

## **NOTICE OF PROPOSED RULEMAKING**

### **CHAPTER 811**

### **BOARD OF CHIROPRACTIC EXAMINERS**

**FILING CAPTION:** Including the language from sexual misconduct rule and updating subsection with COVID-19 related updates

**LAST DAY AND TIME TO OFFER COMMENT TO AGENCY:** 11/17/2021 AT 8:35 AM

#### **HEARING(S):**

**DATE:** 11/17/2021

**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):**

Editing section 18 to incorporate sexual misconduct language from sexual misconduct rule, this rule version does not have those changes. Updating subsection y regarding COVID-19 updates.

#### **DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

OAR Ch. 811, [www.oregon.gov/obce](http://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?

Section update, no need for administrative committee consultation.

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AMEND: 811-010-0110

RULE TITLE: Chiropractic Assistant

RULE SUMMARY:

RULE TEXT:

(1) The certification period for chiropractic assistants in Oregon is a period equal to 12 months, expiring on the last day of the chiropractic assistant's birth month/renewal date.

(2) Chiropractic assistants may be certified upon compliance with the following:

(a) The chiropractic assistant applicant shall successfully complete a Board approved training course. The initial training course shall be at least twelve hours in length, of which eight hours shall be didactic training and four hours shall be practical training.

(A) The practical training must be in physiotherapy, electrotherapy and hydrotherapy administered by a health care provider licensed to independently provide those therapies.

(B) A chiropractic physician may perform the initial practical training provided this is direct contact time.

(C) The initial training must have been completed within 60 days preceding the application submission date.

(b) The applicant shall complete an application packet, and an open book examination administered by a national testing agency.

(c) If an applicant has a certificate or license from another state and adequate documentation of training, the Board may waive the requirement for the initial training course.

(3) Prior to initial certification, the training course verification form, completed application packet, passing examination results, and fees shall be submitted to the Board:

- (a) A non-refundable application fee;
- (b) A non-refundable examination fee; and
- (c) An initial certification fee. A refund of the certification fee will only be allowed when requested within 60 days of the initial application.
- (d) In circumstances beyond the applicant's control the Board may determine to refund the fees or portion thereof.
- (e) In the event the Board requires the NBCE chiropractic assistant examination in lieu of the Board's examination, the fee in subsection (b) will be waived.
- (4) The Board shall maintain an incomplete application file for six months from the date the application was received; afterward, applicants will need to re-apply.
- (5) The applicant shall be at least 18 years of age.
- (6) The chiropractic assistant shall not perform electrotherapy, hydrotherapy, or physiotherapy until they receive a certificate from the Board.
- (7) A chiropractic assistant shall be directly supervised by the licensed chiropractic physician at all times. The supervising licensed chiropractic physician must be on the premises.
- (8) Only under the direct supervision of the licensed chiropractic physician the chiropractic assistant:
  - (a) may perform or provide physiotherapy, electrotherapy and hydrotherapy, the taking of vitals such as height, weight, blood pressure, temperature, pulse, respiration and/or body fat percentages, and other duties as described by the Board; and
  - (b) may not perform or provide physical examinations, taking initial histories, taking X-rays (unless properly licensed), interpretation of postural screening, performing manual muscle testing, or osseous adjustments or manipulations, or other tasks as prohibited by the Board.
- (9) Chiropractic assistants shall report to the Board, in writing, their mailing address and place of employment. Notification of a change of mailing address or place of employment must be made within 10 days of the change.
- (10) At least 30 days prior to the renewal date, the Board shall send the renewal notice to the chiropractic assistant at the last known mailing address, and/or email address.
- (11) On or before the last day of the birth month, the chiropractic assistant shall submit to the Board the following:
  - (a) A completed renewal application and renewal fee;

(A) The renewal application may include a request for fingerprinting and a criminal background check with fees to be paid by the chiropractic assistant.

(B) Frequency of fingerprinting and criminal background checks will be determined by the Board.

(b) An attestation that the six hours of continuing education has been completed within the immediate 12 months prior to renewal date; and

(c) A completed OHA Healthcare Workforce Questionnaire; and

(d) As part of the annual registration, all licensees must complete the required health care workforce data survey and pay the fee established by the Oregon Health Authority pursuant to ORS 676.410.

(12) During the 30 day grace period immediately following the renewal date, the chiropractic assistant may continue to perform assigned duties, but must submit a completed renewal application, proof of continuing education, and payment of the renewal fee plus a delinquent fee.

(13) After the 30 day grace period, the chiropractic assistant shall not perform assigned duties until the renewal application, proof of continuing education, payment to the Board of the renewal fee and a delinquent fee are all submitted to the Board and approved.

(14) A chiropractic assistant has up to one year following their renewal date to renew and reinstate their certificate upon meeting the provisions of (12) and (13) above. After 12 months, a person must restart the application process.

(15) Continuing education programs may be comprised of subjects that are pertinent to clinical practices of chiropractic. Continuing education must meet the criteria outlined in OAR 811-015-0025 sections (8), (9) and (10). No continuing education hours may be carried over into the next renewal year. Evidence of successful completion of six hours of continuing education during the 12 months preceding the renewal must be submitted upon request by the Board.

