NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 811
BOARD OF CHIROPRACTIC EXAMINERS

FILING CAPTION: Temporary CA certificate for domestic partners/spouse of military personnel; code of ethics rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/14/2019 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.

CONTACT: Kelly Beringer
503-373-1573
kelly.beringer@oregon.gov

Filed By:
Kelly Beringer
Rules Coordinator

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

DATE: 11/14/2019
TIME: 9:00 AM - 10:00 AM
OFFICER: Franchesca Vermillion DC
ADDRESS: Equitable Center Building - Conf Room
530 Center St NE, 4th or 6th floor
Salem, OR 97301

SPECIAL INSTRUCTIONS:
Call in access will be available

NEED FOR THE RULE(S):
811-010-0115: to create access to temporary certificate for certified chiropractic assistants who are military personnel's spouses or domestic partners.
811-035-0000 and 811-035-0001: to provide guidance to our licensees and to the public as to what constitutes ethical practice of chiropractic in the State.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:
2019 Senate Bill 688, 2019 House Bill 3030,

FISCAL AND ECONOMIC IMPACT:
None expected.

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).

No additional cost expected; Reporting and recordkeeping needs under review

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):
None

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?
Temp license rule for CA is mandated by legislature; code of ethics rules are clarification of chapter

RULES PROPOSED:
811-010-0115, 811-035-0000, 811-035-0001

ADOPT: 811-010-0115

RULE SUMMARY: Legislature requires agencies to create rules to allow licensure of military personnel who move from location to location frequently.

CHANGES TO RULE:

811-010-0115
Temporary Chiropractic Assistant Certification for Spouses or Domestic Partners of Active Duty Armed Forces of the United States Stationed in Oregon
(1) A temporary certification to perform the duties of a certified chiropractic assistant shall be issued to the spouse or domestic partner of active duty armed forces personnel when the following requirements are met:¶
(a) A completed application and payment of fee is received by the Board; and¶
(b) Satisfactory evidence of having successfully completed a chiropractic assistance training or program with requirements analogous to those of the OBCE and approved by a national or state chiropractic regulatory body; or¶
(c) Satisfactory evidence of having successfully completed a chiropractic assistance training or program with requirements analogous to those of the OBCE and located outside the United States; and¶
(d) Submission of a copy of the military orders assigning the active duty member to an assignment in Oregon; and¶
(e) The spouse or domestic partner holds a current chiropractic assistant certificate or license in another state to perform the duties of a certified chiropractic assistant at the level of application; and¶
(f) The certificate or license is unencumbered and verified as active and current through processes defined by the Board; and¶
(g) Satisfactory evidence of successfully passing a clinical examination administered by any state, national testing agency or other Board-recognized testing agency.¶
(2) The temporary certificate shall expire on the following date, whichever occurs first:¶
(a) Oregon is no longer the duty station of the active armed forces member; or¶
(b) The certificate in the state used to obtain a temporary certificate expires; or¶
(c) Two years after the issuance of the temporary certificate.¶
(3) This temporary certificate is not renewable. If the dates in section two of this rule are exceeded and the spouse or domestic partner continues to perform duties in Oregon, the spouse or domestic partner must apply for an active Oregon certificate. This license must be obtained using the processes and fees established for permanent certification. Continuing to work in Oregon when the temporary certification has expired will be considered practicing without a valid certificate and is subject to Board action.

Statutory/Other Authority: ORS 684
Statutes/Other Implemented: 2019 SB 688, 2019 HB 3030
ADOPT: 811-035-0000

RULE SUMMARY: Created to provide explicit guidance to our licensee base and to the public as to what constitutes ethical practice of chiropractic in the state.

CHANGES TO RULE:

811-035-0000
Preamble and Application of Rules
(1) In order to safeguard the health, safety, and welfare of the citizens of Oregon and to establish and maintain a high standard of competence, integrity, and practice, the rules found within Chapter 811 are binding on every person holding a license to practice chiropractic and those holding a certificate as a certified chiropractic assistant in this State. ¶
(2) The rules as promulgated herein are an exercise of the authority vested in the Board by acts of the legislature. ¶
(3) All persons licensed or certified under ORS 684 are charged with having knowledge of the existence of these rules and must be deemed to be familiar with their provisions and to understand them. Such knowledge must encompass the understanding that the practice of chiropractic is a privilege and not a right. ¶
(4) OAR 811-035-0001 through 811-035-0036 may be used as criteria by the Board in matters pertaining to the initial licensing, revocation, or suspension of licenses or certificates issued by the Board under ORS 684.040 to ORS 684.105, or the discipline of any licensee or certificate holder.
Statutory/Other Authority: ORS 684
Statutes/Other Implemented:
AMEND: 811-035-0001

RULE SUMMARY: Adding one definition, and alphabetizing the existing sections.

