

OFFICE OF THE SECRETARY OF STATE

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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

11/22/2019 1:35 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: New - consolidated fees, spouse of active military, Clinical Justification, Code of Ethics, Board members

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/16/2020 12:00 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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Salem, OR 97301

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: 01/16/2020

TIME: 9:00 AM - 12:00 PM

OFFICER: Franchesca Vermillion DC

ADDRESS: To be determined

~~530 Center St NE~~

~~Suite 620~~

~~Albany, OR 97321~~

Hearing location update (12/10/19):
Holiday Inn Express & Suites Albany
Meeting Room: Oregon State Room
105 Opal Court NE
Albany, OR 97322

SPECIAL INSTRUCTIONS:

Call in will be available

NEED FOR THE RULE(S):

consolidating all fees into one rule for ease of change; Temp DC rule required per 2019 HB 3030 and SB 688; Board members broaden activities covered;

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Chapter 811 rules, SB 688, HB 3030, Chapter 811 rules, SB 688, HB 3030

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).

(1) spouses of active duty military personnel; (2) (a) incoming applicants/spouses of military duty; (b) relatively none; (c) no additional expenses to comply

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

No involvement

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

Fees - no changes, only reorganized; Temp DC rule mandated by legislature; other rules up for general review.

RULES PROPOSED:

811-010-0008, 811-010-0068, 811-010-0071, 811-015-0005, 811-015-0010, 811-035-0005, 811-035-0015

ADOPT: 811-010-0008

RULE SUMMARY: The rule is created to incorporate all fees within chapter 811, plus a few for new rules that are being proposed also; adoption of this rule will eliminate the need to open multiple rules when one fee changes.

CHANGES TO RULE:

811-010-0008

Fees

All fees paid under these rules are non-refundable and are not prorated.

(1) The following fees apply to chiropractic physician applicants and licensees:

(a) Initial application and examination fee: \$100;

(b) Initial application and examination fee for reciprocity candidates: \$100;

(c) Initial license fee: \$150;

(d) Active annual registration fee: \$425;

(e) Senior active annual registration: \$315;

(f) Inactive annual registration: \$225; and

(g) Delinquent fee for late renewal during the 30 days immediately following the renewal date: \$125 per week, not to exceed \$500.

(2) The following fees apply to chiropractic assistant applicants and certificate holders:

(a) Initial application for certification fee: \$50;

(b) Examination: \$35;

(c) Initial certification: \$50;

(d) Annual renewal: \$75;

(e) Delinquent fee for late renewal during the 30 day grace period immediately following the renewal date: \$25; and

(f) Delinquent fee for late renewal after the 30 day grace period: \$50.

(3) The criminal background check fee applies to both chiropractic physicians and assistants: \$41.25.

(4) If issued, the following fees apply to civil penalty citations:

(a) Failing to maintain current email, business and mailing addresses with the Board: \$50;

(b) Failing to pay any fines or fees owed to the Board: \$50 per month of non-payment, not to exceed \$500 total;

(c) Failing to comply with continuing education requirements:

(i) Chiropractic physicians: \$250 plus \$50 per credit hour not completed, or proof provided;

(ii) Chiropractic assistant: \$12.50 per credit not completed, not to exceed \$75;

(d) Failing to attend the Introduction to the Board meeting when required by the Board: \$250;

(e) Failing to notify the Board within 10 days that licensee is convicted of a misdemeanor or felony, or arrested for a felony crime: \$125 per week, not to exceed \$500;

(f) Failing to release patient records upon written request within 30 days: \$250; ¶

(g) Failing to provide notice when leaving, selling, or retiring from the chiropractic office where the chiropractic physician has provided chiropractic services no later than 30 days prior to the last date the chiropractic physician worked at that location: \$500.