(16) The chiropractic assistant's certificate may be displayed in the chiropractic physician's office during the chiropractic assistant's employment, but is not required so long as the certificate is on file with the chiropractic physician's office.

(17) The Board may refuse to grant a certificate to any applicant, may suspend or revoke a certificate, or may impose upon an applicant for certification or chiropractic assistant a civil penalty not to exceed \$1,000 upon finding of any of the following:

(a) Cause, which is defined as, but not limited to, failure to follow directions, unprofessional or dishonorable conduct, injuring a patient, or unlawful disclosure of patient information. The supervising chiropractic physician is required to notify the Board, in writing, of any dismissal of a chiropractic assistant for cause within ten days. The Board shall determine if there is cause for action and shall be governed by the rules of the Board adopted pursuant to ORS Chapter 183;

(b) Conviction of a misdemeanor involving moral turpitude or a felony;

(c) Non-disclosure of misdemeanor or felony convictions; or

(d) Failure to notify the Board of a change of location of employment as required by these rules.

(18) Unprofessional or dishonorable conduct is defined as: 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 assistant performance; 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 assistant:

~~(a) Conduct that is prohibited as described in OAR 811-035-0019 Sexual Unprofessional or Dishonorable Conduct. Engaging in any conduct or verbal behavior with or towards a current patient that may reasonably be interpreted as sexual, seductive, sexually demeaning or romantic (also see ORS 684.100).~~

~~(b) A certificate holder 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 chiropractic assistant-patient relationship.~~

~~(A) "Sexual relations" means:~~

~~(i) Sexual intercourse; or~~

~~(ii) 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 chiropractic assistant for the purpose of arousing or gratifying the sexual desire of either chiropractic assistant or patient.~~

~~(B) A patient's initiation of, or participation in, sexual behavior or involvement with a chiropractic assistant does not change the nature of the conduct nor lift the prohibition.~~

~~(C) In determining whether a patient is a current patient, the Board may consider the length of time of the chiropractic assistant-patient contact, evidence of termination of the chiropractic assistant-patient relationship, the nature of the chiropractic assistant-patient relationship, and any other relevant information.~~

~~(be) Use of protected or privileged information obtained from the patient to the detriment of the patient.~~

~~(cd) Violating section (8) of this rule;~~

~~(de) Charging a patient for services not rendered;~~

~~(ef) Intentionally causing physical or emotional injury to a patient;~~

- (fg) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;
- (gh) Soliciting or borrowing money from patients;
- (hi) Receiving a conviction of a crime for 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;
- (ij) Aiding, abetting, or assisting an individual to violate any law, rule or regulation intended to guide the conduct of chiropractic assistants or other health care providers;
- (jk) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information;
- (kl) Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic;
- (lm) Using any controlled or illegal substance or intoxicating liquor to the extent that such use impacts the ability to safely conduct the assigned duties of a chiropractic assistant;
- (mn) Acting as a chiropractic assistant without a current Oregon certificate;
- (no) Allowing another person to use one's chiropractic assistant certification for any purpose;
- (op) Resorting to fraud, misrepresentation, or deceit in applying for or taking the certificate examination or obtaining a certificate or renewal thereof;
- (pq) Impersonating any applicant or acting as a proxy for the applicant in any chiropractic assistant certificate examination;
- (qr) Disclosing the contents of the certificate examination or soliciting, accepting, or compiling information regarding the contents of the examination before, during, or after its administration;
- (rs) Failing to provide the Board with any documents requested by the Board;
- (st) 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;
- (tu) 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 questions asked by the Board;
- (uv) Claiming any academic degree, or certification, not actually conferred or awarded;
- (vw) Disobeying a final order of the Board;
- (wx) Splitting fees or giving or receiving a commission in the referral of patients for services;

(~~xy~~) Receiving a suspension or revocation of a certificate for a chiropractic assistant, or other license or certificate by any state based upon acts by the chiropractic assistant or applicant that describes acts similar to this section. A certified copy of the record of suspension or revocation of the state making that is conclusive evidence thereof.

(~~yz~~) During a declared emergency, unprofessional conduct includes failing to comply with any applicable provision of a Governor's Executive Order or any provision of this rule.

(A) Failing to comply as described in subsection (~~yz~~) includes, but is not limited to:

(i) Operating a chiropractic entity required to be closed by a current Executive Order;

(ii) Providing chiropractic services at a business required to be closed by a current Executive Order;

(iii) Failing to comply with applicable Oregon Health Authority (OHA) guidance implementing a current Executive Order; and

(iv) Failing to comply with any OBCE guidance or rule implementing an Executive Order.

(B) No disciplinary action or penalty action shall be taken under this rule if the Executive Order alleged to have been violated is not in effect at the time of the alleged violation.

(19) Violations may be grounds for disciplinary action against the supervising chiropractic physician under ORS 684.100(9)

**Statutory/Other Authority:** ORS 684.155

**Statutes/Other Implemented:** ORS 684.054 & 684.155(c)(A)