the business entity during the period of disqualification or prohibition, unless otherwise prohibited under the rules of the Board of Chiropractic Examiners or by law.¶

~~(78)~~ Disposition of ownership interest upon death of owner.¶

(a) A business entity organized for the purpose of practicing chiropractic may provide for the disposition of the ownership interest of a deceased owner in the organizational document, in the bylaws, by agreement between owners or between the business entity and its owners, providing such disposition leaves the business entity in compliance with the provisions of this rule.¶

(b) If there is no provision for the disposition of a deceased owner's interest as described in subsection (a) of this section, the ownership interest shall be disposed of in any manner that leaves the business entity in compliance with the provisions of this rule and the laws of this state.¶

(c) If the ownership interest of a deceased owner is not disposed of within twelve months after the owner's death, a special meeting of the remaining owners shall be called within fourteen months after the owner's death to decide by vote of the remaining owners whether the business entity shall dispose of such ownership interest in accordance with the provisions of this rule, or whether the business entity shall be voluntarily dissolved. The action determined to be taken by the remaining owners shall be completed within eighteen months after the owner's death. The Board may grant an extension of this time period upon request.¶

(d) If the deceased owner of a business entity organized for the purpose of practicing chiropractic was the sole owner of the business entity at the time of death:¶

(A) The business entity shall cease the practice of chiropractic as of the date of the owner's death unless it has retained the services of another chiropractic physician licensed in this state to practice chiropractic.¶

(B) Notwithstanding section (2)(c) of this rule, within twelve months after the date of the owner's death, the business entity shall be dissolved unless the ownership interest of the deceased owner has been sold or assigned to one or more chiropractic physicians who are licensed in this state to practice chiropractic.¶

(89) Multidisciplinary Provisions. A business entity may be organized for the purpose of rendering professional services within two or more health-related licensed professions, provided the majority ownership interest is held by persons licensed in this state in a health-related licensed profession and such licensees are acting only within their license scope of practice and code of professional conduct and are subject to the disciplinary authority of their respective licensing board.

Statutory/Other Authority: ORS 58, 684

Statutes/Other Implemented: ORS 58.367, 684.155(1)(b)

AMEND: 811-035-0015

RULE SUMMARY: Amendment makes ownership of a chiropractic clinic by proxy unprofessional conduct.

CHANGES TO RULE:

811-035-0015

Unprofessional Conduct in the Chiropractic Profession ¶¶

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:¶¶

- (1)(a) Engaging in any conduct or verbal behavior with or towards a patient that may reasonably be interpreted as sexual, seductive, sexually demeaning or romantic (also see ORS 684.100).¶¶
- (b) A licensee shall not engage in sexual relations or have a romantic relationship with a current patient unless a consensual sexual relationship or a romantic relationship existed between them before the commencement of the doctor-patient relationship.¶¶
- (c) "Sexual relations" means:¶¶
 - (A) Sexual intercourse; or¶¶
 - (B) Any touching of sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the licensee for the purpose of arousing or gratifying the sexual desire of either licensee or patient.¶¶
- (d) In determining whether a patient is a current patient, the Board may consider the length of time of the doctor-patient contact, evidence of termination of the doctor-patient relationship, the nature of the doctor-patient relationship, and any other relevant information.¶¶
- (e) A patient's consent to, initiation of or participation in sexual behavior or involvement with a licensee does not change the nature of the conduct nor lift the prohibition.¶¶
- (2) Charging fees for unnecessary services;¶¶
- (3) Failing to teach and/or directly supervise persons to whom chiropractic services have been delegated;¶¶
- (4) Practicing outside the scope of the practice of chiropractic in Oregon;¶¶
- (5) Charging a patient for services not rendered;¶¶
- (6) Intentionally causing physical or emotional injury to a patient;¶¶
- (7) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;¶¶
- (8) Soliciting or borrowing money from patients;¶¶
- (9) Possessing, obtaining, attempting to obtain, furnishing, or prescribing controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; illegally using or dispensing controlled drugs;¶¶
- (10) Aiding, abetting, or assisting an individual to violate any law, rule or regulation intended to guide the conduct of Chiropractic physicians or other health care providers; or¶¶
- (11) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information;¶¶
- (12) Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic;¶¶
- (13) Using any controlled or illegal substance or intoxicating liquor to the extent that such use impacts the ability to safely conduct the practice of chiropractic;¶¶
- (14) Practicing chiropractic without a current Oregon license;¶¶
- (15) Allowing another person to use one's chiropractic license for any purpose;¶¶
- (16) Resorting to fraud, misrepresentation, or deceit in applying for or taking the licensure exam or obtaining a license or renewal thereof;¶¶
- (17) Impersonating any applicant or acting as a proxy for the applicant in any chiropractic licensure examination;¶¶

- (18) Disclosing the contents of the licensure examination or soliciting, accepting, distributing, or compiling information regarding the contents of the examination before, during, or after its administration; Notwithstanding this section, the Ethics and Jurisprudence Examination is open book and there is no restriction on applicants discussing answers to individual questions between themselves or with others¶¶
- (19) Failing to provide the Board with any documents requested by the Board;¶¶
- (20) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to, waiver of confidentiality privileges, except attorney-client privilege;¶¶
- (21) Failing to comply with State and Federal laws regarding child and elderly abuse, and communicable diseases;¶¶
- (22) Claiming any academic degree not actually conferred or awarded;¶¶
- (23) Disobeying a final order of the Board;¶¶
- (24) Splitting fees or giving or receiving a commission in the referral of patients for services;¶¶
- (25) Making an agreement with a patient or person, or any person or entity representing patients or persons, or provide any form of consideration that would prohibit, restrict, discourage or otherwise limit a person's ability to file a complaint with the Board, to truthfully and fully answer any questions posed by an agent or representative of the Board regarding a board proceeding, or to participate as a witness in a Board proceeding;¶¶
- (26) It shall be considered unprofessional conduct for a licensee to engage in ownership as a proxy for, or be employed by, an individual or entity who could otherwise not own and/or operate a chiropractic clinic under OAR 811-010-0120; and¶¶
- (26) Chiropractic physicians holding an ownership interest as described in OAR 811-010-0120 may be held responsible, entirely or in part, for supervised staff (listed below) who provide patient services. This includes a responsibility to render adequate supervision, management and training of ancillary staff or other persons including, but not limited to, chiropractic physicians, student interns, chiropractic assistants and/or others practicing under the licensee's supervision. Chiropractors with supervised staff may be held responsible, entirely or in part, for undue influence on staff or a restriction of a supervised chiropractic physician from using their own clinical judgment.

Statutory/Other Authority: ORS 684

Statutes/Other Implemented: ORS 684.155