

NOTICE OF PROPOSED RULEMAKING

CHAPTER 811

BOARD OF CHIROPRACTIC EXAMINERS

FILING CAPTION: Modifying section 1 and 27 regarding language from the sexual unprofessional conduct rule and actions during an emergency declaration

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):

To address whether the Board wants to modify section 27 regarding actions during an emergency declaration and updating section 1 to include language from the sexual unprofessional conduct rule.

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?

Modify section 27 regarding actions during an emergency declaration and section 1 to include language from the sexual unprofessional conduct rule.

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AMEND: 811-035-0015

RULE TITLE: Unprofessional Conduct in the Chiropractic Profession

RULE SUMMARY:

RULE TEXT:

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) Conduct that is prohibited as described in OAR 811-035-0019 Sexual Unprofessional or Dishonorable Conduct; (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) 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;
- (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 keep complete, accurate, and minimally competent records on all patients;

(20) Failing to provide the Board with any documents requested by the Board;

(21) 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;

(22) 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;

(23) Failing to comply with state and federal laws regarding child and elderly abuse, and communicable diseases;

(24) Failing to provide and maintain a safe and sanitary treatment environment;

(25) Claiming any academic degree or certification, not actually conferred or awarded;

(26) Disobeying a final order of the Board;

(27) 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 (27) includes, but is not limited to:

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

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

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

(D) 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.

(28) Fee splitting means compensation by or to a chiropractic physician or chiropractic clinic solely for referral of a patient.

(a) Chiropractic physicians may not refer patients based on whether the referring chiropractic physician has negotiated a discount for specialty services. Chiropractic physicians may not accept:

(A) Any compensation of any kind, from any source for referring a patient other than distributions of a health care organization's revenues as permitted by law.

(B) Compensation for services relating to the care of a patient from any health care facility/organization to which the physician has referred the patient.

(C) Compensation for referring a patient to a research study with the exception of remuneration for administrative costs.

(b) Compensation is defined as something given or received as payment including but not limited to: bartering, tips, money, donations, goods, or services.

(29) 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;

(30) 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

(31) 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