

NOTICE OF PROPOSED RULEMAKING

CHAPTER 811

BOARD OF CHIROPRACTIC EXAMINERS

FILING CAPTION: Creating new rule to include sexual unprofessional or dishonorable conduct

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/22/2021 AT 8:35 AM

HEARING(S):

DATE: 07/22/2021

TIME: 8:30 AM - 3:30 PM

OFFICER: Mackenzie Purnell

ADDRESS: TBD

Zoom and Telephone

Open to public

All, OR 97301

SPECIAL INSTRUCTIONS:

Zoom and Telephone access will be posted on public agenda on agency website

NEED FOR THE RULE(S):

Creating new rule to include sexual unprofessional or dishonorable conduct

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR Ch. 811, www.oregon.gov/obce

FISCAL AND ECONOMIC IMPACT:

No direct fiscal impact

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 cost associated for compliance.

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

5 of our board members who will be reviewing and voting on this rule are licensed chiropractic physicians and some either own or work for small businesses.

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

Creating new rule

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AMEND: 811-035-0020

RULE TITLE: Sexual Unprofessional or Dishonorable Conduct

RULE SUMMARY:

RULE TEXT:

Sexual unprofessional or dishonorable 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. Sexual unprofessional or dishonorable conduct shall include, but not be limited to, the following acts of licensees/certificate holders:

(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 in nature;

(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) 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) Sexual misconduct: Licensee sexual misconduct is behavior that exploits the licensee-patient relationship in a sexual way. The behavior is non-diagnostic and non-therapeutic, may be verbal, physical or other behavior, and may include expressions of thoughts and feelings or gestures that are sexual or that reasonably may be construed by a patient as sexual. Sexual misconduct includes but is not limited to:

(a) Sexual violation: Licensee-patient sex, whether or not initiated by the patient, and engaging in any conduct with a patient or the patient's immediate family that is sexual or may be reasonably interpreted as sexual, including but not limited to:

(A) Sexual intercourse;

(B) Genital to genital contact;

(C) Oral to genital contact;

(D) Oral to anal contact;

(E) Genital to anal contact;

(F) Kissing;

(G) Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient has refused or has withdrawn consent;

- (H) Licensee touching their sexualized body part against any part or parts of a patient's body for purposes of sexual gratification;
 - (I) Licensee touching their sexualized body part against any part or parts of a patient's body for non-therapeutic or sexual interest;
 - (J) Encouraging the patient to masturbate in the presence of the licensee or masturbation by the licensee while the patient is present;
 - (K) Offering to provide compensation, products, or services in exchange for sexual favors;
 - (L) Requesting a date or romantic relationship with a patient.
- (3) Sexual impropriety: Behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient or the patient's immediate family, to include:
- (a) Sexually exploitative behavior, to include taking, transmitting, viewing, or in any way using photos or any other images of a patient, their family, or associates for the sexual interest of others;
 - (b) Intentional viewing in the health care setting of any sexually explicit conduct for sexual interests;
 - (c) Having any involvement with child pornography, which is defined as any visual depiction of a minor (a child younger than 18) engaged in sexually explicit conduct;
 - (d) Sexually explicit communication in person, by mail, by telephone, or by other electronic means, including but not limited to text message, e-mail, video or social media;
 - (e) Making sexual or sexually demeaning comments about a patient's body, including body modifications or clothing;
 - (f) Making comments about the patient's sexual orientation or gender identity;
 - (g) Making comments about potential sexual performance;
 - (h) Initiating or participating in a conversation with a patient regarding the chiropractic physician's own sexuality, including sexual problems, preferences, or fantasies that are unnecessary and/or not related to the patient's psychosocial evaluation for purposes of treatment;
 - (i) Initiating conversation with, or requesting details of, a patient's sexuality, including history, sexual problems, sexual fantasies, or sexual preferences that are unnecessary and/or not related to the patient's psychosocial evaluation for purposes of treatment;
 - (j) Failure to explain the necessity of performing any procedure that involves exposure or contact with the pelvic area, genitals, rectum, prostate, or breasts. In the event the patient is a minor, the explanation shall be given to the parent or legal guardian, as well as the patient. The chiropractic physician must ensure that the patient comprehends the necessity for such examination;
 - (k) Failure to provide privacy for disrobing and/or failure to provide proper gowns.
- (4) An individual is considered a patient until six months has passed from the date the doctor-patient relationship was formally terminated and documented in the patient record. An individual remains a patient until the doctor-patient relationship is terminated even if the individual is not actively receiving professional services from the licensee.
- (a) 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.
 - (b) In the case of a certificate holder, the certificate holder has the responsibility to report to their supervising licensee any intent to romantically or sexually engage with a patient. The certificate holder has a duty to report

any actions taken against a patient that can be perceived as a violation of this rule. A licensee who supervises a certificate holder has the responsibility to take appropriate action to protect the patient.

Statutory/Other Authority: ORS 684

Statutes/Other Implemented: ORS 684.155