



# Oregon

Kate Brown, Governor



## Medical Board

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## Proposed Rulemaking **Update**: Medical Chaperones

*Establishing requirements for Oregon Medical Board licensees to offer medical chaperones.*

**July 7, 2022**

**The Oregon Medical Board seeks public comment on the updated proposed rule to require a universal offering of a medical chaperone during all breast, genital, and rectal examinations, no matter the medical specialty, in outpatient and inpatient settings by January 1, 2023.**

### Background

In January 2021, the Oregon Medical Board formed a [Workgroup on Sexual Misconduct](#) charged with reviewing rules and policies regarding the Board's approach to sexual misconduct. The Workgroup held a series of public meetings in February, March, and April 2021, and one of the products of these meetings was a proposed rule similar to the American College of Obstetricians and Gynecologists' (ACOG) [recommendation](#) for a chaperone to be present for all breast, genital, and rectal examinations. In July 2021, the Board posted notice of the draft rule and received public comments.

During the October 2021 Board meeting, the Sexual Misconduct Workgroup was tasked with reviewing the public comments. The reconvened Workgroup held a second series of public meetings in November 2021, January 2022, and March 2022. From these meetings, the Workgroup offered an updated draft rule. The updated proposal was reviewed at the Administrative Affairs Committee meeting on June 8, 2022, and the Oregon Medical Board meeting on July 7, 2022.

### Updated Proposed Rule

Starting January 1, 2023, the updated proposal requires a universal offering of a medical chaperone during all breast, genital, and rectal examinations, in outpatient and inpatient settings, no matter the medical specialty. The proposal allows a patient to decline the offer a chaperone, but it should be explained that the chaperone is an integral part of the clinical team whose role includes protecting the patient and the provider. If the patient declines, the updated draft rule would allow the OMB licensee to defer the examination for the protection of the patient and the licensee. See draft rule and list of Frequently Asked Questions below along with the [rulemaking notice](#).

If a chaperone is requested, the draft rule requires an OMB licensee to use a trained chaperone, a person who holds an active Oregon license to practice a health care profession, or unlicensed personnel who have taken a medical chaperone course (2 hours online for about \$55).



## **Proposed Rulemaking: Establishing requirements for Oregon Medical Board licensees to offer medical chaperones.**

### **Fiscal Impact and Implementation**

The Oregon Medical Board recognizes that offering and providing a trained chaperone for breast, genital, and rectal examinations may require some practices to adjust staffing procedures. There also may be concerns about the time and resources needed to implement changes, as well as their potential effect on patient care. However, the Board proposes to implement offering a chaperone due to the evidence of the detrimental effects of sexual misconduct on patients' wellbeing, the patient–physician relationship, and public trust in the medical profession. There is a need to institute a routine offering of a medical chaperone to reduce the risk of sexual misconduct for Oregon patients.

### **Public Comments**

There are two ways to provide input on the updated draft rule:

1. Submit written comments by 5 p.m. on Wednesday, August 24, 2022, via email to [elizabeth.ross@omb.oregon.gov](mailto:elizabeth.ross@omb.oregon.gov).
2. Provide oral testimony at a public hearing on Wednesday, August 24, 2022, at 10 a.m. via videoconference or phone.

#### **[Join Zoom Meeting](#)**

Meeting ID: 863 1251 1800

Passcode: wJ\*3rtcfy

Phone: 253-215-8782

Meeting ID: 863 1251 1800

Passcode: 526758707

During the public hearing, a Board staff member will accept oral testimony on the proposed rule. Please limit your oral comments to about 3 minutes and submit additional comments in writing to [elizabeth.ross@omb.oregon.gov](mailto:elizabeth.ross@omb.oregon.gov) by the deadline noted above. Board staff will not be responding to questions during the public hearing. Participants unable to attend the public hearing may submit written comments by the deadline.

The Board will review all oral comments made at the public hearing and written comments received by the deadline at the Administrative Affairs Committee meeting on September 14, 2022, and the Oregon Medical Board meeting on October 6-7, 2022.

If you have questions about this rulemaking or the public hearing, please contact Elizabeth Ross at [elizabeth.ross@omb.oregon.gov](mailto:elizabeth.ross@omb.oregon.gov).

### **Reasonable Accommodation**

Reasonable accommodations for people with disabilities are available upon request. In your request, please include a description of the accommodation you will need, including as much detail as possible, and a way the Board staff can contact you if we need more information. Make your request as early as possible; please allow at least five days' advance notice. Last-minute requests will be accepted but may be impossible to fill. Please contact Gretchen Kingham at [Gretchen.Kingham@omb.oregon.gov](mailto:Gretchen.Kingham@omb.oregon.gov) or call the Board at (971) 673-2700 with your request.