Statutory/Other Authority: ORS 684

Statutes/Other Implemented: ORS 684.155

ADOPT: 811-010-0068

RULE SUMMARY: In the 2019 Legislative session, HB 3030 and SB 688 required state professional licensing boards to issue temporary authorization to work if a person (spouse of active duty military personnel) meets specific criteria

CHANGES TO RULE:

811-010-0068

Temporary Chiropractic License for Spouses or Domestic Partners of Active Duty Armed Forces of the United States Stationed in Oregon

(1) A temporary license to practice chiropractic shall be issued to the spouse or domestic partner of an active duty armed forces personnel when the following requirements are met:¶

(a) A completed application and payment of fee is received by the Board;¶

(b) Satisfactory evidence of having graduated from a school, college, institution, or university of chiropractic accredited by the Council on Chiropractic Education; or¶

(c) Satisfactory evidence of having graduated from a school, college, institution or university accredited by the Council on Chiropractic Education located outside the United States or Canada; ¶

(d) Submission of a copy of the military orders assigning the active duty member to an assignment in Oregon; ¶

(e) The spouse or domestic partner holds a current license in another state to practice chiropractic at the level of application; ¶

(f) The 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 license 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 license in the state used to obtain a temporary license expires; or¶

(c) 13 months after the issuance of the temporary license.¶

(3) Temporary license holders are responsible to comply with ORS Chapter 684, OAR 811, and any other laws and rules governing the practice of chiropractic and chiropractic physicians.¶

(4) This temporary license is not renewable. If the dates in section two of this rule are exceeded and the spouse or domestic partner continues to practice in Oregon, the spouse or domestic partner must apply for an active Oregon license. This license must be obtained using the processes and fees established for permanent licensure.

Continuing to work in Oregon when the temporary license has expired will be considered practicing without a valid license and is subject to Board action.

Statutory/Other Authority: ORS 684

Statutes/Other Implemented: HB 3030, SB 688

AMEND: 811-010-0071

RULE SUMMARY: The rule needs to be more clearly defined to include all board activities, such as board meeting preparation, exam development, and national conference attendance.

CHANGES TO RULE:

811-010-0071

Board Members ¶¶

(1) Members of the Oregon Board of Chiropractic Examiners shall maintain a position of strict neutrality and confidentiality.¶¶

(2) Board members shall receive a per diem of \$200 a day for board meetings, conference attendance, and presentations.

Statutory/Other Authority: ORS 684

Statutes/Other Implemented: ORS 684.150

AMEND: 811-015-0005

RULE SUMMARY: The rule is open for general review and possible correction of section (3) to not be in conflict with other rules.

CHANGES TO RULE:

811-015-0005

Records

(1) Failure to keep complete, accurate, and minimally competent records on all patients shall be considered unprofessional conduct.¶

(a) Each patient shall have exclusive records which shall be clear, legible, complete, and accurate as to allow any other chiropractic physician to understand the nature of that patient's case and to be able to follow up with the care of that patient, if necessary.¶

(b) Every page of chart notes will identify the patient by name and one other unique identifier (date of birth, medical record number, etc.), and the clinic of origin by name and address. Each entry will be identified by day, month, year, provider of service, and author of the record.¶

(c) Clear, legible, complete, accurate, and minimally competent records shall contain the following:¶

(A) A description of the chief complaint or primary reason the patient sought treatment from the licensee.¶

(B) Documentation of any significant event that affects the chief complaint of the patient or the general history of the health of the patient.¶

(C) An accurate record of the diagnostic and therapeutic procedures that the licensee has employed in providing chiropractic services to the patient, including, but not limited to:¶

(i) Height, weight, blood pressure, and pulse upon examination, and subsequent visits, as clinically indicated;¶

(ii) Examinations and the results of those examinations;¶

(iii) Diagnoses;¶

(iv) Treatment plan, any subsequent changes to the treatment plan, and the clinical reasoning for those changes;¶

(v) Dates on which the licensee provided clinical services to the patient, as well as the services performed, and clinical indications for those services;¶

