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BOARD OF CHIROPRACTIC EXAMINERS

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RULE SUMMARY: Incorporates language regarding surrogate 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.¶¶

(f) "Surrogate" means a person appointed to act for another; deputy.¶¶

(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 own or operate a clinic or practice as a surrogate 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)