## **Proposed Rule Draft**

**847-010-0130**

### **Medical Chaperones**

- (1) As of January 1, 2023, a licensee must offer a trained chaperone to be physically present for all:
  - (a) Genital and rectal examinations regardless of gender; and
  - (b) Breast examinations for patients who identify as female.
- (2) The licensee must ensure that the chaperone:
  - (a) Is not a personal friend or relative of the patient or licensee; and
  - (b)(A) Holds an active Oregon license to practice a health care profession; or
  - (B) Completes a course for medical chaperones approved by the Oregon Medical Board.
- (3) During a breast, genital, or rectal examination when a chaperone is requested, the chaperone may not participate in acts that would obstruct or distract the chaperone from observing the licensee's behavior and actions throughout the exam, procedure, or clinical encounter.
- (4) For all breast, genital, and rectal examinations, the presence or absence of a chaperone must be documented in the patient chart.
- (5) The patient may decline the presence of a chaperone for a breast, genital, and rectal examination. If the patient declines, the licensee:
  - (a) May defer the breast, genital, or rectal examination if, in the provider's judgment, deferring the examination is in the best interest of the patient and the licensee.
  - (b) May perform the examination and document the patient's consent to proceed without the presence of a chaperone.
- (6) A licensee is not required under this rule to offer a chaperone be present in circumstances in which it is likely that failure to examine the patient would result in significant and imminent harm to the patient, such as during a medical emergency.
- (7) A licensee is not required to offer a chaperone if a chaperone is already present in the normal course of the examination.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.265



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### Medical Chaperone Rulemaking

#### Frequently Asked Questions for Proposed Rule

**Updated July 8, 2022**

*The Oregon Medical Board updated the proposal for the medical chaperone rulemaking. The updated draft requires Board licensees to offer a trained chaperone to be physically present for all genital, rectal, and female breast examinations starting January 1, 2023.*

*We know there are many questions about the proposed rule and its implementation. Please review the information below and submit additional questions to Elizabeth Ross at [elizabeth.ross@omb.oregon.gov](mailto:elizabeth.ross@omb.oregon.gov).*

#### **1. What do medical chaperones provide?**

The presence of a trained chaperone in the examination room can provide reassurance to the patient about the professional context and content of the examination and the intent of the provider. The chaperone also serves as a witness to the events taking place should there be any misunderstanding or concern for misconduct.

#### **2. Why is the Oregon Medical Board (OMB) proposing this rule?**

On recommendation of the Sexual Misconduct Workgroup, the OMB proposes to implement this requirement due to the evidence of the detrimental effects of sexual misconduct on patients' wellbeing, the patient-provider relationship, and public trust in the medical profession. There is a need to institute routine offerings of a chaperone to reduce the risk of sexual misconduct for Oregon patients.

#### **3. Does this proposed rule apply to all breast, genital, and rectal examinations?**

The proposed rule requires a universal offering of a medical chaperone during all genital, rectal, and female breast examinations, no matter the medical specialty. This includes examinations where there is no physical contact and examinations that take place inside a hospital. The OMB notes the power differential between providers and patients, which is why universally offering chaperones for sensitive exams is so important. The intent is to develop a process that makes every patient truly feel comfortable asking for a chaperone. The OMB recognizes the balance between protecting patients and allowing practical means for licensees to provide quality care.

#### **4. How is the offer made?**

Patients must be informed about their right to have a chaperone present during sensitive examinations or to opt out of having a chaperone. It is imperative that patients be informed decision makers. There are no exact words that must be used in the offer. The offer may be



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made in writing or verbally by the licensee or a representative of the licensee prior to the exam. The offer can be made when the exam is scheduled through the period immediately prior to starting the exam.

The OMB suggests informing the patient about their right to have or decline a chaperone in advance of their appointment. The intent is to alleviate last-minute rescheduling if a chaperone is not available or the licensee does not want to perform the exam without a chaperone. Advance discussion with patients regarding a chaperone could help alleviate the burden on licensees regarding staffing.

### **5. Is an offer required if a medical chaperone is already present in the normal course of the examination?**

A licensee is not required to offer a chaperone if a medical chaperone is already present in the normal course of the examination.

### **6. May a patient's medical chaperone preference be stored in the patient's record and not offered each time?**

The patient's preference may be stored in their record as guidance, but should always be offered prior to each examination, except as described in question #5. However, if the patient's record indicates they request a medical chaperone, subsequent offers are not required and a provider may assume a medical chaperone has been requested until the patient declines.

### **7. How may a patient decline a chaperone?**

The patient should actively decline the offer either verbally or in writing. The licensee should explain that the chaperone is an integral part of the clinical team whose role includes protecting both the patient and the licensee. If the patient does not respond to an offer, the OMB suggests that a chaperone be present, at least until a patient actively declines the chaperone.