(vi) Areas of the patient's body where the licensee has provided care;¶

(vii) Patient's response to treatment;¶

(viii) Therapeutic procedures must be clearly described including information such as providers involved, timing, setting, and tools used, as appropriate.¶

(D) Documentation of informed consent for examination and treatment.¶

(E) Other clinically relevant correspondence, including, but not limited to: telephonic or other patient communications, referrals to other practitioners, and expert reports.¶

(d) A chiropractic physician shall maintain billing records for services performed for which payment is received from or billed to the patient, an insurance company, or another person or entity who has assumed the financial responsibility for the payment of services performed to the patient. Such records will be maintained for the same amount of time as other patient records. At a minimum, a billing record will include the date of the patient encounter or financial entry, a notation of the services performed either by description or code, common codes such as the AMA Current Procedural Terminology (CPT) codes may be used without additional explanation or legend, and the fee charged for the services billed. If third party payors are billed, the billing instrument (CMS 1500 form or its successor) should be retrievable. Such information may be maintained on a handwritten or printed ledger, with the assistance of a computer or other device either by direct entry or with a particular program or application, or by an alternative method. To the extent billing records do not contain patient health care records not kept elsewhere, they are not considered part of the clinical record.¶

(e) Such information as described in section (d) must be readily available upon request of the patient, an agent of the patient, an insurance carrier or entity responsible for the payment of the services, or by the Board or other entity with a legal right to review such information.¶

(2) Practitioners with dual licenses shall indicate on each patient's records under which license the services were

rendered.¶¶

(3) A patient's original health care and billing records shall be kept by the chiropractic physician a minimum of seven years from the date of last treatment. However, if a patient is a minor, the records must be maintained at least seven years from the time they turn 18 years of age.¶¶

(a) If the treating chiropractic physician is an employee or associate, the duty to maintain original records shall be with the chiropractic business entity or chiropractic physician that employs or contracts with the treating chiropractic physician.¶¶

(b) Chiropractic physicians shall be responsible for keeping an available copy of all authored reports for seven years from the date authored.¶¶

(4) If a chiropractic physician releases original radiographic films to a patient or another party, upon the patient's written request, they should create an expectation that the films will be returned, and a notation shall be made in the patient's file or in an office log where the films are located (either permanently or temporarily). If a chiropractic physician has radiographic films stored outside their clinic, a notation shall be made in the patient's file or in an office log where the films are located and the chiropractic physician must ensure those films are available for release, if requested by the patient.¶¶

(5) The responsibility for maintaining original patient records may be transferred to another chiropractic business entity or to another chiropractic physician as part of a business ownership transfer transaction.¶¶

(6) A chiropractic physician shall establish a plan for custodianship of these records in the event they are incapacitated, become deceased, are or will become unable to maintain these records pursuant to paragraph (7).¶¶

(7) Except as provided for in paragraph (7)(e) of this rule, a chiropractic physician who is an independent contractor or who has an ownership interest in a chiropractic practice shall provide notice when leaving, selling, or retiring from the chiropractic office where the chiropractic physician has provided chiropractic services.¶¶

(a) Notification shall be sent to all patients who received services from the chiropractic physician during the two years immediately preceding the chiropractic physician's last date for seeing patients. This notification shall be sent no later than thirty days prior to the last date the chiropractic physician will see patients.¶¶

(b) The notice shall include all of the following:¶¶

(A) A statement that the chiropractic physician will no longer be providing chiropractic services at the practice;¶¶

(B) The date on which the chiropractic physician will cease to provide services; and¶¶

(C) Contact information that enables the patient to obtain the patient's records.¶¶

(c) The notice shall be sent in one of the following ways:¶¶

(A) A letter sent through the US Postal Service to the last known address of the patient with the date of the mailing of the letter documented, or¶¶

(B) A secure electronic message.¶¶

(d) In the event of an illness, unforeseen emergency, incarceration, or other unanticipated incident, a chiropractic physician is unable to provide a thirty day notice as required by paragraph (7)(a) of this rule, the chiropractic physician shall provide such notice within thirty days after it is determined that the physician will not be returning to practice.¶¶