CHANGES TO RULE:

811-035-0001
Definitions ¶

(1) “Diagnosis” means distinguishing one disease from another. ¶
(2) “Direct supervision”: means the licensed chiropractic physician is physically present in the clinic, is monitoring the activities of the supervisee and is available to intervene, if necessary. ¶
(3) “Supervisee”: one under direct supervision by a licensee. ¶
(4) “Diagnosis”: distinguishing one disease from another. ¶
(5) “Prognosis”: a forecast as to the probable outcome of an attack of disease; the prospect as to recovery from a disease as indicated by the nature and symptoms of the case. ¶
(6) “Prognosis” means a forecast as to the probable outcome of an attack of disease; the prospect as to recovery from a disease as indicated by the nature and symptoms of the case.

Statutory/Other Authority: ORS 684
Statutes/Other Implemented: ORS 684.155
NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 811
BOARD OF CHIROPRACTIC EXAMINERS

FILING CAPTION: Code of Ethics general rule review

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/14/2019 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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503-373-1573
kelly.beringer@oregon.gov
530 Center St NE
Suite 620
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Salem, OR 97301
SPECIAL INSTRUCTIONS: Call in access will be available.

NEED FOR THE RULE(S):
Code of ethics rules; general review

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:
ORS Ch 684 and OAR Ch 811

FISCAL AND ECONOMIC IMPACT:
none

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
Describe how small businesses were involved in the development of these rule(s):

No involvement; general review

Was an administrative rule advisory committee consulted? No. If not, why not?

Preliminary review

Rules proposed:
811-035-0005, 811-035-0015

Amend: 811-035-0005

Rule summary: General rule review, minor grammatical edits

Changes to rule:

811-035-0005
Duties and Obligations of Chiropractic Physicians to Their Patients

(1) The health and welfare of the patient shall always be the first priority of chiropractic physicians and expectation of remuneration shall not affect the quality of service to the patient.

(2) The patient has the right to informed consent regarding examination, therapy and treatment procedures, risks and alternatives, and answers to questions with respect to the examination, therapy, and treatment procedures, in terms that they can be reasonably expected to understand.

(a) Chiropractic physicians shall inform the patient of the diagnosis, plan of management, and prognosis in order to obtain a fully informed consent of the patient during the early course of treatment.

(b) In order to obtain the informed consent of a patient, the chiropractic physician shall explain the following:

(A) In general terms, the examination procedure or treatment to be undertaken;

(B) Any alternative examination procedures or methods of treatment; and

(C) Any risks, to the examination procedure or treatment

(3) Chiropractic physicians have the right to select their cases and patients. The patient has the right to continuity of care once the chiropractic physician has agreed to treat the patient. The chiropractic physician may terminate the patient-doctor relationship only when the patient has been given reasonable notice. It is permissible for the chiropractic physician to terminate the patient-doctor relationship when the patient fails to cooperate.

Statutory/Other Authority: ORS 684
Statutes/Other Implemented: ORS 684.150
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. 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).
2. 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.
3. "Sexual relations" means:
   a. Sexual intercourse;
   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.
4. 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.
5. A patient's initiation of, or participation in, sexual behavior or involvement with a licensee does not change the nature of the conduct nor lift the prohibition.
6. Charging fees for unnecessary services;
7. Failing to teach and/or directly supervise persons to whom chiropractic services have been delegated;
8. Practicing outside the scope of the practice of chiropractic in Oregon;
9. Charging a patient for services not rendered;
10. Intentionally causing physical or emotional injury to a patient;
11. Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;
12. Soliciting or borrowing money from patients;
13. 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;
14. 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;
15. Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information;
16. Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic;
17. 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;
18. Practicing chiropractic without a current Oregon license;
19. Allowing another person to use one's chiropractic license for any purpose;
20. Resorting to fraud, misrepresentation, or deceit in applying for or taking the licensure exam or obtaining a license or renewal thereof;
21. 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 answer truthfully and completely any question asked by the Board on an application for licensure or certification, or during the course of an investigation, or any other question asked by the Board;¶
(22) Failing to comply with state and federal laws regarding child and elderly abuse, and communicable diseases;¶
(23) Claiming any academic degree or certification, not actually conferred or awarded;¶
(24) Disobeying a final order of the Board;¶
(25) Splitting fees or giving or receiving a commission in the referral of patients for services;¶
(26) 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;¶
(27) 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 OAR 811-010-0120; and¶
(28) Chiropractic physicians holding an ownership interest as described in OAR 811-010-0120 may be held responsible, entirely or in part, for staff who provide patient services. This includes a responsibility to render adequate supervision, management, and training of staff or other persons including, but not limited to, chiropractic physicians, student interns, chiropractic assistants and/or others practicing under the licensee's supervision. Chiropractic physicians with staff may be held responsible, entirely or in part, for undue influence on staff or a restriction of an associated chiropractic physician from using their own clinical judgment.
Statutory/Other Authority: ORS 684
Statutes/Other Implemented: ORS 684.155