### **8. Can a minor decline or request a chaperone?**

Minors who are 15 years or older are able to consent to medical services without parental consent in Oregon. Prior to age 15, parents and legal guardians would have the right to accept or decline a chaperone.

### **9. If a patient declines a chaperone, may the licensee defer the examination?**

The licensee may defer an unchaperoned examination for the protection of the patient and the licensee. However as noted earlier, the OMB suggests informing the patient in advance of their appointment to alleviate last-minute rescheduling and unnecessary delay of the exam. It may be reasonable to refer the patient to another provider.



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### **10. Does the emergency exception provided in section (6) of the draft rule apply to emergency department visits?**

It depends on the urgency of the visit and whether or not a chaperone could reasonably be offered to the patient prior to the exam.

### **11. Some patients have a family member or friend with them, can they serve as chaperone?**

Many patients, including pediatric patients, patients with diminished capacity, and patients with varying cultural or language differences, may have a family member or friend with them during exams. However, family members and friends should not be considered chaperones because they likely lack objectivity and the qualifications to serve as a chaperone. Patients and parents of minors may decline a chaperone, but a chaperone must still be offered.

### **12. Does the proposed rule apply to newborn patients?**

Newborn exams are usually performed in the room with the parents or in the nursery where nurses are often present. Although a parent may not serve as a chaperone, the parent may decline the offer of a chaperone for a newborn exam.

### **13. May the patient demand a certain gender of the chaperone?**

Licensees should ensure that a patient is comfortable, to the best of their ability, but the goal of the proposed rule is to protect the patient from harm. If a patient is not comfortable, a licensee could defer or redirect care. In every situation, there must be mutually agreeable informed consent; the patient can decline a chaperone and a licensee can decline to perform an exam.

### **14. Do all chaperones have to take a training course?**

Licensees should ensure that chaperones understand their responsibilities to protect patients' privacy and the confidentiality of health information. No additional training is required if the chaperone holds an active Oregon license to practice a health care profession (physician, physician assistant, registered nurse, etc.). If the chaperone does not hold a health care professional license, the chaperone must complete a course for medical chaperones approved by the Oregon Medical Board.

As an example, the PBI Education offers a two-hour online course for \$55. Additionally, other courses may also meet the training elements of appropriate observational techniques, documentation of encounters, maintaining boundaries in the workplace, draping techniques, the importance of neutrality, reporting requirements, and other components of a chaperone training program.



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### **15. Can a trainee serve as a chaperone?**

Use of trainees, medical students, or residents as chaperones generally is discouraged unless they are trained in appropriate clinical practices and empowered to report concerns about how the health care provider conducts the examination.

### **16. How should a licensee document the presence or absence of a chaperone in the patient chart?**

If a medical chaperone is present, the OMB suggests including the name of the chaperone and credentials (if applicable). If a chaperone is declined, the OMB suggests including information about when the offer was declined, the patient's reason for declining (if available), and the licensee's reasoning for either deferring the examination or proceeding without a chaperone.

### **17. If a chaperone is requested, how should a medical chaperone observe the examination?**

The medical chaperone must directly observe the licensee's behavior and actions during the examination. A medical chaperone would not meet the requirements of the rule by turning their back during the examination, but may be positioned in a way where they can see the patient and how the examination is being conducted that is comfortable and respectful to the patient.

### **18. May a medical chaperone also assist the licensee during the examination?**

The medical chaperone may assist the licensee during the examination as long as the tasks do not obstruct or distract the chaperone from observing the licensee's behavior and actions.

### **19. I'm concerned some patients won't tell me things they otherwise would if a chaperone is in the room.**

If a chaperone is present, the OMB suggests the licensee provide a separate opportunity for private conversation before or after the exam.

### **20. Does the proposed rule apply to virtual visits/telemedicine?**

Even when no physical contact will occur, there may be times that the genital, breast, or rectal area will require virtual examination, and the same standard of care provided to in-person sensitive physical exams is expected.

### **21. I have a Board Order requiring a chaperone. Does the proposed rule allow my patients to decline the chaperone?**

If a Board Order requires you to have a chaperone present, you cannot perform the exam without a chaperone.





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### **22. What about the cost for licensees to offer and provide chaperones? Cost for training unlicensed staff?**

The OMB recognizes that offering and providing chaperones may require some practices to adjust procedures and staffing. There also may be concerns about the time and resources needed to implement changes.

### **23. Does the proposed rule apply to acupuncturists?**

The proposed rule applies to all OMB licensees. However, breast, genital, and rectal exams are, in most circumstances, outside of the scope of practice for acupuncturists.

### **24. What about extenuating circumstances?**

The OMB understands that limited extenuating circumstances may arise in response to the requirement to offer a medical chaperone. The proposed rule cannot address every possibility and situations will be reviewed case by case, as necessary.