(e) Paragraph (7) of this rule does not apply to the chiropractic physician who is departing as an employee of another Oregon licensed chiropractic physician. It is the employer's responsibility to maintain continuity of care, or to comply with this rule, if patient care will be terminated upon an employee's leaving employment or retiring.¶¶

(f) In the event a chiropractic physician dies or becomes incapacitated and unable to practice, and there is no other chiropractic physician associated with the practice, the deceased, incapacitated, or unavailable chiropractic physician's executor, guardian, administrator, conservator, next of kin, or other legal representative shall notify the Board in writing of the management arrangement for the custody and transfer of patient files and records. This individual shall ensure the security of, and access to, patient files and records by the patient or other authorized party, and must report plans or arrangements for permanent custody of patient files and records to the Board in writing within 180 days. Transfer of patient files and records must occur within one year of the death of the chiropractic physician.

Statutory/Other Authority: ORS 684

Statutes/Other Implemented: ORS 684.155

AMEND: 811-015-0010

RULE SUMMARY: Amended to more clearly define a standard of care and clinical justification of treatment

CHANGES TO RULE:

811-015-0010

Clinical Justification ¶

~~(1) Clinical rationale~~ An Oregon licensed chiropractic physician provides care for many conditions using a variety of therapeutic procedures, including but not limited to chiropractic adjustment and manipulation. There is one standard of care for all patients, irrespective of the condition, service, or advice provided. All chiropractic physicians licensed under ORS chapter 684 are subject to the following:¶

(1) Clinical justification, within accepted standards and understood by a group of peers, must be shown for all opinions, diagnostic, and therapeutic procedures. The singular accepted standard of care includes obtaining a history that informs the examination, conducting an examination that informs the diagnosis, and using the diagnosis to inform the management plan which includes relevant outcome markers.¶

(2) "Accepted standards" means skills and treatment which are recognized as being reasonable, prudent, and acceptable under similar conditions and circumstances.¶

(3) All initial exam~~For neuro-musculoskeletal conditions, all in~~initial and subsequent re-examinations performed by a chiropractic physician to determine the need for chiropractic treatment of neuro-musculoskeletal conditions treatment shall include a functional chiropractic analysis. Some combination of at least two of the following PARTS exam constitutes a functional chiropractic analysis:¶

P - Location, quality, and intensity of pain or tenderness produced by palpation and pressure over specific structures and soft tissues;¶

A - Asymmetry of sectional or segmental components identified by static palpation;¶

R - The decrease or loss of specific movements (active, passive, and accessory);¶

T - Tone, texture, and temperature change in specific soft tissues identified through palpation;¶

S - Use of special tests or procedures.¶

(4) Chiropractic physicians shall treat their patients as often as necessary to insure allow for favorable progress. Evidence-based outcomes management shall determine whether the frequency and duration of curative chiropractic treatment is, has been, or continues to be necessary. Outcomes management shall include both subjective, or patient-driven, information as well as objective, provider-driven, information. In addition, treatment of neuro-musculoskeletal conditions outside of the Oregon Practices and Utilization Guidelines—NMS Volume I, Chapter 5, may be considered contrary to accepted standards. Chiropractic physicians treating outside of the Practices and Utilization Guidelines—NMS Volume I, Chapter 5, bear the burden of proof to show that the treatment, or lack thereof, is clinically justified.¶

(5) Copies of any independent examination report must be made available to the patient, the patient's attorney, the treating doctor, and the attending physician at the time the report is made available to the initial requesting party.

Statutory/Other Authority: ORS 684

Statutes/Other Implemented: ORS 684.155

AMEND: 811-035-0005

RULE SUMMARY: Continue general review to make sure rule is in line with other Code of Ethics rules

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

RULE SUMMARY: Continue general review to make sure rule is in line with other Code of Ethics rules

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 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;¶
- (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 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